

HOUSE BILL NO. 661

INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

IN THE HOUSE

FEBRUARY 7, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FEBRUARY 16, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 17, 1987 PRINTING REPORT.

FEBRUARY 18, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 19, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 91; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

MARCH 26, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

STATEMENT OF INTENT ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 *House* BILL NO. *661*
 2 INTRODUCED BY *Speth E. Smith Beck Cody*
 3 *Hanning Hobbs Hoff Brundage Boyle*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
 5 TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
 6 ALTERATION, MODIFICATION, OR DIVERSION OF A STREAM TO
 7 PROVIDE FOR IRRIGATION; AMENDING SECTION 75-7-103, MCA; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 Section 1. Section 75-7-103, MCA, is amended to read:
12 "75-7-103. Definitions. As used in this part, the
13 following definitions apply:

- 14 (1) "Applicant" means any person presenting notice of
- 15 a project to the supervisors.
- 16 (2) "Department" means the Montana department of fish,
- 17 wildlife, and parks.
- 18 (3) "District" means a conservation district under
- 19 Title 76, chapter 15, in which the project will take place;
- 20 a grass conservation district under Title 76, chapter 16,
- 21 where no conservation district exists, or the board of
- 22 county commissioners where a district does not exist.
- 23 (4) "Person" means any natural person, corporation,
- 24 firm, partnership, association, or other legal entity not
- 25 covered under 87-5-502.

1 (5) (a) "Project" means a physical alteration or
2 modification of a stream in the state of Montana which
3 results in a change in the state of the stream in
4 contravention of 75-7-102.

5 (b) Project does not include an alteration,
6 modification, or diversion of a stream for the purpose of
7 providing for irrigation if the alteration, modification, or
8 diversion is consistent with the previous historical action
9 or usage at the point of diversion.

10 (6) "Stream" means any natural perennial-flowing
11 stream or river, its bed and immediate banks.

12 (7) "Supervisors" means the board of supervisors of a
13 conservation district, the directors of a grass conservation
14 district, or the board of county commissioners where a
15 proposed project is not within a district.

16 (8) "Team" means one representative of the
17 supervisors, one representative of the department, and the
18 applicant or his representative."

19 NEW SECTION. Section 2. Extension of authority. Any
20 existing authority of the board of natural resources and
21 conservation and the supervisors as provided in 75-7-103 to
22 make rules on the subject of the provisions of this act is
23 extended to the provisions of this act.

24 NEW SECTION. Section 3. Effective date. This act is
25 effective on passage and approval.

-End-

-2-

INTRODUCED BILL
HB-661



APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 661

INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
~~ALTERATION, MODIFICATION, OR DIVERSION OF A STREAM TO~~
PROVIDE FOR IRRIGATION MAINTENANCE AND REPAIR OF EXISTING
IRRIGATION FACILITIES; AMENDING SECTION 75-7-103, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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a project to the supervisors.

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wildlife, and parks.

(3) "District" means a conservation district under
Title 76, chapter 15, in which the project will take place;
a grass conservation district under Title 76, chapter 16,
where no conservation district exists, or the board of
county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation,
firm, partnership, association, or other legal entity not
covered under 87-5-502.

(5) (a) "Project" means a physical alteration or
modification of a stream in the state of Montana which
results in a change in the state of the stream in
contravention of 75-7-102.

(b) Project does not include an alteration,
modification, or diversion of a stream for the purpose of
providing for irrigation if the alteration, modification, or
diversion is consistent with the previous historical action
or usage at the point of diversion; CUSTOMARY AND HISTORIC
MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES:

(I) THAT DO NOT SIGNIFICANTLY ALTER OR MODIFY THE
STREAM IN CONTRAVENTION OF 75-7-102, AS DETERMINED BY THE
TEAM; OR

(II) FOR WHICH AN ANNUAL PLAN OF OPERATION HAS BEEN
SUBMITTED TO AND APPROVED BY THE DISTRICT. THE PLAN IS
SUBJECT TO FUTURE REVIEW AND APPROVAL BY THE DISTRICT AT ITS
OPTION. ANY MODIFICATION TO THE PLAN MUST HAVE PRIOR
APPROVAL OF THE DISTRICT.

(6) "Stream" means any natural perennial-flowing
stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a
conservation district, the directors of a grass conservation

1 district, or the board of county commissioners where a
2 proposed project is not within a district.

3 (8) "Team" means one representative of the
4 supervisors, one representative of the department, and the
5 applicant or his representative."

6 NEW SECTION. Section 2. Extension of authority. Any
7 existing authority of the board of natural resources and
8 conservation and the supervisors as provided in 75-7-103 to
9 make rules on the subject of the provisions of this act is
10 extended to the provisions of this act.

