

HOUSE BILL NO. 455

INTRODUCED BY M. REINHART

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE BIG SKY RIVERS ACT; AUTHORIZING
5 STREAMSIDE MANAGEMENT AREAS AND VEGETATED BUFFERS; REQUIRING CERTAIN POLITICAL
6 SUBDIVISIONS TO ESTABLISH STREAMSIDE MANAGEMENT AREA PERMITTING OR CERTIFICATION
7 PROGRAMS; PROVIDING EXCEPTIONS; PROHIBITING CERTAIN ACTIVITIES WITHIN STREAMSIDE
8 MANAGEMENT AREAS; AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE VARIANCES, COLLECT FEES,
9 AND ADOPT LOCAL REGULATIONS THAT MEET CERTAIN REQUIREMENTS; PROVIDING FOR
10 ENFORCEMENT AND PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
11 APPLICABILITY DATE."

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

14
15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Big Sky Rivers
16 Act".

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18 NEW SECTION. **Section 2. Intent, findings, and policy.** (1) The legislature, mindful of its constitutional
19 obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Big Sky Rivers
20 Act. It is the legislature's intent that the requirements of [sections 1 through 10] provide adequate remedies for
21 the protection of the environmental life support system from degradation and provide adequate remedies to
22 prevent unreasonable depletion and degradation of natural resources.

- 23 (2) The legislature finds that:
- 24 (a) increasing development along Montana's rivers and streams is causing unnatural rates of soil
25 erosion, diminished water quality, unnecessary damage to protective vegetation, reduced habitat for fish and
26 wildlife, and increased risk of flooding and property loss to downstream landowners;
 - 27 (b) many adverse impacts caused by development along Montana's rivers and streams transcend the
28 jurisdictional boundaries of local government;
 - 29 (c) the state has a duty and legitimate interest in protecting the integrity of its rivers and streams on
30 behalf of all its citizens;

1 (d) the state has a duty and legitimate interest in protecting people and private property by reducing
2 property loss from flooding and erosion;

3 (e) conservation and protection of rivers and streams is crucial to the quality and quantity of water that
4 is available to Montanans for domestic, agricultural, industrial, and recreational use;

5 (f) fish and wildlife that rely on rivers, streams, and streamside habitats are held in trust for the benefit
6 of all Montanans; and

7 (g) through careful management of the lands adjacent to rivers and streams, property owners and the
8 state can achieve their goals without sacrificing water quality or fish and wildlife habitat or without impairing the
9 beneficial uses of the water.

10 (3) The legislature recognizes that:

11 (a) Montana's rivers and streams provide important natural resources that belong to the people of the
12 state and that benefit the economy, the environment, and the quality of life that Montanans enjoy;

13 (b) development along the state's rivers often differs between local government jurisdictions and between
14 regions of the state;

15 (c) development in one jurisdiction on the same river can reduce the natural and economic values of the
16 river in another jurisdiction; and

17 (d) many of the state's rivers are cherished in their natural state by all Montanans.

18 (4) It is the intent of [sections 1 through 10] to:

19 (a) enact a system of streamside protections on 10 big sky rivers, as defined in [section 3], that have
20 widespread cultural, economic, and recreational value to all Montanans;

21 (b) ensure that development along the state's most valuable and cherished rivers and streams proceeds
22 in a way that:

23 (i) protects property from flooding and erosion;

24 (ii) protects water quality and availability;

25 (iii) provides opportunities for recreation;

26 (iv) protects valuable water recharge areas;

27 (v) preserves fish and wildlife habitat; and

28 (vi) preserves the use and enjoyment of private property; and

29 (c) provides political subdivisions with a flexible system through which the provisions of [sections 1
30 through 10] may be implemented in a manner best suited to the needs of the citizens of each county along any

1 river or stream within that political subdivision's jurisdiction.

2

3 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless a different meaning
4 clearly appears from the context, the following definitions apply:

5 (1) "Channel migration zone" means the area where it is reasonably foreseeable that an active channel
6 of a river or stream could migrate in the next 100 years because of erosion or avulsion.

