

HOUSE BILL 30

Introduced by Driscoll

12/23	Introduced
12/30	Referred to Natural Resources
1/04	First Reading
1/08	Hearing
1/15	Hearing
1/20	Committee Report--Bill Passed as Amended
1/23	2nd Reading Passed as Amended
1/26	3rd Reading Passed
	Transmitted to Senate
1/28	First Reading
1/28	Referred to Natural Resources
3/08	Hearing
3/24	Tabled in Committee

1 HOUSE BILL NO. 30

2 INTRODUCED BY DRISCOLL

3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 LAWS RELATED TO THE MANAGEMENT OF LAKESHORES BY LOCAL
7 GOVERNMENTS; AUTHORIZING JURISDICTION OVER CERTAIN
8 RESERVOIRS; EXTENDING CERTAIN LAWS TO INCLUDE LAKESHORES;
9 PROVIDING A CIVIL PENALTY AND REMEDY FOR VIOLATIONS OF LOCAL
10 LAKESHORE LAW; PROVIDING FOR A LAKE ADVISORY COMMITTEE; AND
11 AMENDING SECTIONS 75-7-202, 75-7-203, 75-7-205, 75-7-211,
12 AND 75-7-215, MCA."

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

15 Section 1. Section 75-7-202, MCA, is amended to read:

16 "75-7-202. Definitions. As used in this part, subject
17 to 75-7-203, the following definitions apply:

18 (1) "Lake" means a body of standing water and the area
19 within its lakeshore occurring naturally rather than by
20 virtue of constructed impoundments (although a natural lake
21 whose level is raised and whose area is increased by the
22 construction of impoundments includes the additional level
23 and area), having a water surface area of at least 160 acres
24 for at least 6 months in a year of average precipitation (as
25 such averages are determined by the United States geological

1 survey), not used exclusively for agricultural purposes, and
2 navigable by canoes and small boats.

3 (2) "Lakeshore" is the perimeter of a lake when the
4 lake is at mean annual high-water elevation, including the
5 land within ~~20~~ 50 horizontal feet from that high-water
6 elevation.

7 (3) "Local governing body" or "governing body" is that
8 unit of local government authorized to administer the
9 Montana Subdivision and Platting Act on the land adjoining a
10 lake or part of a lake subject to this part.

11 (4) "Mean annual high-water elevation" is the mean
12 average of the highest elevation of a lake in each of at
13 least 5 consecutive years, excluding any high levels caused
14 by erratic or unusual weather or hydrological conditions. A
15 highest elevation caused by operation of a dam or other
16 impoundment counts toward the establishment of the mean
17 annual high-water elevation."

18 Section 2. Section 75-7-203, MCA, is amended to read:

19 "75-7-203. Change in definition of lake by local
20 government. (1) A local governing body may by resolution
21 change the minimum size in the definition of a lake so that
22 this part ~~may apply~~ applies to natural lakes in the county
23 no smaller than 20 acres in water surface area.

24 (2) Except as provided in subsection (4), a local
25 governing body may by resolution change the definition of a

lake so that this part applies to a reservoir or constructed impoundment that has a water surface area of at least 160 acres for at least 6 months in a year of average precipitation, as determined by the United States geological survey, and is navigable by canoes and small boats.

(3) A local governing body may not change the definition of a lake so that this part applies to a reservoir or constructed impoundment that is:

(a) used primarily for agricultural purposes; or

(b) operated in conjunction with a mining operation permitted under Title 82.

(4) In changing the definition of a lake pursuant to subsection (2), a local governing body shall consult with the board of supervisors of the conservation district, established pursuant to 76-15-201, with jurisdiction over the geographical area of the lake."

Section 3. Section 75-7-205, MCA, is amended to read:

"75-7-205. Unauthorized work. A person who performs work in a lake or on a lakeshore after-May-17-1975, without a permit for--that--work shall, if required by the local governing body or the district court, restore the lake or lakeshore to its condition before he it was disturbed it."

Section 4. Section 75-7-211, MCA, is amended to read:

"75-7-211. Consultation with local planning board. (1) Where When a planning board has been created under 76-1-104

for the area containing the lake in question or a lake advisory committee has been created under [section 7], the governing body shall seek the recommendation of the planning board or lake advisory committee as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board or lake advisory committee shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board or lake advisory committee reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section ~~shall~~ must be exercised by the local governing body."

