

1 *Senate* BILL NO. 203  
 2 INTRODUCED BY *Law Colburn Norman*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE CITIZENS  
 5 TO COMPLAIN TO CERTAIN STATE AGENCIES ABOUT ENVIRONMENTAL  
 6 DEGRADATION AND, FAILING TO RECEIVE ACTION WITHIN ONE  
 7 HUNDRED EIGHTY (180) DAYS, TO MAINTAIN AN ACTION IN COURT."

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

10 Section 1. Definitions. As used in this act:

11 (1) "Abatement" means the cessation or any reduction  
 12 of damage to the environment.

13 (2) "Damage to the environment" means any pollution,  
 14 destruction, damage or impairment, actual or likely, of or  
 15 to any of the natural resources of the state, whether caused  
 16 by the defendant alone or by the defendant and others acting  
 17 jointly or severally. Damage to the environment includes,  
 18 but is not limited to, air pollution, water pollution,  
 19 noise, and destruction, damage or impairment of rivers,  
 20 streams, lakes, ponds, or other water resources, seashores,  
 21 wetland, or publicly held or dedicated open spaces or  
 22 natural areas. For the purpose of this act only, damage to  
 23 the environment does not include any damage caused by:

24 (a) agricultural operations and the growing or  
 25 harvesting of crops or the raising of fowl or animals; the

1 use of equipment or agricultural operations in the growth of  
 2 crops, for the raising of fowls or animals; or agricultural  
 3 land clearing operations or land grading, except to the  
 4 extent environmental regulations have been promulgated by a  
 5 state agency and then this exception is only as broad as the  
 6 scope of such regulations;

7 (b) barbeque equipment used in connection with any  
 8 residence;

9 (c) heating equipment in, or used in connection with,  
 10 residences used exclusively as dwellings for not more than  
 11 four (4) families;

12 (d) fires set or permitted by a public officer or body  
 13 when the fire is set or permission given in the performance  
 14 of the duty of the public officer or body for the purpose of  
 15 weed abatement, prevention or elimination of a fire hazard,  
 16 or the instruction of employees in the methods of fire  
 17 fighting, which, in the opinion of the officer, is  
 18 necessary; or

19 (e) fires set pursuant to permit for the purpose of  
 20 instruction of public employees or private industrial  
 21 concerns in methods of fire fighting, or for civil defense  
 22 instruction.

23 (3) "Person" means any individual, group of  
 24 individuals, association, partnership, corporation, company,  
 25 business organization, trust, estate, political subdivision,

1 administrative agency, public or quasipublic corporation or  
 2 body, or any other legal entity or its legal  
 3 representatives, agents, or assigns, provided, however, any  
 4 such individual and a majority of the individuals or  
 5 stockholders constituting a group of individuals, an  
 6 association, a partnership, corporation, company, business  
 7 organization, trust, or estate must be residents of the  
 8 state of Montana.

9 (4) "Prohibitive" means any cost so great as to  
 10 substantially deprive a person of the use of his property.

11 (5) "Statute" or "regulation" means any statute,  
 12 ordinance, regulation, or ruling of the United States or of  
 13 the state or any of the political subdivisions or  
 14 administrative agencies of either.

15 Section 2. Intervention by persons into environmental  
 16 adjudicatory proceedings of administrative agencies  
 17 permitted. Any person may make timely intervention into an  
 18 adjudicatory proceeding of any administrative agency in  
 19 which damage to the environment is or might be at issue.  
 20 This intervention shall be for the purpose of assuring that  
 21 the nature and extent of the damage are adequately  
 22 considered and that any decision in the proceeding minimizes  
 23 the damage to the fullest extent possible consistent with  
 24 the other purposes of the agency. Any person intervening  
 25 under this act may present evidence or witnesses and make

1 written or oral argument, except that the agency may exclude  
 2 any repetitive, irrelevant, or spurious intervention. Any  
 3 intervening person shall be considered a party to the  
 4 proceeding for purposes of notice and any other procedural  
 5 rights applicable to the proceeding. Such person shall also  
 6 have the right of appeal, any other statute notwithstanding.