7 (2) (a) "Big sky river" includes, as defined by the United States geological survey unless a smaller reach
8 is specified in this subsection (2), the mainstem of the river from its point of origin to the point where the river
9 connects to another river, below which its name changes, or where the river leaves the state for the:

10 (i) Bitterroot River;

11 (ii) Blackfoot River;

12 (iii) Clark Fork River;

13 (iv) Flathead River;

14 (v) Gallatin River;

15 (vi) Jefferson River;

16 (vii) Madison River;

17 (viii) Missouri River from its headwaters near Three Forks to the line between Cascade and Choteau
18 Counties;

19 (ix) Smith River; and

20 (x) Yellowstone River from the Montana-Wyoming border to the line between Treasure and Rosebud
21 Counties.

22 (b) The term does not include any lake or reservoir along a river or any upstream fork or tributary of a
23 river.

24 (3) "Flood plain" has the meaning provided in 76-5-103.

25 (4) "Flood-prone area" means the area adjacent to a river or stream that is predicted to be covered by
26 the floodwater of a flood of 100-year frequency based on:

27 (a) an analysis of elevation, without taking into account channel restrictions such as bridge abutments
28 and obstructions; and

29 (b) if appropriate, aerial photographs of past floods.

30 (5) "Ordinary high-water mark" has the meaning provided in 23-2-301.

1 (6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or
2 association.

3 (7) "Political subdivision" means any incorporated city or town, a consolidated city-county government,
4 or a county.

5 (8) "Streamside management area" means an area of varying width adjacent to a river or stream where
6 certain uses have the potential to significantly affect private property, wildlife habitat, water quality, fish, or other
7 aquatic resources. Streamside management areas may not be smaller than the vegetated buffer.

8 (9) "Vegetated buffer" means the portion of the streamside management area that is closest to the river
9 or stream where all natural vegetation, rocks, soil, and topography should be maintained in their original state
10 to the maximum extent possible or enhanced or restored by the planting of native vegetation. Within the vegetated
11 buffer, weed control and removal of some vegetation reasonably required to protect personal property from the
12 threat of wildfire or to remove a threat to public or personal safety is allowed.

13
14 **NEW SECTION. Section 4. Streamside management area regulations -- jurisdiction.** (1) Except
15 as provided in [section 9], the provisions of [sections 5 through 7] pertaining to a big sky river do not apply to:

16 (a) incorporated cities and towns;
17 (b) unincorporated entities established prior to [the effective date of this act] that are classified as
18 census-designated places by the United States bureau of the census and that are:

19 (i) within the boundary of a sanitary sewer district created pursuant to Title 7, chapter 13, part 1, 22, 23,
20 30, or 43; or

21 (ii) served by a sanitary sewer district under subsection (1)(b)(i);

22 (c) zoned areas with regulations established before [the effective date of this act] that have residential
23 densities of at least 1 unit per acre and are served by municipal sewer and water systems; or

24 (d) a big sky river regulated by a local streamside management area regulation adopted prior to [the
25 effective date of this act] that prohibits all new building construction within at least 150 feet of the river.

26 (2) Changes after [the effective date of this act] to any local streamside management area regulations
27 for a big sky river that were adopted prior to [the effective date of this act] must comply with [sections 1 through
28 10].

29
30 **NEW SECTION. Section 5. Requirements for streamside management areas and vegetated**

1 **buffers.** (1) Except as provided in [section 9] and subsection (2) of this section, along either side of a big sky
 2 river, there must be a streamside management area of at least 250 feet, as measured from the ordinary
 3 high-water mark, that must include a vegetated buffer of at least 150 feet.

4 (2) When a slope adjacent to a big sky river rises at a grade of 50% or greater for at least 20 feet above
 5 the ordinary high-water mark and no historic evidence of bank erosion exists, the streamside management area
 6 required for that big sky river is at least 150 feet, with a vegetated buffer of at least 100 feet.

7
 8 **NEW SECTION. Section 6. Uses within streamside management area -- authorization.** (1) Except
 9 as provided in [section 8], the following uses are prohibited within a streamside management area established
 10 pursuant to [section 5 or 9]:

11 (a) any type of new building, including new residential, commercial, or industrial structures, or
 12 outbuildings such as a garage or shop;

13 (b) the installation of a manufactured or prefabricated building;

14 (c) new onsite wastewater disposal facilities;

15 (d) an addition to an existing building of more than 50% of the square footage of the existing structure;

16 or

17 (e) the construction of a new parking lot or road except when necessary to cross a river or stream.