Section 5. Section 75-7-215, MCA, is amended to read:

"75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake or lakeshore to its previous condition or to enjoin further work in a lake or on a lakeshore;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

1 (3) a petition of an interested person for review of an
2 action of a governing body in adopting or amending
3 regulations."

4 NEW SECTION. **Section 6.** Civil penalty -- injunctive
5 authority. (1) A person who violates an order issued under
6 [this part] or who violates a regulation under [this part]
7 is subject to a civil penalty not to exceed \$500.

8 (2) Each day of a continuing violation constitutes a
9 separate offense.

10 (3) Penalties collected under this section must be paid
11 to the general fund of the county where the offense was
12 committed for the purpose of administering [this part].

13 (4) The governing body may file an action in district
14 court to enjoin the violation of any provision of [this
15 part] or of any regulation adopted pursuant to 75-7-207.

16 NEW SECTION. **Section 7.** Lake advisory committee --
17 consultation. (1) A governing body may establish a lake
18 advisory committee for a particular lake for the purpose of
19 assisting the governing body with the administration of
20 [this part].

21 (2) The members of a lake advisory committee must be
22 appointed by and serve at the pleasure of the governing
23 body.

24 (3) A lake advisory committee has the duties provided
25 for in 75-7-211(1).

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 30

INTRODUCED BY DRISCOLL

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO THE MANAGEMENT OF LAKESHORES BY LOCAL GOVERNMENTS; AUTHORIZING JURISDICTION OVER CERTAIN RESERVOIRS; EXTENDING CERTAIN LAWS TO INCLUDE LAKESHORES; PROVIDING A CIVIL PENALTY AND REMEDY FOR VIOLATIONS OF LOCAL LAKESHORE LAW; PROVIDING FOR A LAKE ADVISORY COMMITTEE; AND AMENDING SECTIONS 75-7-202, 75-7-203, 75-7-205, 75-7-211, AND 75-7-215, MCA."

STATEMENT OF INTENT

IN PROVIDING GOVERNING BODIES WITH A LOCAL OPTION TO CHANGE THE DEFINITION OF A LAKESHORE FROM 20 FEET TO A MAXIMUM OF 50 FEET ABOVE THE HIGH-WATER ELEVATION, IT IS THE INTENT OF THE LEGISLATURE THAT THE GOVERNING BODY NOT AUTOMATICALLY EXCLUDE ALL DEVELOPMENT WITHIN THIS ZONE. RATHER, THE LAKESHORE IS INTENDED TO BE A ZONE OF CLOSELY MANAGED ACTIVITY WHERE PROPOSED DEVELOPMENT IS REVIEWED AND APPROVED BY THE GOVERNING BODY PURSUANT TO LOCAL REGULATIONS ADOPTED UNDER TITLE 75, CHAPTER 7, PART 2.

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

Section 1. Section 75-7-202, MCA, is amended to read:

"75-7-202. Definitions. As used in this part, subject to 75-7-203 AND [SECTION 8], the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation (as such averages are determined by the United States geological survey), not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within ~~20~~ 50 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused



by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation."

Section 2. Section 75-7-203, MCA, is amended to read:

"75-7-203. Change in definition of lake by local government. (1) A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply applies to natural lakes in the county no smaller than 20 acres in water surface area.

(2) Except as provided in subsection (4), UPON RECEIPT OF A PETITION SIGNED BY AT LEAST 15% OF THE LAKESHORE PROPERTY OWNERS, OR SIGNED BY PERSONS OWNING AT LEAST 15% OF THE LAKESHORE PROPERTY, a local governing body may by resolution change the definition of a lake so that this part applies to a reservoir or constructed impoundment that has a water surface area of at least 160 acres for at least 6 months in a year of average precipitation, as determined by the United States geological survey, and is navigable by canoes and small boats.

(3) A local governing body may not change the definition of a lake so that this part applies to a reservoir or constructed impoundment that is:

(a) THAT IS used primarily for agricultural purposes; or

(b) THAT IS operated in conjunction with a mining operation permitted under Title 82; OR

(C) WHEN LAKESHORE DEVELOPMENT IS REGULATED BY A FEDERAL AGENCY.

