

Senate Bill 327

In The Senate

January 30, 1981	Introduced and referred to Committee on Natural Resources.
February 21, 1981	Committee recommend bill do pass as amended.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading do pass.
February 25, 1981	On motion rules suspended. Bill placed on Calendar for third reading this day.
	Third reading passed.

In The House

March 3, 1981	Introduced and referred to Committee on Natural Resources.
April 23, 1981	Died in Committee.

Senate BILL NO. 327

PRODUCED BY Hannover Concert Marley Dealing
STEVENS E. Smith McCallum

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE
5 AUTHORITY OF LOCAL GOVERNMENT AND LANDOWNERS TO ALTER RIVERS
6 AND STREAMS AND LAND ADJACENT TO THEM IN ORDER TO PROTECT
7 LIVES AND PROPERTY; AMENDING SECTIONS 75-7-102, 75-7-112,
8 75-7-113, 75-7-115, 87-5-501, AND 87-5-509, MCA; AND
9 REPEALING SECTION 87-5-505, MCA.*

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

1 purpose as guaranteed by The Constitution of the State of
2 Montana."

3 Section 2. Section 75-7-112, MCA, is amended to read:

4 *75-7-112. Procedure for considering projects -- team.
5 (1) The supervisors shall receive all notices of proposed
6 projects within their district. They shall, within 5 days of
7 receipt of a notice, examine and investigate the notice and
8 determine whether the proposal is for a project. Within the
9 5 days, they shall send a copy of their determination to the
10 department and the applicant. If the supervisors determine
11 that the proposal is not a project, the applicant may, upon
12 receipt of written notice, proceed with the proposed
13 activity.

14 (2) If the supervisors determine that the proposal is
15 for a project, the department shall, within 5 days of
16 receipt of the determination, notify the supervisors whether
17 the department requests an on-site inspection by a team.

1 recommendations for alternative plans.

2 (4) Each member of the team shall recommend in
3 writing, within 50 days of the date of application, denial,
4 approval, or modification of the project to the supervisors.
5 The applicant may waive participation in this
6 recommendation.

7 (5) The supervisors shall review the proposed project
8 and affirm, overrule, or modify the individual team
9 recommendations and notify the applicant and team members,
10 within 60 days of the date of application, of their
11 decision.

12 (6) When a member of the team ~~the applicant~~ disagrees
13 with the supervisors' action, he may ask, within 5 days of
14 receipt of the supervisors' decision, that an arbitration
15 panel as provided in 75-7-114 be appointed to hear the
16 dispute and make a final written decision thereon.

17 (7) Upon written notice, with a recommendation or
18 alternative plan, by the supervisors to the applicant, the
19 applicant, within 15 days, shall notify the supervisors in
20 writing if he wishes to proceed with the project in
21 accordance with the recommendations or alternative plans. No
22 work may be commenced on a project before the end of this
23 15-day period unless written permission is given by ~~a~~³-team
24 members ~~the~~ supervisors. If the written decision of the
25 supervisors approves the proposed project without

1 recommendation or alternative plan, the applicant may
2 proceed with the project upon the expiration of 10 days
3 after receipt of the decision.

4 (8) The supervisors may extend, upon the request of a
5 team member, the time limits provided in subsections (4) and
6 (5) where, in their determination, the time provided is not
7 sufficient to carry out the purposes of this part. The time
8 extension may not, in total, exceed 1 year from date of
9 application. The applicant shall be notified, within 60 days
10 of date of application, of the initial time extension and
11 shall be notified immediately of any subsequent time
12 extensions.

13 (9) No work on a project under this part may take
14 place without the written consent of the supervisors."

15 Section 3. Section 75-7-113, MCA, is amended to read:
16 "75-7-113. Emergencies -- procedure. (1) The
17 provisions of this part do not apply to those actions which
18 are necessary to safeguard life or property, including
19 growing crops, during periods of emergency. The person
20 responsible for a project under this section shall notify
21 the supervisors in writing within 15 days of the action
22 taken as a result of an emergency.