7 Section 3. Standing--judicial remedies. Any person  
 8 may maintain in district court an action against any person  
 9 causing or about to cause damage to the environment and,  
 10 upon sustaining his burden of proof by the weight of the  
 11 evidence that damage to the environment has been caused or  
 12 is about to be caused by defendant, shall be entitled to  
 13 relief as follows:

14 (1) Upon finding that defendant is violating or about  
 15 to violate a statute or regulation, a direct effect of which  
 16 is to prevent or minimize damage to the environment, the  
 17 court shall order the defendant to comply with the statute  
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19 (2) Upon finding that there is at least one (1) method  
 20 of abatement, the court shall order abatement to the lowest  
 21 attainable level which is not prohibitive. The burden shall  
 22 be upon the defendant to prove by the weight of the evidence  
 23 that any method of abatement under consideration would be  
 24 prohibitive. The defenses of subsection (3) shall not be  
 25 available to a defendant against a claim under this

1 subsection.

2 (3) The court shall issue an injunction ordering the  
3 defendant to cease so much of his action, activity,  
4 operations, or enterprise, which causes or is about to cause  
5 damage to the environment, unless the defendant proves, by  
6 the weight of the evidence, that the damage to the  
7 environment does not constitute a nuisance which equitably  
8 should be enjoined. In determining whether the damage to  
9 the environment constitutes a nuisance which equitably  
10 should be enjoined, the court shall consider, in addition to  
11 those substantive factors which are relevant under the  
12 common law of nuisance, the following:

- 13 (a) the extent and likelihood of such damage;  
14 (b) the number of people that are or will be affected  
15 by the damage to the environment and the severity of its  
16 effect;  
17 (c) the value of the natural resources of the state  
18 affected in terms of economics, aesthetics, recreation,  
19 health, safety, and welfare; and  
20 (d) whether defendant is attempting to research or to  
21 assist in research to reduce or eliminate the damage and, if  
22 so, the extent of his attempt.

23 (4) Upon finding that the defendant is causing damage  
24 to the environment and that the plaintiff has been injured  
25 by this environmental damage after the effective date of

1 this act, the court shall award damages to the plaintiff.  
2 The court may award two (2) times the amount it would  
3 otherwise award, if it finds that the damage to the  
4 environment complained of was in willful or knowing  
5 violation of a statute or regulation as set forth in  
6 subsection (1) or a court order as provided in subsection  
7 (2) or (3) in this section.

8 (5) If the court issues an order requiring abatement,  
9 cessation, or damages, or grants any other relief under this  
10 section, it shall award plaintiff a reasonable amount for  
11 costs, attorneys' fees, and expenses reasonably incurred in  
12 connection with said action, including fees and expenses of  
13 expert witnesses and consultants.

14 Section 4. Relief -- notice. The court may grant  
15 temporary and permanent equitable relief, or may impose  
16 conditions on the defendant that are required to protect the  
17 air, water, land, and timber and other natural resources  
18 from pollution, impairment, or destruction.

19 (1) As a condition precedent to maintaining any action  
20 as set forth in section 5 of this act, any person shall give  
21 notice in writing by certified mail, to the department of  
22 natural resources, the department of health and  
23 environmental sciences, or their successor agencies in  
24 environmental affairs, and the attorney general of this  
25 state who shall promptly notify all state administration

1 agencies having jurisdiction over or control of the  
2 pollution, impairment, destruction, or protection of the  
3 environment for which relief is sought.

4 (2) No action shall be maintained under this chapter  
5 unless the administrative agency to whom such notice was  
6 given, the agency having jurisdiction of the matter, fails  
7 to investigate and conduct a hearing to determine whether or  
8 not the accused has caused damage to the environment. The  
9 complainant shall be joined as a party. If the agency fails  
10 to commence such proceedings within thirty (30) days after  
11 receipt of notice by the attorney general as provided in  
12 subsection (a), action may be maintained and such agency  
13 shall be joined as a party defendant.

14 (3) If the administrative agency holds a hearing and  
15 makes a final determination, an appeal from its action may  
16 be taken in the manner prescribed by law.

