

SENATE BILL NO. 396

introduced: 02/11/83

Referred to Committee on Natural Resources: 02/11/83
Hearing: 2/16/83

On Motion, 2/18/83, That The Bill Be Taken From The Committee
On Natural Resources And Be Printed And Placed On 2nd
Reading. Motion Failed
Died in Committee.

1 *Senate* BILL NO. *396*
 2 INTRODUCED BY *Martinez Dan Holt Bob Brown Dave*
 3 *E. Smith Lee*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO FURTHER PROVIDE FOR
 5 CONSERVATION EASEMENTS FOR RIPARIAN HABITAT; ALLOWING FOR
 6 RESTRICTIONS ON PUBLIC ACCESS TO CERTAIN RIPARIAN HABITAT;
 7 TO EXEMPT CONSERVATION EASEMENTS FOR RIPARIAN HABITAT FROM
 8 REVIEW BY LOCAL PLANNING AUTHORITIES; AMENDING SECTIONS
 9 76-6-102, 76-6-104, 76-6-203, 76-6-206, AND 87-2-305, MCA."

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

12 Section 1. Section 76-6-102, MCA, is amended to read:

13 "76-6-102. Findings and policy. The legislature finds
 14 that:

15 (1) the rapid growth and spread of urban development
 16 are creating critical problems of service and finance for
 17 the state and local governments;

18 (2) the present and future rapid population growth in
 19 urban areas is creating severe problems of urban and
 20 suburban living;

21 (3) this population spread and its attendant
 22 development are disrupting and altering the remaining
 23 natural areas, biotic communities, and geological and
 24 geographical formations and thereby providing the potential
 25 for the destruction of scientific, educational, aesthetic,

1 and ecological values;

2 (4) the present and future rapid population spread
 3 throughout the state of Montana into its open spaces is
 4 creating serious problems of lack of open space and
 5 overcrowding of the land;

6 (5) to lessen congestion and to preserve natural,
 7 ecological, geographical, and geological elements, the
 8 provision and preservation of open-space lands are necessary
 9 to secure park, recreational, historic, and scenic areas and
 10 to conserve the land, its biotic communities, its riparian
 11 habitats, its natural resources, and its geological and
 12 geographical elements in their natural state;

13 (6) the acquisition or designation of interests and
 14 rights in real property by certain qualifying private
 15 organizations and by public bodies to provide or preserve
 16 open-space land is essential to the solution of these
 17 problems, the accomplishment of these purposes, and the
 18 health and welfare of the citizens of the state;

19 ~~(1) the protection, preservation, and enhancement of~~
 20 ~~riparian habitat may necessitate restrictions on public~~
 21 ~~access to certain parts of this significant resource;~~

22 ~~(7)(8)~~ the exercise of authority to acquire or
 23 designate interests and rights in real property to provide
 24 or preserve open-space land and the expenditure of public
 25 funds for these purposes would be for a public purpose; and

~~(8)(2)~~ the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest."

Section 2. Section 76-6-104, MCA, is amended to read:

"76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby

an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

~~(6) "Riparian habitat" means all areas within the~~

1 ~~floodplain of or adjacent to a lake, stream, or other~~
 2 ~~permanent body of water, including vegetation, soils and~~
 3 ~~water, that provide food, shelter, and other environmental~~
 4 ~~needs of aquatic and terrestrial species, including but not~~
 5 ~~limited to the area between the high- and low-water marks of~~
 6 ~~a navigable stream.~~

7 ~~{6}{11}~~ "Urban area" means any area which is urban in
 8 character, including surrounding areas which form an
 9 economic and socially related region, taking into
 10 consideration such factors as present and future population
 11 trends and patterns of urban growth, location of
 12 transportation facilities and systems, and distribution of
 13 industrial, commercial, residential, governmental,
 14 institutional, and other activities."

15 Section 3. Section 76-6-203, MCA, is amended to read:
 16 "76-6-203. Types of permissible easements. Easements
 17 or restrictions under this chapter may prohibit or limit any
 18 or all of the following:

19 (1) structures--construction or placing of buildings,
 20 camping trailers, house trailers, mobile homes, roads, signs,
 21 billboards or other advertising, utilities, or other
 22 structures on or above the ground;

23 (2) landfill--dumping or placing of soil or other
 24 substance or material as landfill or dumping or placing of
 25 trash, waste, or unsightly or offensive materials;

1 (3) vegetation--removal or destruction of trees,
 2 shrubs, or other vegetation;

3 (4) loam, gravel, etc.--excavation, dredging, or
 4 removal of loam, peat, gravel, soil, rock, or other material
 5 substance;

6 (5) surface use--surface use except for such purposes
 7 permitting the land or water area to remain predominantly in
 8 its existing condition;

9 (6) acts detrimental to conservation--activities
 10 detrimental to drainage, flood control, water conservation,
 11 erosion control, soil conservation, or fish and wildlife
 12 habitat and preservation;

13 ~~{11} uses detrimental to riparian habitat--recreational~~
 14 ~~development, public access for recreation, and other uses~~
 15 ~~detrimental to the preservation and enhancement of riparian~~
 16 ~~habitat;~~

17 ~~{7}{8}~~ subdivision of land--subdivision of land as
 18 defined in 76-3-103, 76-3-104, and 76-3-202;

19 ~~{8}{12}~~ other acts--other acts or uses detrimental to
 20 such retention of land or water areas in their existing
 21 conditions."

22 Section 4. Section 76-6-206, MCA, is amended to read:

23 "76-6-206. Review by local planning authority. In
 24 order to minimize conflict with local comprehensive
 25 planning, all conservation easements, ~~except those easements~~

1 ~~created to preserve and enhance riparian habitat~~ shall be
 2 subject to review prior to recording by the appropriate
 3 local planning authority for the county within which the
 4 land lies. It shall be the responsibility of the entity
 5 acquiring the conservation easement to present the proposed
 6 conveyance of the conservation easement to the appropriate
 7 local planning authority. The local planning authority
 8 shall have 90 days from receipt of the proposed conveyance
 9 within which to review and to comment upon the relationship
 10 of the proposed conveyance to comprehensive planning for the
 11 area. Such comments will not be binding on the proposed
 12 grantor or grantee but shall be merely advisory in nature.
 13 The proposed conveyance may be recorded after comments have
 14 been received from the local planning authority or the local
 15 planning authority has indicated in writing it will have no
 16 comments or 90 days have elapsed, whichever occurs first."

17 Section 5. Section 87-2-305, MCA, is amended to read:

18 "87-2-305. Navigable waters subject to fishing rights.
 19 [1] Navigable rivers, sloughs, or streams between the lines
 20 of ordinary high water thereof of the state of Montana and
 21 all rivers, sloughs, and streams flowing through any public
 22 lands of the state shall hereafter be public waters for the
 23 purpose of angling, and any rights of title to such streams
 24 or the land between the high water flow lines or within the
 25 meander lines of navigable streams shall be subject to the

1 right of any person owning an angler's license of this state
 2 who desires to angle therein or along their banks to go upon
 3 the same for such purpose.

4 ~~(2) The provisions of subsection (1) do not apply to~~
 5 ~~riparian habitat for which a conservation easement has been~~
 6 ~~conveyed and to which public access is restricted under the~~
 7 ~~terms of the easement as provided in Title 76, chapter 6."~~

-End-