23 (2) The supervisors shall send one copy of the notice,
24 within 5 days of its receipt, to the department.

25 (3) A team, called together as described in

1 75-7-112(3), shall make an on-site inspection and individual
 2 written reports to the supervisors within 30 days, giving
 3 its observations and opinions on the emergency project.

4 (4) If the same or a similar emergency occurs to the
 5 same applicant more than once within a 5-year period, the
 6 supervisors shall request the team members to include in
 7 their reports a determination of the validity of the
 8 emergency action and to ascertain the feasibility of a more
 9 permanent solution to the emergency.

10 (5) The supervisors shall determine the feasibility of
 11 a more permanent solution and shall, within 30 days,
 12 recommend that the person put the solution into effect
 13 within a reasonable period of time as determined by the
 14 supervisors. Failure of the person to put that solution into
 15 effect is not a violation of this part unless a subsequent
 16 emergency action results from this failure.

17 (6) When a--member--of--the--team--or the applicant
 18 disagrees with the supervisors' recommendation, he may ask
 19 that an arbitration panel as provided in 75-7-114 be
 20 appointed to hear the dispute and make a final written
 21 decision thereon."

22 Section 4. Section 75-7-115, MCA, is amended to read:
 23 "75-7-115. Arbitration panel -- costs. Cost of the
 24 arbitration panel, computed as for jurors' fees under
 25 3-15-201, shall be borne by the contesting party or parties

1 not prevailing; all other parties shall bear their own
 2 costs."

3 Section 5. Section 87-5-501, MCA, is amended to read:
 4 "87-5-501. State policy. It is hereby declared to be
 5 the policy of the state of Montana that its fish and
 6 wildlife resources and particularly the fishing waters
 7 within the state are to be protected and preserved to the
 8 end that they be available for all time, without change, in
 9 their natural existing state except as may be necessary and
 10 appropriate after due consideration of ~~all-factors-involved~~
 11 the need to protect the lives, property, and economic
 12 well-being of landowners."

13 Section 6. Section 87-5-509, MCA, is amended to read:
 14 "87-5-509. Penalty and restoration. (1) An agency,
 15 under 87-5-502, violating provisions of this part shall be
 16 assessed a fine of not less than \$100 or more than \$500 for
 17 each day of continuing violation but not more than a total
 18 of \$1,000.

19 (2) In addition, at the discretion of the court, the
 20 agency shall restore the damaged stream to its prior
 21 condition. Employees of an agency acting in the ordinary
 22 course of their employment under directions of a superior
 23 are not liable for violations under this section.

24 ~~(3)--the--department--may--institute--and--maintain--in--the~~
 25 ~~name--of--the--state--enforcement--proceedings--under--this~~

1 sections--All--fines--assessed--under--this--section--shall--be
2 deposited--in--the--earmarked--revenue--fund--for--the--use--of--the
3 departments--"
4 Section 7. Repealer. Section 87-5-505, MCA, is
5 repealed.

-End-

Approved by Committee
on Natural Resources

1 SENATE BILL NO. 327

2 INTRODUCED BY HAFFERMAN, CONDVER, MANLEY,
3 KEATING, STEPHENS, E. SMITH, McCALLUM

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE BROADEN THE
6 AUTHORITY-OF STATE POLICY WITH RESPECT TO LOCAL GOVERNMENT
7 AND LANDOWNERS TO-ALTER AND ALTERATION OF RIVERS AND STREAMS
8 AND LAND ADJACENT TO THEM IN ORDER TO PROTECT LIVES AND
9 PROPERTY; AMENDING SECTIONS 75-7-102, 75-7-112, 75-7-113,
10 75-7-115, AND 87-5-501, AND REPEALING
11 SECTION 87-5-509, MCA."

