

SENATE BILL NO. 381

INTRODUCED BY KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE USE OF ARBITRATION FOR DISPUTE RESOLUTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 IS NOT MANDATORY; AND AMENDING SECTIONS 75-7-111, 75-7-112, 75-7-113, 75-7-116, 75-7-117, AND 75-7-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-7-111, MCA, is amended to read:

"75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.

(2) The notice must include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant ~~shall~~ may sign an arbitration agreement as provided in 75-7-117.

(4) The district may authorize a representative to accept notices of proposed projects."

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

"75-7-112. Procedure for considering projects -- team. (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

1 (3) Each member of the team shall recommend in writing, within 30 days of the date of inspection,
2 denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this
3 recommendation.

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

7 (5) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees
8 with the supervisors' decision, the team member shall request, within 5 working days of receipt of the
9 supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and
10 make a final written decision regarding the dispute.

11 (b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors'
12 decision, the applicant shall, within 5 15 working days of receipt of the supervisors' decision:

13 (i) agree to arbitration under this section and request that an arbitration panel, as provided for in
14 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

15 (ii) appeal the decision of the supervisors to the district court for the county where the project is located.

16 (6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within
17 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work
18 may not be commenced on a project before the end of the 15-day waiting period unless written permission is
19 given by all team members and the district.

20 (7) The supervisors may extend, upon the request of a team member, the time limits provided in
21 subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes
22 of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must
23 be notified, within 60 days of the date of application, of the initial time extension and must be notified
24 immediately of any subsequent time extensions.

25 (8) Work on a project under this part may not take place without the written consent of the supervisors.

26 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying
27 a project, shall determine:

28 (a) the purpose of the project; and

29 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed
30 project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means."

Section 3. Section 75-7-113, MCA, is amended to read:

"75-7-113. Emergencies -- procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 5 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation."

Section 4. Section 75-7-116, MCA, is amended to read:

"75-7-116. Modification of plan -- assignment of costs. (1) If the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper

1 participant.

2 (2) Any of the involved entities may withdraw or modify required modification of the project within 10
3 days after the decision."

4
5 **Section 5.** Section 75-7-117, MCA, is amended to read:

6 **"75-7-117. Rules -- minimum standards -- arbitration agreement.** (1) The department of natural
7 resources and conservation, after consultation with the association of conservation districts, shall adopt and may
8 revise rules setting minimum standards and guidelines for the purposes of this part.

9 (2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules
10 setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not
11 covered by the minimum standards set by the department under subsection (1).

12 (3) The department of natural resources and conservation, after consultation with the association of
13 conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an
14 applicant chooses to use arbitration. The arbitration agreement must contain provisions for:

15 (a) the appointment of arbitrators;

16 (b) the exercise of power by the arbitrators;

17 (c) an arbitration hearing process, including time and place for hearing, notification, presentation of
18 witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change
19 of award; and

20 (d) the fees and expenses of arbitration."

21
22 **Section 6.** Section 75-7-121, MCA, is amended to read:

23 **"75-7-121. Review.** (1) Any review of final action by the supervisors under 75-7-112 or 75-7-113 ~~must~~
24 may be by arbitration or by the district court of the county where the project is located. Judicial review of an
25 arbitration action is under the provisions of Title 27, chapter 5, part 3.

26 (2) AN APPLICANT'S CHOICE OF THE JUDICIAL REVIEW REMEDY PREVAILS OVER ANY OTHER TEAM MEMBER'S
27 REQUEST FOR ARBITRATION REGARDLESS OF WHETHER ARBITRATION WAS REQUESTED PRIOR TO THE FILING OF A
28 PETITION FOR JUDICIAL REVIEW BY THE APPLICANT. "

29
30 ~~NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.~~

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