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18 bring an action under section 5 may, if the damage to the  
19 environment complained of has caused similar injury to other  
20 persons similarly situated and too numerous to join, and if  
21 the court finds in a preliminary hearing that he adequately  
22 and fairly represents such other persons, bring the action  
23 on behalf of himself and such other similarly injured and  
24 situated persons. The court shall require that notice of  
25 said action be given to unnamed plaintiffs in the most

1 effective practicable manner. Said action shall not be  
2 dismissed, settled, or compromised without the approval of  
3 the court, and notice of any proposed dismissal, settlement,  
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6 consideration the number of persons involved and the  
7 difficulties in serving actual notice.

8 (2) If the court has reasonable grounds to doubt the  
9 plaintiff's ability to pay any cost which might be rendered  
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11 may order the plaintiff to post a surety bond or cash not to  
12 exceed five hundred dollars (\$500).

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24 Nothing in this act shall be interpreted to derogate from  
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1 remedy against damage to the environment or damage to any  
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3 (2) The provisions of this act are severable, and if  
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-End-

Approved by Committee  
on Natural Resources

Approved by Comm.  
on Fish and Game

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 20 APPLY TO WHEN ANY POLITICAL SUBDIVISIONS SUBDIVISION OR  
 21 ADMINISTRATIVE AGENCIES AGENCY IS THE PLAINTIFF.

22 Section 6. Class actions. (1) Any person entitled to  
 23 bring an action under section 5 3 may, if the damage to the  
 24 environment complained of has caused similar injury to other  
 25 persons similarly situated and too numerous to join, and if

1 the court finds in a preliminary hearing that he adequately  
 2 and fairly represents such other persons, bring the action  
 3 on behalf of himself and such other similarly injured and  
 4 situated persons. The court shall require that notice of  
 5 said action be given to unnamed plaintiffs in the most  
 6 effective practicable manner. Said action shall not be  
 7 dismissed, settled, or compromised without the approval of  
 8 the court, and notice of any proposed dismissal, settlement,  
 9 or compromise shall be given to all members of the class of  
 10 plaintiffs in such manner as the court directs, taking into  
 11 consideration the number of persons involved and the  
 12 difficulties in serving actual notice.

13 (2) If the court has reasonable grounds to doubt the  
 14 plaintiff's ability to pay any cost which might be rendered  
 15 against him in an action brought under section 3, the court  
 16 may order the plaintiff to post a surety bond or cash not to  
 17 exceed five hundred dollars (\$500).

18 (3) The court may appoint a master or referee to take  
 19 testimony and make a report to the court in any action under  
 20 section 5 3.

21 (4) Proof of noncompliance with any statute or  
 22 regulation on damage to the environment shall constitute  
 23 prima facie evidence that the defendant is causing or is  
 24 about to cause damage to the environment.

25 (5) The doctrines of collateral estoppel and res

1    judicata may be applied by the court to prevent multiplicity  
2    of suits.

3           Section 7. Savings clause -- severability. (1)  
4    Nothing in this act shall be interpreted to derogate from  
5    any existing or future common law of statutory right or  
6    remedy against damage to the environment or damage to any  
7    person.

8           (2) The provisions of this act are severable, and if  
9    any of its provisions are held by any court of competent  
10   jurisdiction to be invalid or unconstitutional, the holding  
11   shall not affect or impair any of the remaining provisions.

-End-

March 20, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendments to SENATE BILL NO. 203,  
third reading copy, as follows:

Amend page 8, line 17

1. Strike: "five hundred"

Insert: "one thousand"

2. Strike: "(\$500)"

Insert: "(\$1,000)"

AND AS SO AMENDED  
BE CONCURRED IN

March 20, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to SENATE BILL NO. 203, third  
reading copy as follows:

1. Amend page 1, section 1, subsection (2), line 21

Following: "resources"

Strike: "seashores,"



SENATE BILL NO. 203

INTRODUCED BY TOWE, COLBERG, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE CITIZENS TO COMPLAIN TO CERTAIN STATE AGENCIES ABOUT ENVIRONMENTAL DEGRADATION AND, FAILING TO RECEIVE ACTION WITHIN ~~ONE HUNDRED-EIGHTY-(180)~~ THIRTY (30) DAYS, TO MAINTAIN AN ACTION IN COURT."

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

Section 1. Definitions. As used in this act:

(1) "Abatement" means the cessation or any reduction of damage to the environment.