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

13 Section 1. Section 75-7-102, MCA, is amended to read:
14
15 "75-7-102. Policy. It is the policy of the state of
16 Montana that its natural rivers and streams and the lands
17 and property immediately adjacent to them within the state
18 are to be protected and preserved to be available in their
19 natural or existing state, except when alterations are
20 necessary to protect the lives and property of landowners,
21 and to prohibit unauthorized projects and in so doing to
22 keep soil erosion and sedimentation to a minimum, except as
23 may be necessary and appropriate after due consideration of
24 all factors involved. Further, it is the policy of this
25 state to recognize the needs of irrigation and agricultural

1 use of the rivers and streams of the state of Montana and to
2 protect the use of water for any useful or beneficial
3 purpose as guaranteed by The Constitution of the State of
4 Montana."

5 Section 2. Section 75-7-112, MCA, is amended to read:
6 "75-7-112. Procedure for considering projects. Team
7 supervisors shall receive all notices of proposed
8 projects within their district. They shall within 5 days of
9 receipt of a notice examine and investigate the notice and
10 determine whether the proposal is for a project. Within the
11 5 days they shall send a copy of their determination to the
12 department and the applicant. If the supervisors determine
13 that the proposal is not a project, the applicant may upon
14 receipt of a written notice proceed with the proposed
15 activity.

16 If the supervisors determine that the proposal is
17 for a project, the department shall within 5 days of
18 receipt of the determination notify the supervisors whether
19 the department requests an on-site inspection by a team.
20 The supervisors shall call a team together within
21 20 days of receipt of the request of the department for an
22 on-site inspection. A member of the team shall notify the
23 supervisors in writing within 5 days after notice of the
24 call for an inspection of his waiver of participation in
25 the inspection. If the department does not request an

1 on-site--inspection--within--the--time--specified--above--the
 2 supervisors--may--deny--or--approve--the--project--or--may--make
 3 recommendations--for--alternative--plans
 4 (4)--Each--member--of--the--team--shall--recommend--in
 5 writing--within--50--days--of--the--date--of--application--dental
 6 approval--or--modification--of--the--project--to--the--supervisors--
 7 the--applicant--may--waive--participation--in--this
 8 recommendations
 9 (5)--The--supervisors--shall--review--the--proposed--project
 10 and--affirm--overrule--or--modify--the--individual--team
 11 recommendations--and--notify--the--applicant--and--team--members--
 12 within--60--days--of--the--date--of--application--of--their
 13 decisions
 14 (6)--When--a--member--of--the--team--the--applicant--disagrees
 15 with--the--supervisors--action--he--may--ask--within--5--days--of
 16 receipt--of--the--supervisors--decision--that--an--arbitration
 17 panel--as--provided--in--75-7-114--be--appointed--to--hear--the
 18 dispute--and--make--a--final--written--decision--thereon
 19 (7)--Upon--written--notice--with--a--recommendation--or
 20 alternative--plans--by--the--supervisors--to--the--applicant--the
 21 applicant--within--5--days--shall--notify--the--supervisors--in
 22 writing--if--he--wishes--to--proceed--with--the--project--in
 23 accordance--with--the--recommendations--or--alternative--plans--No
 24 work--may--be--commenced--on--a--project--before--the--end--of--this
 25 15--day--period--unless--written--permission--is--given--by--all--team

1 members--the--supervisors--if--the--written--decision--of--the
 2 supervisors--approves--the--proposed--project--without
 3 recommendation--or--alternative--plan--the--applicant--may
 4 proceed--with--the--project--upon--the--expiration--of--10--days
 5 after--receipt--of--the--decision
 6 (8)--The--supervisors--may--extend--upon--the--request--of--a
 7 team--member--the--time--limits--provided--in--subsections--(4)--and
 8 (5)--whereas--in--their--determination--the--time--provided--is--not
 9 sufficient--to--carry--out--the--purposes--of--this--part--the--time
 10 extension--may--not--in--total--exceed--1--year--from--date--of
 11 application--The--applicant--shall--be--notified--within--60--days
 12 of--date--of--application--of--the--initial--time--extension--and
 13 shall--be--notified--immediately--of--any--subsequent--time
 14 extension
 15 (9)--No--work--on--a--project--under--this--part--may--take
 16 place--without--the--written--consent--of--the--supervisors--"

