

1 *House* BILL NO. *153*
 2 INTRODUCED BY *Boudreau, Meloy, Fagg, Monahan, Bradley, Simpson, Henderson, Hummeken, Gray, DeLuca, Alussant, Lester* VINCENT
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 PROTECTION AND ENHANCEMENT OF SHORELAND AREAS; COUNTY
 6 ZONING; ASSISTANCE BY THE DEPARTMENT OF NATURAL RESOURCES
 7 AND CONSERVATION; ZONING BY THAT DEPARTMENT UPON DEFAULT BY
 8 A COUNTY."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Short title. This act may be cited as "The
 12 Montana Shoreline Protection Act".

13 Section 2. Declaration of public interest -- lands
 14 included -- purposes of regulation. It is declared to be in
 15 the public interest to establish policies, make plans, and
 16 authorize and require counties to adopt shoreland zoning
 17 permit regulations for the efficient use, conservation,
 18 development, and protection of this state's ponds, lakes,
 19 and reservoirs. The regulations shall relate to lands under,
 20 abutting, or lying close to ponds, lakes, and reservoirs.
 21 The purposes of the regulations shall be to further the
 22 maintenance of safe and healthful conditions; prevent and
 23 control water pollution; protect spawning grounds, fish, and
 24 aquatic life; control building sites, placement of
 25 structures, and land uses, and preserve shore cover and

1 natural beauty.
 2 Section 3. Definitions. As used in this act:
 3 (1) "Reservoir" means any reservoir which covers more than
 4 200 acres at mean low water level, and which is identified
 5 by the board as an environmentally critical shoreland area.
 6 (2) "Lake" or "pond" means any lake or pond identified
 7 by the board as having an environmentally critical shoreland
 8 area.
 9 (3) "Environmentally critical shoreland area" means an
 10 area where development could result in irreversible losses
 11 of important agricultural, aesthetic, cultural, or
 12 historical values; or loss of natural ecosystems which are
 13 of more than local significance; or where such development
 14 could unreasonably endanger life and property as a result of
 15 natural hazards. These areas include:
 16 (a) estuaries and shorelands of ponds, lakes, and
 17 reservoirs that are relatively unspoiled by the works of
 18 man;
 19 (b) areas of unstable soils;
 20 (c) areas of high seismic risk;
 21 (d) unique natural communities and ecosystems;
 22 (e) significant agricultural, forest, grazing, and
 23 watershed lands;
 24 (f) scenic areas of more than local significance;
 25 (g) significant historical and archeological sites;

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1 (h) important fish and game habitat.

2 (4) "Board" means the board of natural resources and
3 conservation.

4 (5) "Department" means the department of natural
5 resources and conservation.

6 Section 4. Identification of shorelands --
7 interdepartmental cooperation -- maps. (1) The department,
8 in cooperation with the department of state lands,
9 department of fish and game, city and county planning
10 boards, other agencies, and affected property owners shall
11 identify lakes, ponds, and reservoirs to be considered for
12 management under this act. After a public hearing, the
13 department shall designate those lakes, ponds, and
14 reservoirs that are found to have environmentally critical
15 shoreland areas.

16 (2) The department shall furnish to each county having
17 environmentally critical shorelands a map of the lakes,
18 ponds, and reservoirs, and a copy of the department's
19 minimum standards and criteria.

20 Section 5. County zoning of lands affected by this
21 act. To effect the purposes of this act, counties shall, by
22 resolution enacted under Title 16, chapter 47, zone all
23 environmentally critical shorelands in their unincorporated
24 areas within five hundred (500) feet of the normal low-water
25 elevation of ponds, lakes, and reservoirs.

1 Section 6. County failure to adopt ordinance --
2 department responsibility -- procedures. If any county does
3 not adopt an ordinance hereunder within one hundred twenty
4 (120) days of receipt of minimum standards promulgated under
5 section 7 of this act, or if the department, after notice
6 and hearing, determines that a county has adopted an
7 ordinance which fails to meet reasonable minimum standards
8 in accomplishing shoreland protection objectives, the
9 department shall itself take on this zoning responsibility
10 under the following procedures: (1) Proceed in substitution
11 of the board of county commissioners under section 16-4705
12 except for subsection (3) thereof, and except that the
13 creation of a zoning district shall not be affected by a
14 protest as provided in subsection (6) thereof; but, instead
15 the protest shall be addressed to the board for review and
16 decision.

