

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.

1 *Senate* BILL NO. *327*
 2 INTRODUCED BY *Haffeman, Conover, Maly, Keating*
 3 *STEPHENS 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."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 75-7-102, MCA, is amended to read:
 13 "75-7-102. Policy. It is the policy of the state of
 14 Montana that its natural rivers and streams and the lands
 15 and property immediately adjacent to them within the state
 16 are to be protected and preserved to be available in their
 17 natural or existing state, except when alterations are
 18 necessary to protect the lives and property of landowners,
 19 and to prohibit unauthorized projects and in so doing to
 20 keep soil erosion and sedimentation to a minimum, except as
 21 may be necessary and appropriate after due consideration of
 22 all factors involved. Further, it is the policy of this
 23 state to recognize the needs of irrigation and agricultural
 24 use of the rivers and streams of the state of Montana and to
 25 protect the use of water for any useful or beneficial

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.
 18 (3) The supervisors shall call a team together within
 19 20 days of receipt of the request of the department for an
 20 on-site inspection. A member of the team shall notify the
 21 supervisors in writing, within 5 days after notice of the
 22 call for an inspection, of his waiver of participation in
 23 the inspection. If the department does not request an
 24 on-site inspection within the time specified above, the
 25 supervisors may deny or approve the project or may make

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 ~~all 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~~

LC 1224/01

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

SENATE BILL NO. 327

INTRODUCED BY HAFFERMAN, CONOVER, MANLEY,
KEATING, STEPHENS, E. SMITH, McCALLUM

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

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

Section 1. Section 75-7-102, MCA, is amended to read:

"75-7-102. Policy. It is the policy of the state of
Montana that its natural rivers and streams and the lands
and property immediately adjacent to them within the state
are to be protected and preserved to be available in their
natural or existing state, except when alterations are
necessary to protect the lives and property of landowners,
and to prohibit unauthorized projects and in so doing to
keep soil erosion and sedimentation to a minimum, except as
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all factors involved. Further, it is the policy of this
state to recognize the needs of irrigation and agricultural

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

Section 2. Section 75-7-112, MCA, is amended to read
"75-7-112. Procedure for considering projects. (1) The supervisors shall receive all notices of proposed projects within their districts. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicants. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

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

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors in writing, within 5 days after notice of the call for an inspection, of his waiver of participation in 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, denial,
 6 approval or modification of the project to the supervisors.
 7 The applicant may waive participation in this
 8 recommendation.

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 decision.

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 plan, by the supervisors to the applicant, the
 21 applicant, within 15 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) where, 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
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7 the policy of the state of Montana that its fish and
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4 deposited in the earmarked revenue fund for the use of the
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6 Section 7 is Repeater. Section 87-5-505, MCA, is
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-End-