

1 *Senate* BILL NO. *175*
 2 INTRODUCED BY *Brown Roberts Drake Watt*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT LAKESHORES
 5 BY REQUIRING A PERMIT FOR ANY WORK WHICH WOULD ALTER OR
 6 DIMINISH A LAKE; REQUIRING LOCAL GOVERNING BODIES TO ADOPT
 7 REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS;
 8 PROVIDING FOR VARIANCES, JUDICIAL REVIEW, AND FUNDING."
 9

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

11 Section 1. Declaration of policy. The legislature
 12 finds and declares that the natural lakes of Montana are
 13 high in scenic and resource values and that the conservation
 14 and protection of these lakes is important to the continued
 15 value of lakeshore property as well as to the state's
 16 residents and visitors who use and enjoy the lakes. The
 17 legislature further declares that local governments should
 18 play the primary public roles in establishing policies to
 19 conserve and protect lakes. Local governments do not have
 20 adequate statutory powers to protect their lake areas, and
 21 it is the purpose of this act to confer such powers on local
 22 governments, provided that such powers are exercised to
 23 maintain public health, welfare, and safety.

24 Section 2. Definitions. As used in this act--

25 (1) "Lake" means a body of standing water, and the

1 area within its lakeshore, occurring naturally rather than
 2 by virtue of constructed impoundments (although a natural
 3 lake whose level is raised and whose area is increased by
 4 the construction of impoundments includes the additional
 5 level and area), having a water surface area of at least one
 6 hundred sixty (160) acres for at least six (6) months in a
 7 year of average precipitation as such averages are
 8 determined by the United States Geological Survey, and
 9 navigable by canoes and small boats. A board of county
 10 commissioners may by resolution change the minimum size in
 11 the definition of a lake so that this act may apply to lakes
 12 in the county no smaller than twenty (20) acres in water
 13 surface area.

14 (2) "Lakeshore" is the perimeter of a lake when the
 15 lake is at mean annual high water elevation.

16 (3) "Mean annual high water elevation" is the mean
 17 average of the highest elevation of a lake in each of at
 18 least five (5) consecutive years, excluding any high levels
 19 caused by erratic or unusual weather or hydrological
 20 conditions. A highest elevation caused by operation of a
 21 dam or other impoundment counts toward the establishment of
 22 the mean annual high water elevation.

23 (4) "Local governing body" or "governing body" is that
 24 unit of local government authorized to administer the
 25 Montana Subdivision and Platting Act on the land adjoining a

1 lake or part of a lake subject to this act.

2 Section 3. Work for which permit required. A person
3 who proposes to do any work which will alter or diminish the
4 course, current, or cross-sectional area of a lake must
5 first secure a permit for the work from the local governing
6 body. Without limitation, the following activities are,
7 when conducted below mean annual high water elevation,
8 examples of work for which a permit is required:
9 construction of channels and ditches; dredging of lake
10 bottom areas to remove muck, silt, or weeds; lagooning; and
11 filling.

12 Section 4. Criteria for issuance of permits. (1) A
13 planning board created under section 11-3801 for an area
14 containing a lake shall propose, before January 1, 1976,
15 regulations governing the issuance of permits for work in
16 lakes. The governing body or bodies shall adopt these
17 regulations in the form of criteria for the issuance or
18 denial of permits.

19 (2) The regulations shall favor issuance if the
20 proposed work will not, during either its construction or
21 its utilization:

- 22 (a) diminish water quality,
- 23 (b) diminish habitat for fish or wildlife,
- 24 (c) interfere with navigation or other lawful
25 recreation,

1 (d) create a public nuisance, or

2 (e) create a visual impact discordant with natural
3 scenic values, as determined by the planning board, where
4 such values form the predominant landscape elements.

5 (3) A governing body whose area contains more than one
6 lake may adopt regulations in differing form for the various
7 lakes, recognizing the physical and social differences
8 between lakes.

9 (4) The requirements of subsection (2) of this section
10 are minimum requirements and do not restrict a local
11 governing body from adopting such stricter or additional
12 regulations as may be authorized by other statutes.

13 (5) If a local governing body has not adopted
14 regulations in compliance with subsection (1) of this
15 section on January 1, 1976, the department of natural
16 resources and conservation may upon petition of five (5)
17 owners of land along a lake adopt such regulations for the
18 particular lake. The department may then exercise the
19 powers conferred upon a local governing body by this act
20 until the governing body adopts the necessary regulations.

