

1 HOUSE BILL NO. 76

2 INTRODUCED BY R. MEHLHOFF

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT RELIEVING THE DEPARTMENT OF NATURAL RESOURCES AND
6 CONSERVATION OF THE POWER TO REMOVE OBSTRUCTIONS IN FLOODWAYS; ELIMINATING THE
7 OBSTRUCTION PERMIT FEE AND THE FLOODWAY OBSTRUCTION REMOVAL FUND; AMENDING
8 SECTIONS 76-5-208 AND 76-5-405, MCA; REPEALING SECTIONS 76-5-206 AND 76-5-207, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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13 **Section 1.** Section 76-5-208, MCA, is amended to read:

14 **"76-5-208. Orders and rules.** (1) The department may adopt orders and rules ~~that are necessary to~~
15 implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department
16 and in the office of the county clerk and recorder of each county affected by the order or rule.

17 ~~(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under~~
18 ~~76-5-401 through 76-5-404 for its removal or repair, the order may not become effective less than 10 days after~~
19 ~~a hearing is held relating to the order.~~

20 ~~(3)(2)~~ In addition to any requirement imposed by 76-5-202 through 76-5-205, ~~when an order is issued~~
21 ~~that affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order~~
22 ~~and of any required hearing must be mailed to the titleholder of the land not less than 10 days before the effective~~
23 ~~date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial~~
24 ~~obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need~~
25 ~~not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to~~
26 ~~76-5-206(2) if the owner cannot be found or determined: the department shall provide notice by mail to the~~
27 titleholder of land adjacent to a watercourse or drainway that would be specifically affected by a proposed order.
28 The notice must be provided at least 10 days prior to a hearing, if one is required, or at least 10 days prior to the
29 effective date of the order if a hearing is not required."
30

1 **Section 2.** Section 76-5-405, MCA, is amended to read:

2 **"76-5-405. Variance for obstruction or nonconforming use.** (1) The department or the responsible
3 political subdivision may issue permits for the establishment or alteration of artificial obstructions and
4 nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must
5 be submitted to the department or the responsible political subdivision and contain the information that the
6 department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and
7 watercourse or drainway.

8 (2) Permits for obstructions or uses to be established in the designated flood plain or designated
9 floodway of watercourses must be specifically approved or denied within a reasonable time by the department
10 or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or
11 designated floodways are conclusively considered to have been granted 60 days after the receipt of the
12 application by the department or the responsible political subdivision or after a time that the department or the
13 responsible political subdivision specifies, unless the department or the responsible political subdivision notifies
14 the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy
15 of each permit granted pursuant to 76-5-406 and this section.

16 ~~(3) An application for a permit must be accompanied by a nonrefundable application fee of \$10, which~~
17 ~~the state treasurer shall credit to the floodway obstruction removal fund.~~

18 ~~(4)(3) The department or the responsible political subdivision may make a part of issue the permit any~~
19 ~~with reasonable conditions that it may consider advisable. In order for the permit to continue to remain in force,~~
20 ~~the The permitted obstruction or use must be maintained so as to comply with the conditions and specifications~~
21 ~~of in compliance with the permit."~~

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23 NEW SECTION. **Section 3. Repealer.** The following sections of the Montana Code Annotated are
24 repealed:

25 76-5-206. Powers and duties of department relative to obstructions.

26 76-5-207. Floodway obstruction removal fund.

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28 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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