17 Section 2. Section 75-7-113, MCA, is amended to read:

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 19 provisions of this part do not apply to those actions which
 20 are necessary to safeguard life or property, including
 21 growing crops, during periods of emergency. The person
 22 responsible for a project under this section shall notify
 23 the supervisors in writing within 15 days of FOLLOWING the
 24 action taken as a result of an emergency.

25 (2) The supervisors shall send one copy of the notice,

1 within 5 days of its receipt, to the department.

2 (3) A team, called together as described in
 3 75-7-112(3), shall make an on-site inspection and individual
 4 written reports to the supervisors within 30 days, giving
 5 its observations and opinions on the emergency project.

6 (4) If the same or a similar emergency occurs to the
 7 same applicant more than once within a 5-year period, the
 8 supervisors shall request the team members to include in
 9 their reports a determination of the validity of the
 10 emergency action and to ascertain the feasibility of a more
 11 permanent solution to the emergency.

12 (5) The supervisors shall determine the feasibility of
 13 a more permanent solution and shall, within 30 days,
 14 recommend that the person put the solution into effect
 15 within a reasonable period of time as determined by the
 16 supervisors. Failure of the person to put that solution into
 17 effect is not a violation of this part unless a subsequent
 18 emergency action results from this failure.

19 (6) When a-member-of-the-team-or A_MEMBER_OF_THE_TEAM
 20 OR the applicant disagrees with the supervisors'
 21 recommendation, he may ask that an arbitration panel as
 22 provided in 75-7-114 be appointed to hear the dispute and
 23 make a final written decision thereon."

24 Section-4---Section--75-7-115y-MCA--is-amended-to-read+
 25 #75-7-115y---Arbitration-panel----costs---Cost--of--the

1 arbitration--panel--computed--as--for--jurors"--fees--under
 2 3-15-201y--shall--be--borne--by--the--contesting--party--or--parties
 3 not--prevailing--at--other--parties--shall--bear--their--own
 4 costs#.

5 Section 3. Section 87-5-501, MCA, is amended to read:
 6 "87-5-501. State policy. It is hereby declared to be
 7 the policy of the state of Montana that its fish and
 8 wildlife resources and particularly the fishing waters
 9 within the state are to be protected and preserved to the
 10 end that they be available for all time, without change, in
 11 their natural existing state except as may be necessary and
 12 appropriate after due consideration of all-factors-involved
 13 ALL_FACTORS_INVOLVED INCLUDING the need to protect the
 14 lives, property, and economic well-being of landowners."

15 Section-6---Section--87-5-509y-MCA--is-amended-to-read+
 16 #87-5-509y---Penalty-and-restoration---{+}--An--agency--
 17 under--87-5-502y---violating-provisions-of-this-part--shall--be
 18 assessed-a-fine-of-not-less-than-\$100-or-more-than-\$500--for
 19 each--day--of--continuing-violation-but-not-more-than-a-total
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 22 agency--shall--restore--the--damaged--stream--to--its--prior
 23 conditions--Employees--of--an--agency--acting--in--the--ordinary
 24 course--of--their--employment--under--directions--of--a--superior
 25 are--not--liable--for--violations--under--this--section+

1 t37--The-department-may-institute-and-maintain--in--the
2 name---of--the--state--enforcement--proceedings--under--this
3 section--All-fines-assessed--under--this--section--shall--be
4 deposited--in--the-earmarked-revenue-fund-for-the-use-of-the
5 department--"

6 Section-7--Repeater---Section---87-5-505v---May---is
7 repeated--

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24 course--of--their--employment--under--directions--of--a--superior
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6 Section-7--Repeater---Section---87-5-505r---MEA---is
7 repeated--

-End-