(4) In changing the definition of a lake pursuant to subsection (2), a local governing body shall:

(A) consult with the board of supervisors of the conservation district, established pursuant to 76-15-201, with jurisdiction over the geographical area of the lake; AND

(B) COMPLY WITH THE REQUIREMENTS OF [SECTION 8(2)]."

Section 3. Section 75-7-205, MCA, is amended to read:

"75-7-205. Unauthorized work. A person who performs work in a lake or on a lakeshore after May-17-1975, without a permit GRANTED UNDER THIS PART for-that-work shall, if required by the local governing body or the district court, restore the lake or lakeshore to its condition before he it was disturbed it."

Section 4. Section 75-7-211, MCA, is amended to read:

"75-7-211. Consultation with local planning board, LAKE ADVISORY COMMITTEE, AND CONSERVATION DISTRICT. (1) Where When a planning board has been created under 76-1-104 for the area containing the lake in question or a lake advisory committee has been created under [section 7], the governing body shall seek the recommendation of the planning board or

1 lake advisory committee as to the compliance of the proposed
 2 work with the criteria for the issuance of a permit. The
 3 planning board or lake advisory committee shall report its
 4 recommendations to the governing body as to whether the
 5 proposed work conforms to the criteria for issuance of a
 6 permit and may require the applicant to submit additional
 7 information before the board or lake advisory committee
 8 reports its recommendations.

9 (2) In areas where a planning board is not established,
 10 the functions of a planning board under this section ~~shall~~
 11 must be exercised by the local governing body.

12 (3) IN PERFORMING ITS DUTIES UNDER THIS PART, THE
 13 GOVERNING BODY SHALL, UPON REQUEST, SEEK THE RECOMMENDATION
 14 AND ASSISTANCE OF THE LOCAL CONSERVATION DISTRICT."

15 **Section 5.** Section 75-7-215, MCA, is amended to read:

16 "75-7-215. Judicial enforcement and review. The
 17 district court may hear and decide the following cases
 18 arising under this part within the district:

19 (1) a complaint and petition of a governing body or an
 20 interested person for an order to restore a lake or
 21 lakeshore to its previous condition or to enjoin further
 22 work in a lake or on a lakeshore;

23 (2) a petition of an interested person for review of a
 24 final action of a governing body upon an application for a
 25 permit;

1 (3) a petition of an interested person for review of an
 2 action of a governing body in adopting or amending
 3 regulations."

4 **NEW SECTION. Section 6.** Civil penalty -- injunctive
 5 authority. (1) A person who violates an order issued under
 6 [this part] or who violates a regulation under [this part]
 7 is subject to a civil penalty not to exceed \$500.

8 (2) Each day of a continuing violation constitutes a
 9 separate offense.

10 (3) Penalties collected under this section must be paid
 11 to the general fund of the county where the offense was
 12 committed for the purpose of administering [this part].

13 (4) The governing body may file an action in district
 14 court to enjoin the violation of any provision of [this
 15 part] or of any regulation adopted pursuant to 75-7-207.

16 **NEW SECTION. Section 7.** Lake advisory committee --
 17 consultation. (1) A governing body may establish a lake
 18 advisory committee for a particular lake for the purpose of
 19 assisting the governing body with the administration of
 20 [this part].

21 (2) The members of a lake advisory committee must be
 22 appointed by and serve at the pleasure of the governing
 23 body.

24 (3) A lake advisory committee has the duties provided
 25 for in 75-7-211(1).

1 NEW SECTION. SECTION 8. CHANGE IN WIDTH OF LAKESHORE

2 ZONE -- LOCAL OPTION. (1) A GOVERNING BODY MAY, THROUGH THE
3 PROCEDURES IN SUBSECTION (2), CHANGE THE DEFINITION OF A
4 LAKESHORE IN 75-7-202 FROM 20 HORIZONTAL FEET TO A MAXIMUM
5 OF 50 HORIZONTAL FEET FROM THE HIGH-WATER ELEVATION.

6 (2) WHEN CHANGING THE DEFINITION OF A LAKESHORE UNDER
7 SUBSECTION (1), A GOVERNING BODY SHALL:

8 (A) PROVIDE PUBLIC NOTICE PURSUANT TO 7-1-4128 FOR A
9 MUNICIPALITY OR 7-1-2121 FOR A COUNTY;

10 (B) CONDUCT A PUBLIC HEARING ACCORDING TO THE
11 PROCEDURES IN 7-1-4131; AND

12 (C) FOLLOW THE PROCEDURES FOR THE ADOPTION OF
13 ORDINANCES IN 7-5-103.