21 Section 5. Application for permits -- procedure. A
22 person seeking a permit for work in a lake shall apply to
23 the local governing body, and shall pay an application fee
24 of ten dollars (\$10) to the governing body. If the
25 governing body has or is participating in a planning board,

1 the application shall be referred to the planning board.
 2 The planning board shall determine whether the proposed work
 3 conforms to the criteria for issuance of a permit, and may
 4 require the applicant to submit additional information
 5 before the board reaches a conclusion. The board shall
 6 report its findings to the governing body within three (3)
 7 months of receiving an application, unless for cause the
 8 governing body extends this time. In areas where a planning
 9 board is not established, the functions of a planning board
 10 under this section shall be exercised by the local board of
 11 health.

12 Section 6. Consideration of applications by governing
 13 body. When a planning board finds that proposed work
 14 conforms to the criteria for issuing a permit under this
 15 act, the governing body shall approve or reject the
 16 application depending upon its compliance with all pertinent
 17 rules and statutes. When a planning board finds that
 18 proposed work does not conform to these criteria, the
 19 governing body may not approve the application without first
 20 granting to the applicant a variance from the regulations.

21 Section 7. Variance procedure. A governing body which
 22 proposes to grant a variance from its regulations under this
 23 act shall first prepare an environmental impact statement at
 24 the expense of the applicant which conforms to the
 25 requirements of the Montana Environmental Policy Act,

1 distribute this statement to interested residents, and
 2 conduct a public hearing on the proposed action.

3 Section 8. Removing work undertaken without permit. A
 4 person who performs work in a lake after the effective date
 5 of this act without a permit for that work shall restore the
 6 lake to its condition before he disturbed it, upon order of
 7 the governing body or the district court.

8 Section 9. Judicial enforcement and review. The
 9 district court may hear and decide the following cases
 10 arising under this act within the district:

11 (1) A complaint and petition of a governing body or an
 12 interested person for an order to restore a lake to its
 13 previous condition or to enjoin further work in a lake.

14 (2) A petition of an interested person for review of a
 15 final action of a governing body upon an application for a
 16 permit.

17 (3) A petition of an interested person for review of
 18 an action of a governing body in adopting or amending
 19 regulations.

20 Section 10. Penalty. A person who violates an order
 21 issued under this act or who knowingly violates a regulation
 22 made under this act commits a misdemeanor, and on conviction
 23 may be sentenced to thirty (30) days in the county jail or
 24 fined five hundred dollar (\$500), or both. Fines collected
 25 under this section shall be paid to the general fund of the

1 county where the offense was committed for the purpose of
2 administering this act.

3 Section 11. 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 12. Funding. In compliance with section
10 43-517, R.C.M. 1947, the administration of this act is
11 declared a public purpose of a city or county which may be
12 paid out of permit application fees collected under section
13 [5 of this act] and federal revenue sharing moneys.

-End-

Approved by Committee on Judiciary

SENATE BILL NO. 175

INTRODUCED BY BROWN, ROBERTS, DRAKE, WATT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT LAKESHORES BY REQUIRING A PERMIT FOR ANY WORK WHICH WOULD ALTER OR DIMINISH A LAKE; REQUIRING LOCAL GOVERNING BODIES TO ADOPT REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS; PROVIDING FOR VARIANCES, JUDICIAL REVIEW, AND FUNDING."

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

Section 1. Declaration of policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this act to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

Section 2. Definitions. As used in this act--

(1) "Lake" means a body of standing water, and the

area within its lakeshore, ~~occurring-naturally-rather-than by-virtue-of-constructed-impoundments--(although-a-natural-lake-whose-level-is-raised-and-whose-area-is-increased-by the-construction-of-impoundments--includes-the-additional level-and-area)~~ having a water surface area of at least one ~~TWO~~ hundred ~~sixty--(160)~~ (200) acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, NOT USED EXCLUSIVELY FOR AGRICULTURAL PURPOSES, and navigable by canoes and small boats. A ~~board--of--county--commissioners~~ LOCAL GOVERNING BODY may by resolution change the minimum size in the definition of a lake so that this act may apply to NATURAL lakes in the county no smaller than twenty (20) acres in water surface area.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high water elevation.

(3) "Mean annual high water elevation" is the mean average of the highest elevation of a lake in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high water elevation.