(2) "Damage to the environment" means any pollution, destruction, damage or impairment, actual or likely, of or to any of the natural resources of the state, whether caused by the defendant alone or by the defendant and others acting jointly or severally. Damage to the environment includes, but is not limited to, air pollution, water pollution, noise, and destruction, damage or impairment of rivers, streams, lakes, ponds, or other water resources, ~~seashores,~~ wetland, or publicly held or dedicated open spaces or natural areas. For the purpose of this act only, damage to the environment does not include any damage caused by:

(a) agricultural AND SILVICULTURAL operations and the

growing or harvesting of crops THEREOF or the raising of fowl or animals; the use of equipment or agricultural operations in the growth of crops, for the raising of fowls or animals; or agricultural land clearing operations or land grading, except to the extent environmental regulations have been promulgated by a state agency and then this exception is only as broad as the scope of such regulations;

(b) barbeque equipment used in connection with any residence;

(c) heating equipment in, or used in connection with, residences used exclusively as dwellings for not more than four (4) families;

(d) fires set or permitted by a public officer or body when the fire is set or permission given in the performance of the duty of the public officer or body for the purpose of weed abatement, prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which, in the opinion of the officer, is necessary; or

(e) fires set pursuant to permit for the purpose of instruction of public employees or private industrial concerns in methods of fire fighting, or for civil defense instruction.

(3) "Person" - means any individual, group of individuals, association, partnership, corporation, company,

1 business organization, trust, estate, political subdivision,  
 2 administrative agency, public or quasi-public corporation or  
 3 body, or any other legal entity or its legal  
 4 representatives, agents, or assigns, provided, however, any  
 5 such individual and a majority of the individuals or  
 6 stockholders constituting a group of individuals, an  
 7 association, a partnership, corporation, company, business  
 8 organization, trust, or estate must be residents of the  
 9 state of Montana.

10 (4) "Prohibitive" means any cost so great as to  
 11 substantially deprive a person of the use of his property.

12 (5) "Statute" or "regulation" means any statute,  
 13 ordinance, regulation, or ruling of the United States or of  
 14 the state or any of the political subdivisions or  
 15 administrative agencies of either.

16 Section 2. Intervention by persons into environmental  
 17 adjudicatory proceedings of administrative agencies  
 18 permitted. Any person may make timely intervention into an  
 19 adjudicatory proceeding of any administrative agency in  
 20 which damage to the environment is or might be at issue.  
 21 This intervention shall be for the purpose of assuring that  
 22 the nature and extent of the damage are adequately  
 23 considered and that any decision in the proceeding minimizes  
 24 the damage to the fullest extent possible consistent with  
 25 the other purposes of the agency. Any person intervening

1 under this act may present evidence or witnesses and make  
 2 written or oral argument, except that the agency may exclude  
 3 any repetitive, irrelevant, or spurious intervention. Any  
 4 intervening person shall be considered a party to the  
 5 proceeding for purposes of notice and any other procedural  
 6 rights applicable to the proceeding. Such person shall also  
 7 have the right of appeal, any other statute notwithstanding.

8 Section 3. Standing--judicial remedies. Any person  
 9 may maintain in district court an action against any person  
 10 causing or about to cause damage to the environment and,  
 11 upon sustaining his burden of proof by the weight of the  
 12 evidence that damage to the environment has been caused or  
 13 is about to be caused by defendant, shall be entitled to  
 14 relief as follows:

15 (1) Upon finding that defendant is violating or about  
 16 to violate a statute or regulation, a direct effect of which  
 17 is to prevent or minimize damage to the environment, the  
 18 court shall order the defendant to comply with the statute  
 19 or regulation.

20 (2) Upon finding that there is at least one (1) method  
 21 of abatement, the court shall order abatement to the lowest  
 22 attainable level which is not prohibitive. The burden shall  
 23 be upon the defendant to prove by the weight of the evidence  
 24 that any method of abatement under consideration would be  
 25 prohibitive. The defenses of subsection (3) shall not be

1 available to a defendant against a claim under this  
2 subsection.