14 NEW SECTION. SECTION 9. CODIFICATION INSTRUCTION.

15 [SECTIONS 6 THROUGH 8] ARE INTENDED TO BE CODIFIED AS AN
16 INTEGRAL PART OF TITLE 75, CHAPTER 7, PART 2, AND THE
17 PROVISIONS OF TITLE 75, CHAPTER 7, PART 2, APPLY TO
18 [SECTIONS 6 THROUGH 8].

-End-

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6 LAWS RELATED TO THE MANAGEMENT OF LAKESHORES BY LOCAL
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8 RESERVOIRS; EXTENDING CERTAIN LAWS TO INCLUDE LAKESHORES;
9 PROVIDING A CIVIL PENALTY AND REMEDY FOR VIOLATIONS OF LOCAL
10 LAKESHORE LAW; REVISING TIME PERIODS FOR ACTING ON A PERMIT
11 APPLICATION; PROVIDING FOR A LAKE ADVISORY COMMITTEE; AND
12 AMENDING SECTIONS 75-7-202, 75-7-203, 75-7-205, 75-7-211,
13 75-7-212, AND 75-7-215, MCA."

14
15 STATEMENT OF INTENT

16 IN PROVIDING GOVERNING BODIES WITH A LOCAL OPTION TO
17 CHANGE THE DEFINITION OF A LAKESHORE FROM 20 FEET TO A
18 MAXIMUM OF 50 FEET ABOVE THE HIGH-WATER ELEVATION, IT IS THE
19 INTENT OF THE LEGISLATURE THAT THE GOVERNING BODY NOT
20 AUTOMATICALLY EXCLUDE ALL DEVELOPMENT WITHIN THIS ZONE.
21 RATHER, THE LAKESHORE IS INTENDED TO BE A ZONE OF CLOSELY
22 MANAGED ACTIVITY WHERE PROPOSED DEVELOPMENT IS REVIEWED AND
23 APPROVED BY THE GOVERNING BODY PURSUANT TO LOCAL REGULATIONS
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7 within its lakeshore occurring naturally rather than by
8 virtue of constructed impoundments (although a natural lake
9 whose level is raised and whose area is increased by the
10 construction of impoundments includes the additional level
11 and area), having a water surface area of at least 160 acres
12 for at least 6 months in a year of average precipitation (as
13 such averages are determined by the United States geological
14 survey), not used exclusively for agricultural purposes, and
15 navigable by canoes and small boats.

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17 lake is at mean annual high-water elevation, including the
18 land within ~~20~~ 50 ~~20~~ horizontal feet from that high-water
19 elevation.

20 (3) "Local governing body" or "governing body" is that
21 unit of local government authorized to administer the
22 Montana Subdivision and Platting Act on the land adjoining a
23 lake or part of a lake subject to this part.

24 (4) "Mean annual high-water elevation" is the mean
25 average of the highest elevation of a lake in each of at

1 least 5 consecutive years, excluding any high levels caused
2 by erratic or unusual weather or hydrological conditions. A
3 highest elevation caused by operation of a dam or other
4 impoundment counts toward the establishment of the mean
5 annual high-water elevation."

6 **Section 2.** Section 75-7-203, MCA, is amended to read:

7 "75-7-203. Change in definition of lake by local
8 government. (1) A local governing body may by resolution
9 change the minimum size in the definition of a lake so that
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12 (2) Except as provided in subsection (4), UPON RECEIPT
13 OF A PETITION SIGNED BY AT LEAST 15% OF THE LAKESHORE
14 PROPERTY OWNERS, OR SIGNED BY PERSONS OWNING AT LEAST 15% OF
15 THE LAKESHORE PROPERTY, a local governing body may by
16 resolution change the definition of a lake so that this part
17 applies to a reservoir or constructed impoundment that has a
18 water surface area of at least 160 acres for at least 6
19 months in a year of average precipitation, as determined by
20 the United States geological survey, and is navigable by
21 canoes and small boats.

22 (3) A local governing body may not change the
23 definition of a lake so that this part applies to a
24 reservoir or constructed impoundment that is:

25 (a) THAT IS used primarily for agricultural purposes;

1 or

2 (b) THAT IS operated in conjunction with a mining
3 operation permitted under Title 82r; OR

4 (C) WHEN LAKESHORE DEVELOPMENT IS REGULATED BY A
5 FEDERAL AGENCY.