(4) "Local governing body" or "governing body" is that unit of local government authorized to administer the

1 Montana Subdivision and Platting Act on the land adjoining a
2 lake or part of a lake subject to this act.

3 Section 3. Work for which permit required. A person
4 who proposes to do any work which will alter or diminish the
5 course, current, or cross-sectional area of a lake must
6 first secure a permit for the work from the local governing
7 body. Without limitation, the following activities are,
8 when conducted below mean annual high water elevation,
9 examples of work for which a permit is required:
10 construction of channels and ditches; dredging of lake
11 bottom areas to remove muck, silt, or weeds; lagooning; and
12 filling.

13 Section 4. Criteria for issuance of permits. ~~(1)---A~~
14 ~~planning--board--created--under--section--11--3801--for--an--area~~
15 ~~containing--a--lake--shall--propose,--before--January--1,--1976,~~
16 ~~regulations--governing--the--issuance--of--permits--for--work--in~~
17 ~~lakes.--The--governing--body--or--bodies--shall--adopt--these~~
18 ~~regulations--in--the--form--of--criteria--for--the--issuance--or~~
19 ~~denial--of--permits. (1) BEFORE JANUARY 1, 1976, EVERY~~
20 GOVERNING BODY HAVING JURISDICTION OVER AN AREA CONTAINING A
21 LAKE SHALL ADOPT REGULATIONS, IN THE FORM OF CRITERIA, FOR
22 THE ISSUANCE OR DENIAL OF PERMITS FOR WORK IN LAKES. WHERE
23 A PLANNING BOARD HAS BEEN CREATED UNDER SECTION 11-3801 FOR
24 AN AREA CONTAINING A LAKE, THE GOVERNING BODY SHALL SEEK THE
25 RECOMMENDATIONS OF THE PLANNING BOARD AS TO THE REGULATIONS

1 TO BE ADOPTED UNDER THIS ACT.

2 (2) The regulations shall favor issuance if the
3 proposed work will not, during either its construction or
4 its utilization:

- 5 (a) MATERIALLY diminish water quality,
6 (b) MATERIALLY diminish habitat for fish or wildlife,
7 (c) interfere with navigation or other lawful
8 recreation,
9 (d) create a public nuisance, or
10 (e) create a visual impact discordant with natural
11 scenic values, as determined by the ~~planning--board~~ LOCAL
12 GOVERNING BODY, where such values form the predominant
13 landscape elements.

14 (3) THE LOCAL GOVERNING BODY MAY PROVIDE A SUMMARY
15 PROCEDURE TO PERMIT WORK WHICH IT FINDS HAS A MINIMAL OR
16 INSIGNIFICANT IMPACT ON A LAKESHORE.

17 ~~(3)~~ (4) A governing body whose area contains more than
18 one lake may adopt regulations in differing form for the
19 various lakes, recognizing the physical and social
20 differences between lakes.

21 ~~(4)~~ (5) The requirements of subsection (2) of this
22 section are minimum requirements and do not restrict a local
23 governing body from adopting such stricter or additional
24 regulations as may be authorized by other statutes.

25 ~~(5)~~ (6) ~~if--a--local--governing--body--has--not--adopted~~

1 ~~regulations in compliance with subsection (1) of this~~
 2 ~~section on January 17, 1976, the~~ THE department of natural
 3 resources and conservation may, upon petition of five (5)
 4 owners OR THIRTY PERCENT (30%) OF THE OWNERS of land ~~along~~
 5 ABUTTING a lake, WHICHEVER IS GREATER, adopt such
 6 regulations for the particular lake. The department may
 7 then exercise the powers conferred upon a local governing
 8 body by this act until the governing body adopts the
 9 necessary regulations.

10 Section 5. Application for permits -- procedure. A
 11 person seeking a permit for work in a lake shall apply to
 12 the local governing body, and shall pay an application fee
 13 of ten dollars (\$10) to the governing body. ~~if the governing~~
 14 ~~body has or is participating in a planning board, the~~
 15 ~~application shall be referred to the planning board: WHERE A~~
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 18 SHALL SEEK THE RECOMMENDATION OF THE PLANNING BOARD AS TO
 19 THE COMPLIANCE OF THE PROPOSED WORK WITH THE CRITERIA FOR
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 21 determine REPORT ITS RECOMMENDATIONS TO THE GOVERNING BODY
 22 AS TO whether the proposed work conforms to the criteria for
 23 issuance of a permit, and may require the applicant to
 24 submit additional information before the board ~~reaches a~~
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1 ~~report its findings to the governing body within three (3)~~
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 3 ~~governing body extends this time.~~ In areas where a planning
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 5 under this section shall be exercised by the local ~~board of~~
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 16 UNLESS THE APPLICANT AGREES TO AN EXTENSION OF TIME, THE
 17 GOVERNING BODY SHALL GRANT OR DENY PERMISSION FOR THE WORK
 18 WITHIN NINETY (90) DAYS OF RECEIVING AN APPLICATION FOR A
 19 PERMIT. IF THE GOVERNING BODY FINDS THAT THE PROPOSED WORK
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 21 A PERMIT OR CONDITIONAL PERMIT. IF THE GOVERNING BODY FINDS
 22 THAT THE WORK DOES NOT CONFORM TO THE CRITERIA, IT SHALL
 23 DENY THE APPLICATION.