17 (2) Make, in its discretion, under appropriate
18 conditions and safeguards, special exceptions to the terms
19 of the zoning ordinance in harmony with general purposes and
20 intent of the resolution, and in accordance with the general
21 or specific rules of this act.

22 (3) Act as a board of adjustments under section
23 16-4706 except for subsections (1), (2), and (7) thereof,
24 for the purposes of this act.

25 (4) Bring enforcement proceedings under section

1 16-4707.

2 Section 7. Minimum standards by
3 department -- criteria -- special standards for construction
4 of structures. (1) The department shall prepare and provide
5 to boards of county commissioners or planning boards:

6 (a) minimum standards for pond, lake, and reservoir
7 protection,

8 (b) regulations to meet those standards, and

9 (c) guidelines for the administration thereof.

10 (2) The standards shall include, but are not limited
11 to, the following criteria:

12 (a) safe and healthful conditions for the enjoyment of
13 aquatic recreation;

14 (b) demands of water traffic, boating, and water
15 sports;

16 (c) capability of the water resource;

17 (d) requirements necessary to assure proper operation
18 of septic tank disposal fields near ponds, lakes, and
19 streams;

20 (e) building setbacks from the water;

21 (f) preservation of shore growth and cover;

22 (g) conservancy uses for low-lying lands;

23 (h) shoreland layouts for residential and commercial
24 development;

25 (i) restriction of filling ponds, lakes, and

1 reservoirs;

2 (j) regulation of the construction and operation of
3 wharves and docks;

4 (k) forestry regulations supplied by the department's
5 division of forestry;

6 (l) range management practices supplied by the
7 department's division of conservation;

8 (m) wildlife management practices suggested by the
9 department of fish and game.

10 (3) The regulation of siting and construction of
11 structures shall be governed by the following standards:

12 (a) Open space uses shall be generally preferred.

13 (b) Uses not inherently a source of pollution within
14 an area are preferred over uses that are or may be a
15 pollution source. Use locations within an area tending to
16 minimize the possibility of pollution are preferred over use
17 locations tending to increase that possibility.

18 (c) Use dispersions within an area are preferred over
19 concentrations of uses or their undue proximity to each
20 other.

21 Section 8. Date of application -- prior land use. This
22 act shall not apply to any land uses established prior to
23 the date the county adopts the permit zoning regulations
24 required by this act.

25 Section 9. Severability. If a part of this act is

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1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 153

INTRODUCED BY BARDANOUVE, MELOY, FAGG, MENAHAN,

BRADLEY, QUILICI, GUNDERSON, VINCENT, HUENNEKENS, FINLEY,

HALVORSON, DUSSAULT, LESTER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
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ZONING; ASSISTANCE BY THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION; ZONING BY THAT DEPARTMENT UPON DEFAULT BY
A COUNTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The
Montana Shoreline Protection Act".

Section 2. Declaration of public interest -- lands
included -- purposes of regulation. It is declared to be in
the public interest to establish policies, make plans, and
authorize and require counties to adopt shoreland zoning
permit regulations for the efficient use, conservation,
development, and protection of this state's ponds, lakes,
and reservoirs. The regulations shall relate to lands
under, abutting, or lying close to ponds, lakes, and
reservoirs. The purposes of the regulations shall be to
further the maintenance of safe and healthful conditions;
prevent and control water pollution; protect spawning

grounds, fish, and aquatic life; control building sites,
placement of structures, and land uses, and preserve shore
cover and natural beauty.

Section 3. Definitions. As used in this act:

(1) "Reservoir" means any reservoir which covers more
than two hundred (200) acres at mean low water level, and
which is identified by the board as an environmentally
critical shoreland area.

(2) "Lake" or "pond" means any lake or pond identified
by the board as having an environmentally critical shoreland
area.

(3) "Environmentally critical shoreland area" means an
area where development could result in irreversible losses
of important agricultural, aesthetic, cultural, or
historical values; or loss of natural ecosystems which are
of more than local significance; or where such development
could unreasonably endanger life and property as a result of
natural hazards. These areas include:

- (a) estuaries and shorelands of ponds, lakes, and
reservoirs that are relatively unspoiled by the works of
man;
- (b) areas of unstable soils;
- (c) areas of high seismic risk;
- (d) unique natural communities and ecosystems;
- (e) significant agricultural, forest, grazing, and

1 watershed lands;

2 (f) scenic areas of more than local significance;

3 (g) significant historical and archeological sites;

4 (h) important fish and game habitat.