18 (2) The following uses are authorized in a streamside management area:

19 (a) the lawful use of land or buildings that existed on or before [the effective date of this act], including:

20 (i) the reconstruction, replacement, or repair of an existing onsite wastewater disposal facility if the
 21 updated facility is no closer to the river or stream than the original onsite wastewater disposal facility; and

22 (ii) the reconstruction or repair of any building destroyed or damaged by accidental causes other than
 23 flooding if:

24 (A) the original perimeter of the building is not exceeded; and

25 (B) the reconstruction or repair is commenced within 2 years of the date of destruction;

26 (b) any use conducted on property pursuant to a hydroelectric project license issued by the federal
 27 energy regulatory commission or located within the licensed project boundary as determined by the federal
 28 energy regulatory commission;

29 (c) agricultural uses, except any use that includes a new building that is serviced by electricity, water,
 30 and onsite wastewater disposal facilities and that could be used as a permanent residence;

- 1 (d) structures and equipment used to collect and transport water from a river or stream for agricultural
 2 or industrial uses, including diversion and intake structures, pipes, pumps, pumphouses, and related equipment;
 3 (e) structures and infrastructure pertaining to water-related recreation, including but not limited to docks,
 4 boat ramps, and fishing access sites;
 5 (f) filling for highway, street, and railroad embankments not associated with a river or stream crossing
 6 if:
 7 (i) reasonable alternative transportation routes outside the streamside management area are not
 8 available; and
 9 (ii) any encroachment is located as far from the river or stream channel as possible;
 10 (g) repair and improvement of existing roads within the streamside management area; and
 11 (h) commercial forest practices subject to the provisions of Title 77, chapter 5, part 3.

12
 13 **NEW SECTION. Section 7. Political subdivision administration -- requirements -- fees.** (1) Subject
 14 to subsection (4), any political subdivision establishing a streamside management area pursuant to [section 5
 15 or 9] shall implement a permit or certification program for new construction proposed within that streamside
 16 management area to ensure that the requirements of [sections 1 through 10] are met.

17 (2) The permit or certification program:

- 18 (a) may be outlined in a separate ordinance or as part of a local subdivision, zoning, sanitation, flood
 19 plain, or other local development regulation;
 20 (b) must allow an applicant to appeal a permit or certification decision to the governing body of the
 21 political subdivision within 30 days of the issuance of the decision, with an opportunity for a hearing on the appeal;
 22 (c) must allow an applicant to appeal a decision by the governing body to the court of record within 30
 23 days after the decision of the governing body; and
 24 (d) may include standards that exceed those established in [sections 5 and 6].

25 (3) A political subdivision may charge a fee to cover the costs of implementing the requirements of
 26 [sections 1 through 10].

27 (4) A county or consolidated city-county government establishing a streamside management area for
 28 a big sky river within its boundaries shall implement a permit or certification program by January 1, 2011.

29
 30 **NEW SECTION. Section 8. Variances.** (1) A political subdivision shall adopt variance procedures that

1 address the criteria established in subsection (3) for granting variances for uses that would not otherwise be
2 allowed pursuant to [section 6].

3 (2) An application for a variance must include information that the political subdivision considers
4 necessary to evaluate the variance request, including but not limited to plans, maps, and specifications detailing
5 the request. A delineation of the flood plain boundary for the parcel may be required.

6 (3) A political subdivision may grant a variance upon finding that:

7 (a) literal application of [sections 1 through 10] would result in an unnecessary hardship to the property
8 owner as a result of circumstances unique to the parcel, including but not limited to size, shape, topography, or
9 location;

10 (b) the hardship referred to in subsection (3)(a) is not the result of the actions of the applicant;

11 (c) the variance is consistent with the general purpose and intent of [sections 1 through 10] and the
12 variance is not likely to:

13 (i) adversely impact water quality;

14 (ii) increase river or streambank erosion; or

15 (iii) increase flood heights or velocity; and

16 (d) the variance is as small as reasonably possible to accommodate the proposed use while preserving
17 the intent of [section 2] to the greatest degree practicable.