24 Section 7. Variance procedure. A governing body which
 25 proposes to grant a variance from its regulations under this

1 act shall first prepare an environmental impact statement at
 2 the expense of the applicant which conforms to the
 3 requirements of ~~the--Montana--Environmental--Policy--Act~~
 4 REGULATIONS ADOPTED PURSUANT TO THIS ACT, distribute this
 5 statement to interested residents, and conduct a public
 6 hearing on the proposed action.

7 Section 8. ~~Removing-work--undertaken--without--permit.~~
 8 (1) A person who performs work in a lake after the
 9 effective date of this act without a permit for that work
 10 shall, IF REQUIRED BY THE LOCAL GOVERNING BODY OR THE
 11 DISTRICT COURT, restore the lake to its condition before he
 12 disturbed it--upon--order--of--the--governing--body--or--the
 13 district-court.

14 (2) WORK OR DEVELOPMENT AUTHORIZED OR APPROVED UNDER
 15 THIS ACT SHALL NOT CREATE A VESTED PROPERTY RIGHT IN THE
 16 PERMITTED DEVELOPMENT, OTHER THAN IN THE PHYSICAL STRUCTURE,
 17 IF ANY, SO DEVELOPED.

18 SECTION 9. IF A LAKE, AS DEFINED BY THIS ACT, IS
 19 LOCATED UNDER THE JURISDICTION OF MORE THAN ONE GOVERNING
 20 BODY, THE GOVERNING BODIES ARE EMPOWERED AND ENCOURAGED TO
 21 ENTER INTO AGREEMENTS TO EFFECTUATE THE PURPOSES OF THIS
 22 ACT, AND ESTABLISH COMPATIBLE CRITERIA FOR DENIAL OR
 23 ISSUANCE OF PERMITS.

24 Section 10. Judicial enforcement and review. The
 25 district court may hear and decide the following cases

1 arising under this act within the district:

2 (1) A complaint and petition of a governing body or an
 3 interested person for an order to restore a lake to its
 4 previous condition or to enjoin further work in a lake.

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 14 may be sentenced to thirty (30) days in the county jail or
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 17 county where the offense was committed for the purpose of
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 20 invalid, all valid parts that are severable from the invalid
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4 THE CONSTRUCTION OF IMPOUNDMENTS INCLUDES THE ADDITIONAL
5 LEVEL AND AREA), ~~occurring-naturally-rather-than-by-virtue~~
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18 twenty (20) acres in water surface area.

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20 lake is at mean annual high water elevation.

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THIRD READING
(Corrected) 3/7/05

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15 scenic values, as determined by the ~~planning-board~~ LOCAL
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 23 PERMIT. IF THE GOVERNING BODY FINDS THAT THE PROPOSED WORK
 24 CONFORMS TO THE CRITERIA FOR ISSUING A PERMIT IT SHALL ISSUE
 25 A PERMIT OR CONDITIONAL PERMIT. IF THE GOVERNING BODY FINDS

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6 the expense of the applicant which conforms to the
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8 REGULATIONS ADOPTED PURSUANT TO THIS ACT, distribute this
9 statement to interested residents, and conduct a public
10 hearing on the proposed action.

11 ~~Section 8. Removing work undertaken without permit.~~
12 RESTORATION -- PROPERTY RIGHTS. (1) A person who performs
13 work in a lake after the effective date of this act without
14 a permit for that work shall, IF REQUIRED BY THE LOCAL
15 GOVERNING BODY OR THE DISTRICT COURT, restore the lake to
16 its condition before he disturbed it, ~~upon order of the~~
17 ~~governing body or the district court.~~

18 (2) WORK OR DEVELOPMENT AUTHORIZED OR APPROVED UNDER
19 THIS ACT SHALL NOT CREATE A VESTED PROPERTY RIGHT IN THE
20 PERMITTED DEVELOPMENT, OTHER THAN IN THE PHYSICAL STRUCTURE,
21 IF ANY, SO DEVELOPED.