11 NEW SECTION. Section 3. Effective date. This act is
12 effective on passage and approval.

-End-

HOUSE BILL NO. 661

INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
~~ALTERATION,--MODIFICATION,--OR--DIVERSION--OF--A--STREAM--TO~~
~~PROVIDE--FOR--IRRIGATION~~ MAINTENANCE AND REPAIR OF EXISTING
IRRIGATION FACILITIES; AMENDING SECTION 75-7-103, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the
following definitions apply:

(1) "Applicant" means any person presenting notice of
a project to the supervisors.

(2) "Department" means the Montana department of fish,
wildlife, and parks.

(3) "District" means a conservation district under
Title 76, chapter 15, in which the project will take place;
a grass conservation district under Title 76, chapter 16,
where no conservation district exists, or the board of
county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation,
firm, partnership, association, or other legal entity not
covered under 87-5-502.

(5) (a) "Project" means a physical alteration or
modification of a stream in the state of Montana which
results in a change in the state of the stream in
contravention of 75-7-102.

~~(b) Project does not include an--alteration~~
~~modification,--or--diversion--of--a--stream--for--the--purpose--of~~
~~providing--for--irrigation--if--the--alteration,--modification,--or~~
~~diversion--is--consistent--with--the--previous--historical--action~~
~~or--usage--at--the--point--of--diversion;~~ CUSTOMARY AND HISTORIC
MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES:

~~(I) THAT DO NOT SIGNIFICANTLY ALTER OR MODIFY THE~~
~~STREAM IN CONTRAVENTION OF 75-7-102, AS DETERMINED BY THE~~
~~TRAM SUPERVISORS; OR~~

~~(II) FOR WHICH AN ANNUAL PLAN OF OPERATION HAS BEEN~~
~~SUBMITTED TO AND APPROVED BY THE DISTRICT. THE PLAN IS~~
~~SUBJECT TO FUTURE REVIEW AND APPROVAL BY THE DISTRICT AT ITS~~
~~OPTION. ANY MODIFICATION TO THE PLAN MUST HAVE PRIOR~~
~~APPROVAL OF THE DISTRICT.~~

(6) "Stream" means any natural perennial-flowing
stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a
conservation district, the directors of a grass conservation

1 district, or the board of county commissioners where a
2 proposed project is not within a district.

3 (8) "Team" means one representative of the
4 supervisors, one representative of the department, and the
5 applicant or his representative."

6 NEW SECTION. Section 2. Extension of authority. Any
7 existing authority of the board of natural resources and
8 conservation and the supervisors as provided in 75-7-103 to
9 make rules on the subject of the provisions of this act is
10 extended to the provisions of this act.

11 NEW SECTION. Section 3. Effective date. This act is
12 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 661

3 Senate Natural Resources Committee

4

5 A statement of intent is required for this bill in
6 order to clarify that the board of natural resources and
7 conservation and boards of supervisors of conservation
8 districts may revise their rules as necessary. Section 2
9 clarifies that boards of supervisors are authorized to
10 establish standards and guidelines for projects and
11 exclusions within their districts for matters not covered by
12 the minimum standards and guidelines established by the
13 board of natural resources and conservation. Section 2 also
14 provides authorization to adopt rules identifying repair and
15 maintenance activities that are not "projects", as that term
16 is defined in 75-7-103, because the activities do not
17 significantly alter a stream. Section 2 further authorizes
18 rulemaking to identify the following:

19 (1) categories of information that should be included
20 in plans of annual operation;

21 (2) procedures for filing the plans; and

22 (3) procedures for evaluation and board of supervisor
23 decisions concerning the plans.



REFERENCE BILL

HB-661

1 HOUSE BILL NO. 661

2 INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
3 HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
4 HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
7 TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
8 ALTERATION, ~~MODIFICATION, OR DIVERSION OF A STREAM TO~~
9 PROVIDE FOR IRRIGATION MAINTENANCE AND REPAIR OF EXISTING
10 IRRIGATION FACILITIES; AMENDING ~~SECTION~~ SECTIONS 75-7-103
11 AND 75-7-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
12 DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 75-7-103, MCA, is amended to read:

16 "75-7-103. Definitions. As used in this part, the
17 following definitions apply:

18 (1) "Applicant" means any person presenting notice of
19 a project to the supervisors.

20 (2) "Department" means the Montana department of fish,
21 wildlife, and parks.

22 (3) "District" means a conservation district under
23 Title 76, chapter 15, in which the project will take place;
24 a grass conservation district under Title 76, chapter 16,
25 where no conservation district exists, or the board of

1 county commissioners where a district does not exist.

2 (4) "Person" means any natural person, corporation,
3 firm, partnership, association, or other legal entity not
4 covered under 87-5-502.

5 (5) (a) "Project" means a physical alteration or
6 modification of a stream in the state of Montana which
7 results in a change in the state of the stream in
8 contravention of 75-7-102.