3 (3) The court shall issue an injunction ordering the  
4 defendant to cease so much of his action, activity,  
5 operations, or enterprise, which causes or is about to cause  
6 damage to the environment, unless the defendant proves, by  
7 the weight of the evidence, that the damage to the  
8 environment does not constitute a nuisance which equitably  
9 should be enjoined. In determining whether the damage to  
10 the environment constitutes a nuisance which equitably  
11 should be enjoined, the court shall consider, in addition to  
12 those substantive factors which are relevant under the  
13 common law of nuisance, the following:

14 (a) the extent and likelihood of such damage;

15 (b) the number of people that are or will be affected  
16 by the damage to the environment and the severity of its  
17 effect;

18 (c) the value of the natural resources of the state  
19 affected in terms of economics, aesthetics, recreation,  
20 health, safety, and welfare; and

21 (d) whether defendant is attempting to research or to  
22 assist in research to reduce or eliminate the damage and, if  
23 so, the extent of his attempt.

24 (4) Upon finding that the defendant is causing damage  
25 to the environment and that the plaintiff has been injured

1 by this environmental damage after the effective date of  
2 this act, the court shall award damages to the plaintiff.  
3 The court may award two (2) times the amount it would  
4 otherwise award, if it finds that the damage to the  
5 environment complained of was in willful or knowing  
6 violation of a statute or regulation as set forth in  
7 subsection (1) or a court order as provided in subsection  
8 (2) or (3) in this section.

9 (5) If the court issues an order requiring abatement,  
10 cessation, or damages, or grants any other relief under this  
11 section, it ~~shall~~ MAY award plaintiff a reasonable amount  
12 for costs, attorneys' fees, and expenses reasonably incurred  
13 in connection with said action, including fees and expenses  
14 of expert witnesses and consultants.

15 Section 4. Relief -- notice. The court may grant  
16 temporary and permanent equitable relief, or may impose  
17 conditions on the defendant that are required to protect the  
18 air, water, land, and timber and other natural resources  
19 from pollution, impairment, or destruction.

20 SECTION 5. NOTIFICATION AS CONDITION PRECEDENT.

21 (1) As a condition precedent to maintaining any action as  
22 set forth in section 5 3 of this act, any person shall give  
23 notice in writing by certified mail, to the department of  
24 natural resources, the department of health and  
25 environmental sciences, or their successor agencies in

1 environmental affairs, and the attorney general of this  
 2 state who shall promptly notify all state administration  
 3 agencies having jurisdiction over or control of the  
 4 pollution, impairment, destruction, or protection of the  
 5 environment for which relief is sought.

6 (2) No action shall be maintained under this chapter  
 7 unless the administrative agency to whom such notice was  
 8 given, the agency having jurisdiction of the matter, fails  
 9 to investigate and conduct a hearing to determine whether or  
 10 not the accused has caused damage to the environment. The  
 11 complainant shall be joined as a party. If the agency fails  
 12 to commence such proceedings within thirty (30) days after  
 13 receipt of notice by the attorney general as provided in  
 14 subsection (a), action may be maintained and such agency  
 15 shall be joined as a party defendant.

16 (3) If the administrative agency holds a hearing and  
 17 makes a final determination, an appeal from its action may  
 18 be taken in the manner prescribed by law.

19 (4) THE NOTICE REQUIRED BY THIS SECTION SHALL NOT  
 20 APPLY TO WHEN ANY POLITICAL SUBDIVISIONS SUBDIVISION OR  
 21 ADMINISTRATIVE AGENCIES AGENCY IS THE PLAINTIFF.

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 3 on behalf of himself and such other similarly injured and  
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 6 effective practicable manner. Said action shall not be  
 7 dismissed, settled, or compromised without the approval of  
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 10 plaintiffs in such manner as the court directs, taking into  
 11 consideration the number of persons involved and the  
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 14 plaintiff's ability to pay any cost which might be rendered  
 15 against him in an action brought under section 3, the court  
 16 may order the plaintiff to post a surety bond or cash not to  
 17 exceed ~~five-hundred~~ ONE THOUSAND dollars ~~(~~\$500~~)~~ (\$1,000).

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 19 testimony and make a report to the court in any action under  
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 22 regulation on damage to the environment shall constitute  
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-End-