22 SECTION 9. IF A LAKE, AS DEFINED BY THIS ACT, IS
23 LOCATED UNDER THE JURISDICTION OF MORE THAN ONE GOVERNING
24 BODY, THE GOVERNING BODIES ARE EMPOWERED AND ENCOURAGED TO
25 ENTER INTO AGREEMENTS TO EFFECTUATE THE PURPOSES OF THIS

1 ACT, AND ESTABLISH COMPATIBLE CRITERIA FOR DENIAL OR
2 ISSUANCE OF PERMITS.

3 Section 10. Judicial enforcement and review. The
4 district court may hear and decide the following cases
5 arising under this act within the district:

6 (1) A complaint and petition of a governing body or an
7 interested person for an order to restore a lake to its
8 previous condition or to enjoin further work in a lake.

9 (2) A petition of an interested person for review of a
10 final action of a governing body upon an application for a
11 permit.

12 (3) A petition of an interested person for review of
13 an action of a governing body in adopting or amending
14 regulations.

15 Section 11. Penalty. A person who violates an order
16 issued under this act or who knowingly violates a regulation
17 made under this act commits a misdemeanor, and on conviction
18 may be sentenced to thirty (30) days in the county jail or
19 fined five hundred dollar (\$500), or both. Fines collected
20 under this section shall be paid to the general fund of the
21 county where the offense was committed for the purpose of
22 administering this act.

23 Section 12. Severability. If a part of this act is
24 invalid, all valid parts that are severable from the invalid
25 part remain in effect. If a part of this act is invalid in

1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

4 Section 13. Funding. In compliance with section
5 43-517, R.C.M. 1947, the administration of this act is
6 declared a public purpose of a city or county which may be
7 paid out of permit application fees collected under section
8 [5 of this act] and federal revenue sharing moneys.

-End-

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 175

1. Amend title, page 1, line 8.

Following: "FUNDING"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Amend page 2, section 2, subsection (1), lines 1 through 5.

Following: "lakeshore,"

Strike: "OCCURRING NATURALLY RATHER THAN BY VIRTUE OF CONSTRUCTED
IMPOUNDMENTS (ALTHOUGH A NATURAL LAKE WHOSE LEVEL IS RAISED AND WHOSE
AREA IS INCREASED BY THE CONSTRUCTION OF IMPOUNDMENTS INCLUDES THE
ADDITIONAL LEVEL AND AREA),"

3. Amend page 2, section 2, subsection (1), line 17.

Following: "apply to"

Strike: "NATURAL"

4. Amend page 2, section 2, subsection (2), line 20.

Following: "elevation"

Insert: ", including the land within one hundred (100) feet above
that high water elevation"

5. Amend page 3, section 3, line 9.

Following: "lake"

Insert: "or its lakeshore"

6. Amend page 3, section 3, lines 15 and 16.

Following: "lagooning;"

Strike: "and filling"

Insert: "filling; and constructing breakwaters of pilings"

7. Amend page 3, section 4, subsection (1), line 25.

Following: "REGULATIONS"

Strike: ", IN THE FORM OF CRITERIA,"

8. Amend page 4, section 4, subsection (1), line 1.

Following: "LAKES"

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 175

Insert: "and on lakeshores"

9. Amend page 4, section 4, subsection (2), lines 6 through 17.

Strike: Subsection (2) in its entirety.

Insert: A new subsection (2) to read:

"(2) The regulations shall include minimum standards in the following categories:

- (a) safe and healthful conditions for the enjoyment of aquatic recreation;
- (b) demands of water traffic, boating and water sports;
- (c) requirements necessary to assure proper operation of septic tank disposal fields near lakes;
- (d) building setbacks from the water;
- (e) preservation of shore growth and cover;
- (f) shoreland layouts for residential and commercial development;
- (g) restriction of filling ponds, lakes and reservoirs;
- (h) regulation of the construction and operation of wharves and docks."