6 (4) In changing the definition of a lake pursuant to
7 subsection (2), a local governing body shall:

8 (A) consult with the board of supervisors of the
9 conservation district, established pursuant to 76-15-201,
10 with jurisdiction over the geographical area of the lake;

11 AND

12 (B) COMPLY WITH THE REQUIREMENTS OF [SECTION 9(2)]
13 9(2)]."

14 **Section 3.** Section 75-7-205, MCA, is amended to read:

15 "75-7-205. Unauthorized work. A person who performs
16 work in a lake or on a lakeshore after May 17, 1975, without
17 a permit GRANTED UNDER THIS PART ~~for--that--work~~ shall, if
18 required by the local governing body or the district court,
19 restore the lake or lakeshore to its condition before he it
20 was disturbed it."

21 **Section 4.** Section 75-7-211, MCA, is amended to read:

22 "75-7-211. Consultation with local planning board, LAKE
23 ADVISORY COMMITTEE, AND CONSERVATION DISTRICT. (1) Where
24 When a planning board has been created under 76-1-104 for
25 the area containing the lake in question or a lake advisory

committee has been created under [section 7 8], the governing body shall seek the recommendation of the planning board or lake advisory committee as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board or lake advisory committee shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board or lake advisory committee reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall must be exercised by the local governing body.

(3) IN PERFORMING ITS DUTIES UNDER THIS PART, THE GOVERNING BODY SHALL, UPON REQUEST, SEEK THE RECOMMENDATION AND ASSISTANCE OF THE LOCAL CONSERVATION DISTRICT."

SECTION 5. SECTION 75-7-212, MCA, IS AMENDED TO READ:

"75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, if a variance under 75-7-213 may be necessary, the governing body shall grant or deny permission for the work within 90 60 days of receiving an application for a permit. If a variance is not necessary, the governing body shall grant or deny permission for the work within 30 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application."

Section 6. Section 75-7-215, MCA, is amended to read:

"75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake or lakeshore to its previous condition or to enjoin further work in a lake or on a lakeshore;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations."

NEW SECTION. Section 7. Civil penalty -- injunctive authority. (1) A person who violates an order issued under [this part] or who violates a regulation under [this part] is subject to a civil penalty not to exceed \$500.

(2) Each day of a continuing violation constitutes a separate offense.

(3) Penalties collected under this section must be paid to the general fund of the county where the offense was committed for the purpose of administering [this part].

(4) The governing body may file an action in district court to enjoin the violation of any provision of [this part] or of any regulation adopted pursuant to 75-7-207.

NEW SECTION. Section 8. Lake advisory committee -- consultation. (1) A governing body may establish a lake advisory committee for a particular lake for the purpose of assisting the governing body with the administration of [this part].

(2) The members of a lake advisory committee must be appointed by and serve at the pleasure of the governing body.

(3) A lake advisory committee has the duties provided for in 75-7-211(1).

NEW SECTION. SECTION 9. CHANGE IN WIDTH OF LAKESHORE ZONE -- LOCAL OPTION. (1) A GOVERNING BODY MAY, THROUGH THE PROCEDURES IN SUBSECTION (2), CHANGE THE DEFINITION OF A LAKESHORE IN 75-7-202 FROM 20 HORIZONTAL FEET TO A MAXIMUM OF 50 HORIZONTAL FEET FROM THE HIGH-WATER ELEVATION.

(2) WHEN CHANGING THE DEFINITION OF A LAKESHORE UNDER SUBSECTION (1), A GOVERNING BODY SHALL:

(A) PROVIDE PUBLIC NOTICE PURSUANT TO 7-1-4128 FOR A MUNICIPALITY OR 7-1-2121 FOR A COUNTY;

(B) CONDUCT A PUBLIC HEARING ACCORDING TO THE PROCEDURES IN 7-1-4131; AND

(C) FOLLOW THE PROCEDURES FOR THE ADOPTION OF ORDINANCES IN 7-5-103.

NEW SECTION. SECTION 10. CODIFICATION INSTRUCTION. [SECTIONS 6 7 THROUGH 8 9] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 7, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 7, PART 2, APPLY TO [SECTIONS 6 7 THROUGH 8 9].

-End-