18 (4) The applicant for a variance has the burden of demonstrating that the variance request meets the
19 criteria established in subsection (3).

20 (5) If the provisions of [sections 1 through 10] preclude the construction of structures on an otherwise
21 developable parcel in existence on [the effective date of this act], the political subdivision shall:

22 (a) find that an unnecessary hardship exists under subsection (3)(a); and

23 (b) upon the applicant's compliance with subsection (2), issue a variance in conformance with subsection
24 (3)(d).

25

26 **NEW SECTION. Section 9. Local streamside management area standards authorized -- minimum**
27 **requirements.** (1) A political subdivision may enact local streamside management area regulations defining the
28 streamside management area and vegetated buffer for any river or stream within its jurisdiction, as long as the
29 political subdivision complies with the provisions of [section 7] and provides for variances pursuant to [section
30 8].

1 (2) Local streamside management area regulations may be adopted in lieu of the provisions of [section
2 5] for a big sky river if they meet the minimum requirements of this section.

3 (3) Local streamside management area regulations must:

4 (a) be adopted as a separate ordinance or as part of a local subdivision, zoning, sanitation, flood plain,
5 or other local development regulation;

6 (b) establish vegetated buffers that, based on peer-reviewed scientific studies and local conditions, are
7 wide enough to generally prevent unnatural rates of erosion and sedimentation, protect water quality, maintain
8 native riparian vegetation, and protect other natural resources for the purposes expressed in [section 2(4)(b)];
9 and

10 (c) define terms.

11 (4) Local streamside management area regulations established under this section may exempt those
12 entities listed in [section 4(1)].

13 (5) Subject to subsection (6), locally established streamside management areas and vegetated buffers
14 may be of a fixed or variable width and may be larger or smaller than those required in [section 5]. Streamside
15 management areas and vegetated buffers may be expressed as a numerical distance in feet or by narrative
16 reference to topography or other physical features as long as the description establishes a definable streamside
17 management area and vegetated buffer.

18 (6) Streamside management areas must be established at a sufficient width, based on peer-reviewed
19 scientific studies and local information, to fulfill the purposes set forth in [section 2] by designating an area along
20 the river or stream where the uses prohibited in [section 6] will not occur. The streamside management area
21 should generally encompass the areas described in subsections (6)(a) through (6)(d). Streamside management
22 areas need not be set at a width that encompasses the entirety of the areas described in subsections (6)(a)
23 through (6)(d) at every point along the river or stream, as long as the width is reasonably calculated to encompass
24 the following areas:

25 (a) wetlands adjacent to the river or stream;

26 (b) flood-prone areas;

27 (c) areas adjacent to the river or stream with slopes greater than 25%; and

28 (d) for a river, the channel migration zone.

29 (7) The political subdivision shall prepare a written record in support of its decision to enact a local
30 streamside management area regulation, including references to the peer-reviewed scientific studies and local

1 information that were used to determine the width of the streamside management area and vegetated buffer.

2 (8) Nothing in [sections 1 through 10] may be construed to limit a political subdivision's authority to enact
3 regulations further limiting uses within streamside management areas or vegetated buffers or to enact regulations
4 establishing streamside management areas and vegetated buffers for watercourses not governed by the
5 provisions of [sections 1 through 10].

6
7 **NEW SECTION. Section 10. Enforcement -- penalties.** (1) In addition to other remedies, the proper
8 authorities of the political subdivision may institute any appropriate action or proceeding to ensure that a person
9 who commences a use prohibited for a streamside management area established pursuant to [section 5 or 9]
10 restores the streamside management area and vegetated buffer to the conditions in existence before the
11 prohibited use occurred.

12 (2) The political subdivision may appoint enforcing officers to supervise and enforce the provisions of
13 [sections 1 through 10].

14 (3) A knowing violation of [sections 1 through 10] or any regulation adopted pursuant to [sections 1
15 through 10] is a misdemeanor punishable by a fine not to exceed \$500 a day.

16
17 **NEW SECTION. Section 11. Notification to tribal governments.** The secretary of state shall send
18 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
19 Chippewa tribe.

20
21 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
22 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 10].

23
24 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

26
27 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
29 the part remains in effect in all valid applications that are severable from the invalid applications.

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