10. Amend page 5, section 4, subsection (6), lines 4, 5 and 6.

Following: "(6)"

Strike: ~~"If a local governing body has not adopted regulations in compliance with subsection (1) of this section on January 1, 1976, the~~ THE

Insert: "If a local governing body has not adopted regulations in compliance with subsection (1) of this section on January 1, 1976, the"

11. Amend page 5, section 4, subsection (6), line 9.

Following: "IS"

Strike: "GREATER"

Insert: "smaller"

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 175

12. Amend page 9, following line 8.

Insert: A new section 14.

"Section 14. Effective date. This act is effective upon passage and approval."

BE CONCURRED IN AS AMENDED

SENATE BILL NO. 175

INTRODUCED BY BROWN, ROBERTS, DRAKE, WATT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT LAKESHORES BY REQUIRING A PERMIT FOR ANY WORK WHICH WOULD ALTER OR DIMINISH A LAKE; REQUIRING LOCAL GOVERNING BODIES TO ADOPT REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS; PROVIDING FOR VARIANCES, JUDICIAL REVIEW, AND FUNDING; ~~AND PROVIDING AN EFFECTIVE DATE;~~ AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Declaration of policy. The legislature finds and declares that the natural lakes of Montana are rich in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this act to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

Section 2. Definitions. As used in this act--

(1) "Lake" means a body of standing water, and the area within its lakeshore, ~~occurring naturally rather than by virtue of constructed impoundments--(although--a--natural lake--whose level--is--raised--and--whose--area--is--increased--by--the construction--of--impoundments--includes--the--additional level--and--area);~~ ~~occurring naturally rather than by virtue of constructed impoundments--(although--a--natural--lake--whose level--is--raised--and--whose--area--is--increased--by--the construction--of--impoundments--includes--the--additional--level and--area);~~ occurring naturally rather than by virtue of constructed impoundments--(although--a--natural--lake--whose level--is--raised--and--whose--area--is--increased--by--the construction--of--impoundments--includes--the--additional--level and--area); having a water surface area of at least ~~one TWO ONE~~ hundred sixty ~~SIXTY (160) (200) (160)~~ acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, NOT USED EXCLUSIVELY FOR AGRICULTURAL PURPOSES, and navigable by canoes and small boats. A ~~board-of-county commissioners~~ LOCAL GOVERNING BODY may by resolution change the minimum size in the definition of a lake so that this act may apply to ~~natural~~ NATURAL lakes in the county no smaller than twenty (20) acres in water surface area.

(2) "Lakeshore" is the perimeter of a lake when the

1 lake is at mean annual high water elevation, INCLUDING THE
 2 LAND WITHIN ONE HUNDRED (100) FEET ABOVE THAT HIGH WATER
 3 ELEVATION.

4 (3) "Mean annual high water elevation" is the mean
 5 average of the highest elevation of a lake in each of at
 6 least five (5) consecutive years, excluding any high levels
 7 caused by erratic or unusual weather or hydrological
 8 conditions. A highest elevation caused by operation of a
 9 dam or other impoundment counts toward the establishment of
 10 the mean annual high water elevation.

11 (4) "Local governing body" or "governing body" is that
 12 unit of local government authorized to administer the
 13 Montana Subdivision and Platting Act on the land adjoining a
 14 lake or part of a lake subject to this act.

15 Section 3. Work for which permit required. A person
 16 who proposes to do any work which will alter or diminish the
 17 course, current, or cross-sectional area of a lake OR ITS
 18 LAKESHORE must first secure a permit for the work from the
 19 local governing body. Without limitation, the following
 20 activities are, when conducted below mean annual high water
 21 elevation, examples of work for which a permit is required:
 22 construction of channels and ditches; dredging of lake
 23 bottom areas to remove muck, silt, or weeds; lagooning; and
 24 FILLING PILING; AND CONSTRUCTING BREAKWATERS OF PILING AND
 25 PILING FILLING; AND CONSTRUCTING BREAKWATERS OF PILING.

1 Section 4. Criteria for issuance of permits. ~~(1) A~~
 2 ~~planning board created under section 11-3601 for an area~~
 3 ~~containing a lake shall propose, before January 1, 1976,~~
 4 ~~regulations governing the issuance of permits for work in~~
 5 ~~lakes. The governing body or bodies shall adopt these~~
 6 ~~regulations in the form of criteria for the issuance or~~
 7 ~~denial of permits: (1) BEFORE JANUARY 1, 1976, EVERY~~
 8 GOVERNING BODY HAVING JURISDICTION OVER AN AREA CONTAINING A
 9 LAKE SHALL ADOPT REGULATIONS, IN THE FORM OF CRITERIA, FOR
 10 THE ISSUANCE OR DENIAL OF PERMITS FOR WORK IN LAKES AND ON
 11 LAKESHORES. WHERE A PLANNING BOARD HAS BEEN CREATED UNDER
 12 SECTION 11-3801 FOR AN AREA CONTAINING A LAKE, THE GOVERNING
 13 BODY SHALL SEEK THE RECOMMENDATIONS OF THE PLANNING BOARD AS
 14 TO THE REGULATIONS TO BE ADOPTED UNDER THIS ACT.