9 (b) Project does not include an alteration
10 modification, or diversion of a stream for the purpose of
11 providing for irrigation if the alteration, modification, or
12 diversion is consistent with the previous historical action
13 or usage at the point of diversion; CUSTOMARY AND HISTORIC
14 MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES:

15 (I) THAT DO NOT SIGNIFICANTLY ALTER OR MODIFY THE
16 STREAM IN CONTRAVENTION OF 75-7-102, AS DETERMINED BY THE
17 TEAM SUPERVISORS; OR

18 (II) FOR WHICH AN ANNUAL PLAN OF A PLAN OF ANNUAL
19 OPERATION HAS BEEN SUBMITTED TO AND APPROVED BY THE
20 DISTRICT. THE PLAN IS SUBJECT TO FUTURE REVIEW AND APPROVAL
21 BY THE DISTRICT AT ITS OPTION. ANY MODIFICATION TO THE PLAN
22 MUST HAVE PRIOR APPROVAL OF THE DISTRICT.

23 (6) "Stream" means any natural perennial-flowing
24 stream or river, its bed and immediate banks.

25 (7) "Supervisors" means the board of supervisors of a

1 conservation district, the directors of a grass conservation
 2 district, or the board of county commissioners where a
 3 proposed project is not within a district.

4 (8) "Team" means one representative of the
 5 supervisors, one representative of the department, and the
 6 applicant or his representative."

7 SECTION 2. SECTION 75-7-117, MCA, IS AMENDED TO READ:

8 "75-7-117. Rules -- minimum standards. (1) ~~By-duty-17~~
 9 ~~1975-7-the~~ The board of natural resources and conservation,
 10 after consultation with the association of conservation
 11 districts, shall adopt and may from time to time revise
 12 rules setting minimum standards and guidelines for the
 13 purposes of this part.

14 (2) ~~By-January-17-1976,-the~~ The supervisors of each
 15 district shall adopt and may from time to time revise by
 16 resolution after a public hearing rules setting standards
 17 and guidelines for projects, and exclusions, within their
 18 districts which ~~shall meet or, exceed, or are not covered by~~
 19 the minimum standards set by the board under subsection
 20 (1)."

21 NEW SECTION. Section 3. Extension of authority. Any
 22 existing authority of the board of natural resources and
 23 conservation and the supervisors as provided in 75-7-103 to
 24 make rules on the subject of the provisions of this act is
 25 extended to the provisions of this act.

1 NEW SECTION. Section 4. Effective date. This act is
 2 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 25

87

March 25, 1987

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 661

THIRD reading copy (BLUE color)

REDEFINE "PROJECT" TO CLARIFY DOES NOT INCLUDE DIVERSION FOR IRRIGATION

SPAETH (BECK)

Respectfully report as follows: That HOUSE BILL No. 661

BE AMENDED AS FOLLOWS:

1. Page 1, line 10.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"

2. Page 1, line 10.
Following: "75-7-103"
Insert: "AND 75-7-117"

3. Page 2, lines 15 and 16.
Following: "75-7-102"
Strike: "AS DETERMINED BY THE TEAM SUPERVISORS"

4. Page 2, line 17.
Strike: "AN ANNUAL PLAN OF"
Insert: "a plan of annual"

5. Page 3, following line 5.
Insert: "Section 2. Section 75-7-117, MCA, is amended to read:
"75-7-117. Rules--minimum standards. (1) ~~By July 17, 1975~~ the board of natural resources and conservation, after consultation with the association of conservation districts, shall adopt, and may from time to time revise, rules setting minimum standards and guidelines for the purpose of this part.

(2) ~~By January 7, 1976~~ the The supervisors of each district shall adopt, and may from time to time revise, by resolution after a public hearing rules setting standards and guidelines for projects, and exclusions, within their districts which shall meet or exceed, or ~~are not covered by~~ the minimum standards set by the board under subsection (1)."

~~XXXXXX~~
Renumber: subsequent sections.

AND AS AMENDED,
BE CONCURRED IN

Thomas F. Keating
SENATOR THOMAS F. KEATING, Chairman.

STATEMENT OF INTENT ADOPTED AND ATTACHED

MR. PRESIDENT:

WE, YOUR COMMITTEE ON NATURAL RESOURCES HAVING HAD UNDER CONSIDERATION HOUSE BILL 661, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify that the board of natural resources and conservation and boards of supervisors of conservation districts may revise their rules as necessary. Section 2 clarifies that boards of supervisors are authorized to establish standards and guidelines for projects and exclusions within their districts for matters not covered by the minimum standards and guidelines established by the board of natural resources and conservation. Section 2 also provides authorization to adopt rules identifying repair and maintenance activities that are not "projects" as that term is defined in 75-7-103 because the activities do not significantly alter a stream. Section 2 further authorizes rulemaking to identify the following: 1) categories of information that should be included in plans of annual operation; 2) procedures for filing the plans; and 3) procedures for evaluation and board of supervisor decisions concerning the plans.

3 26 87
11.6