5 (4) "Board" means the board of natural resources and
6 conservation.

7 (5) "Department" means the department of natural
8 resources and conservation.

9 Section 4. Identification of shorelands --
10 interdepartmental cooperation -- maps. (1) The department,
11 in cooperation with the department of state lands,
12 department of fish and game, city and county planning
13 boards, other agencies, and affected property owners shall
14 identify lakes, ponds, and reservoirs to be considered for
15 management under this act. After a public hearing, the
16 department shall designate those lakes, ponds, and
17 reservoirs that are found to have environmentally critical
18 shoreland areas.

19 (2) The department shall furnish to each county having
20 environmentally critical shorelands a map of the lakes,
21 ponds, and reservoirs, and a copy of the department's
22 minimum standards and criteria.

23 Section 5. County zoning of lands affected by this
24 act. To effect the purposes of this act, counties shall, by
25 resolution enacted under Title 16, chapter 47, zone all

1 environmentally critical shorelands in their unincorporated
2 areas within five hundred (500) feet of the normal low-water
3 elevation of ponds, lakes, and reservoirs.

4 Section 6. County failure to adopt ordinance --
5 department responsibility -- procedures. If any county does
6 not adopt an ordinance hereunder within one hundred twenty
7 (120) days of receipt of minimum standards promulgated under
8 section 7 of this act, or if the department, after notice
9 and hearing, determines that a county has adopted an
10 ordinance which fails to meet reasonable minimum standards
11 in accomplishing shoreland protection objectives, the
12 department shall itself take on this zoning responsibility
13 under the following procedures:

14 (1) Proceed in substitution of the board of county
15 commissioners under section 16-4705 except for subsection
16 (3) thereof, and except that the creation of a zoning
17 district shall not be affected by a protest as provided in
18 subsection (6) thereof; but, instead the protest shall be
19 addressed to the board for review and decision.

20 (2) Make, in its discretion, under appropriate
21 conditions and safeguards, special exceptions to the terms
22 of the zoning ordinance in harmony with general purposes and
23 intent of the resolution, and in accordance with the general
24 or specific rules of this act.

25 (3) Act as a board of adjustments under section

1 16-4706 except for subsections (1), (2), and (7) thereof,
2 for the purposes of this act.

3 (4) Bring enforcement proceedings under section
4 16-4707.

5 Section 7. Minimum standards by department -- criteria
6 -- special standards for construction of structures. (1) The
7 department shall prepare and provide to boards of county
8 commissioners or planning boards:

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21 of septic tank disposal fields near ponds, lakes, and
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23 (e) building setbacks from the water;

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25 (g) conservancy uses for low-lying lands;

1 (h) shoreland layouts for residential and commercial
2 development;

3 (i) restriction of filling ponds, lakes, and
4 reservoirs;

5 (j) regulation of the construction and operation of
6 wharves and docks;

7 (k) forestry regulations supplied by the department's
8 division of forestry;

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13 (3) The regulation of siting and construction of
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24 Section 8. Date of application -- prior land use. This
25 act shall not apply to any land uses established prior to

1 the date the county adopts the permit zoning regulations
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3 Section 9. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

9 SECTION 10. THIS ACT IS EFFECTIVE ON ITS PASSAGE AND
10 APPROVAL.

-End-

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9 SECTION 10. THIS ACT IS EFFECTIVE ON ITS PASSAGE AND
10 APPROVAL.

-End-

March 25, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 153

That House Bill No. 153, third reading, be amended as follows:

1. Amend page 1, section 2, lines 17 and 18.
Following: "plans,"
Strike: "and authorize"
2. Amend page 1, section 2, line 18.
Following: "and"
Strike: "require"
Insert: "recommend that"
3. Amend page 1, section 2, line 18.
Following: "counties"
Strike: "to"
4. Amend page 3, section 4, line 22.
Following: "minimum"
Insert: "recommended"
5. Amend page 4, section 6, line 7.
Following: "minimum"
Insert: "recommended"
6. Amend page 4, section 6, line 10.
Following: "minimum"
Insert: "recommended"
7. Amend page 5, section 7, line 7.
Following: "and"
Strike: "provide"
Insert: "recommend"