15 ~~(2) The regulations shall favor issuance if the~~
 16 ~~proposed work will not, during either its construction or~~
 17 ~~its utilization:~~

18 ~~(a) MAYBEABLY MAYBEABLY diminish water quality;~~

19 ~~(b) MAYBEABLY MAYBEABLY diminish habitat for fish~~
 20 ~~or wildlife, OR OTHER AQUATIC LIFE;~~

21 ~~(c) interfere with navigation or other lawful~~
 22 ~~recreation;~~

23 ~~(d) create a public nuisance; or~~

24 ~~(e) create a visual impact discordant with natural~~
 25 ~~scenic values, as determined by the planning board BOCAH~~

1 ~~GOVERNING BODY, where such values form the predominant~~
2 ~~landscape elements.~~

3 (2) THE REGULATIONS SHALL INCLUDE MINIMUM STANDARDS IN
4 THE FOLLOWING CATEGORIES:

5 (A) SAFE AND HEALTHFUL CONDITIONS FOR THE ENJOYMENT OF
6 AQUATIC RECREATION;

7 (B) DEMANDS OF WATER TRAFFIC, BOATING AND WATER
8 SPORTS;

9 (C) REQUIREMENTS NECESSARY TO ASSURE PROPER OPERATION
10 OF SEPTIC TANK DISPOSAL FIELDS NEAR LAKES;

11 (D) BUILDING SETBACKS FROM THE WATER;

12 (E) PRESERVATION OF SHORE GROWTH AND COVER;

13 (F) SHORELAND LAYOUTS FOR RESIDENTIAL AND COMMERCIAL
14 DEVELOPMENT;

15 (G) RESTRICTION OF FILLING PONDS, LAKES AND
16 RESERVOIRS;

17 (H) REGULATION OF THE CONSTRUCTION AND OPERATION OF
18 WHARVES AND DOCKS.

19 (3) THE LOCAL GOVERNING BODY MAY PROVIDE A SUMMARY
20 PROCEDURE TO PERMIT WORK WHICH IT FINDS HAS A MINIMAL OR
21 INSIGNIFICANT IMPACT ON A LAKESHORE.

22 ~~{3}~~ (4) A governing body whose area contains more than
23 one lake may adopt regulations in differing form for the
24 various lakes, recognizing the physical and social
25 differences between lakes.

1 ~~{4}~~ (5) The requirements of subsection (2) of this
2 section are minimum requirements and do not restrict a local
3 governing body from adopting such stricter or additional
4 regulations as may be authorized by other statutes.

5 ~~{5}~~ (6) ~~If a local governing body has not adopted~~
6 ~~regulations in compliance with subsection (1) of this~~
7 ~~section on January 1, 1976, the THE~~ department of natural
8 ~~resources and conservation may, upon petition of five (5)~~
9 ~~owners OR THIRTY PERCENT (30%) OF THE OWNERS of land along~~
10 ~~ABUTTING a lake, whichever is greater, adopt such~~
11 ~~regulations for the particular lake. IF A LOCAL GOVERNING~~
12 ~~BODY HAS NOT ADOPTED REGULATIONS IN COMPLIANCE WITH~~
13 ~~SUBSECTION (1) OF THIS SECTION ON JANUARY 1, 1976, THE~~
14 ~~DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY, UPON~~
15 ~~PETITION OF FIVE (5) OWNERS OF LAND ABUTTING A LAKE, ADOPT~~
16 ~~SUCH REGULATIONS FOR THE PARTICULAR LAKE. THE IF A LOCAL~~
17 ~~GOVERNING BODY HAS NOT ADOPTED REGULATIONS IN COMPLIANCE~~
18 ~~WITH SUBSECTION (1) OF THIS SECTION ON JANUARY 1, 1976, THE~~
19 department of natural resources and conservation may, upon
20 petition of five (5) owners OR THIRTY PERCENT (30%) OF THE
21 OWNERS of land along ABUTTING a lake, WHICHEVER IS GREATER
22 SMALLER, adopt such regulations for the particular lake.
23 The department may then exercise the powers conferred upon a
24 local governing body by this act until the governing body
25 adopts the necessary regulations.

1 Section 5. Application for permits -- procedure. A
 2 person seeking a permit for work in a lake shall apply to
 3 the local governing body, and shall pay an application fee
 4 of ten dollars (\$10) to the governing body. ~~if the governing~~
 5 ~~body has or is participating in a planning board, the~~
 6 ~~application shall be referred to the planning board; WHERE A~~
 7 PLANNING BOARD HAS BEEN CREATED UNDER SECTION 11-3801 FOR
 8 THE AREA CONTAINING THE LAKE IN QUESTION, THE GOVERNING BODY
 9 SHALL SEEK THE RECOMMENDATION OF THE PLANNING BOARD AS TO
 10 THE COMPLIANCE OF THE PROPOSED WORK WITH THE CRITERIA FOR
 11 THE ISSUANCE OF A PERMIT. The planning board shall
 12 ~~determine~~ REPORT ITS RECOMMENDATIONS TO THE GOVERNING BODY
 13 AS TO whether the proposed work conforms to the criteria for
 14 issuance of a permit, and may require the applicant to
 15 submit additional information before the board ~~reaches a~~
 16 ~~conclusion~~ REPORTS ITS RECOMMENDATIONS. ~~The board shall~~
 17 ~~report its findings to the governing body within three (3)~~
 18 ~~months of receiving an application, unless for cause the~~
 19 ~~governing body extends this time.~~ In areas where a planning
 20 board is not established, the functions of a planning board
 21 under this section shall be exercised by the local ~~board of~~
 22 ~~health~~ GOVERNING BODY.

23 Section 6. Consideration of applications by governing
 24 body. ~~When a planning board finds that proposed work~~
 25 ~~conforms to the criteria for issuing a permit under this~~

1 ~~act, the governing body shall approve or reject the~~
 2 ~~application depending upon its compliance with all pertinent~~
 3 ~~rules and statutes, when a planning board finds that~~
 4 ~~proposed work does not conform to these criteria, the~~
 5 ~~governing body may not approve the application without first~~
 6 ~~granting to the applicant a variance from the regulations.~~
 7 UNLESS THE APPLICANT AGREES TO AN EXTENSION OF TIME, THE
 8 GOVERNING BODY SHALL GRANT OR DENY PERMISSION FOR THE WORK
 9 WITHIN NINETY (90) DAYS OF RECEIVING AN APPLICATION FOR A
 10 PERMIT. IF THE GOVERNING BODY FINDS THAT THE PROPOSED WORK
 11 CONFORMS TO THE CRITERIA FOR ISSUING A PERMIT IT SHALL ISSUE
 12 A PERMIT OR CONDITIONAL PERMIT. IF THE GOVERNING BODY FINDS
 13 THAT THE WORK DOES NOT CONFORM TO THE CRITERIA, IT SHALL
 14 DENY THE APPLICATION.

15 Section 7. Variance procedure. A governing body which
 16 proposes to grant a variance from its regulations under this
 17 act shall first prepare an environmental impact statement at
 18 the expense of the applicant which conforms to the
 19 requirements of ~~the Montana Environmental Policy Act~~
 20 REGULATIONS ADOPTED PURSUANT TO THIS ACT, distribute this
 21 statement to interested residents, and conduct a public
 22 hearing on the proposed action.

23 Section 8. ~~Removing work undertaken without permit.~~
 24 RESTORATION -- PROPERTY RIGHTS. (1) A person who performs
 25 work in a lake after the effective date of this act without

1 a permit for that work shall, IF REQUIRED BY THE LOCAL
2 GOVERNING BODY OR THE DISTRICT COURT, restore the lake to
3 its condition before he disturbed it, ~~upon order of the~~
4 ~~governing body or the district court.~~

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14 in all valid applications that are severable from the
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18 declared a public purpose of a city or county which may be
19 paid out of permit application fees collected under section
20 [5 of this act] and federal revenue sharing moneys.

21 ~~SECTION 14. EFFECTIVE DATE. THIS ACT IS EFFECTIVE~~
22 ~~UPON PASSAGE AND APPROVAL.~~

23 SECTION 14. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON
24 PASSAGE AND APPROVAL.

-End-