

## 1 HOUSE BILL NO. 40

2 INTRODUCED BY T. BERRY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE

4 OFFICE OF BUDGET AND PROGRAM PLANNING

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING APPOINTMENT AND TERMS OF MEMBERS TO  
7 BOARDS OF ADJUSTMENTS FOR CONSERVATION DISTRICTS; AMENDING SECTIONS 76-15-706,  
8 76-15-721, AND 76-15-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11  
12 **Section 1.** Section 76-15-706, MCA, is amended to read:

13 **"76-15-706. Contents of land use regulations.** (1) The regulations to be adopted by the supervisors  
14 under the provisions of 76-15-701 through 76-15-707 may include:

15 (a) provisions requiring the carrying out of necessary engineering operations, including the construction  
16 of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary  
17 structures;

18 (b) provisions requiring observance of particular methods of cultivation or grazing, including contour  
19 cultivating, contour furrowing, and lister furrowing; sowing, planting, and strip cropping; seeding; and planting  
20 of lands to ~~water-conserving~~ water-conserving and ~~erosion-preventing~~ erosion-preventing plants, trees, and  
21 grasses; and forestation and reforestation;

22 (c) specifications of cropping and range programs and tillage and grazing practices to be observed;

23 (d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which  
24 erosion may not be adequately controlled if cultivation is carried on; and

25 (e) provisions for ~~such~~ other means, measures, operations, and programs ~~as~~ that may assist  
26 conservation of soil and water resources and prevent or control erosion in the district, having due regard to the  
27 legislative findings set forth in 76-15-101 and 76-15-102.

28 (2) The regulations must provide for the establishment of a board of adjustment pursuant to 76-15-721.

29 ~~(2)~~(3) The regulations ~~shall~~ must be uniform throughout the territory comprised within the district except  
30 that the supervisors may classify the lands within the district with reference to such factors as soil type, degree

1 of slope, degree of threatened or existing erosion, ~~threatened or existing~~, grazing and cropping programs, tillage  
 2 and range practices in use, and other relevant factors and may provide regulations varying with the type or class  
 3 of land affected but uniform as to all lands within each class or type."

4

5 **Section 2.** Section 76-15-721, MCA, is amended to read:

6 **"76-15-721. Board of adjustment.** ~~(1) When the supervisors of a district adopt an ordinance prescribing~~  
 7 ~~land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance~~  
 8 ~~for the establishment of a board of adjustment.~~

9 ~~(2)(1) The A board of adjustment consists~~ consisting of three members, ~~each to be appointed for a term~~  
 10 ~~of 3 years, except that the members first appointed must be appointed for terms of 1, 2, and 3 years, respectively~~  
 11 ~~must be appointed to decide a petition for variance pursuant to 76-15-723.~~

12 ~~(3)(2) (a) (i) The members of each board of adjustment must be appointed by the department with the~~  
 13 ~~advice and approval of the supervisors of the district for which the board has been established. On filing of a~~  
 14 ~~petition pursuant to 76-15-723, the department shall appoint members to the board of adjustment, subject to the~~  
 15 ~~approval of the district supervisors.~~

16 ~~(ii) After a board is appointed pursuant to subsection (2)(a)(i), that board serves until it reaches a final~~  
 17 ~~decision on the petition.~~

18 ~~(b) The members may be removed by the department, ~~upon~~ on notice and hearing, only for neglect of~~  
 19 ~~duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of~~  
 20 ~~the district.~~

21 ~~(c) Employees of the department and the supervisors of the district are ineligible to appointment as~~  
 22 ~~members of the board of adjustment.~~

23 ~~(4)(3) Vacancies in the board of adjustment must be filled in the same manner as original appointments~~  
 24 ~~and are for the unexpired term of the member whose term becomes vacant.~~

25 ~~(5)(4) The members of the board of adjustment receive compensation for their services at the rate of \$25~~  
 26 ~~a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for~~  
 27 ~~in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the~~  
 28 ~~necessary administrative and other expenses of operation incurred by the board upon the certificate of the~~  
 29 ~~presiding officer of the board."~~

30

1           **Section 3.** Section 76-15-722, MCA, is amended to read:

2           **"76-15-722. Operation of board of adjustment.** (1) The board of adjustment shall adopt rules to govern  
3 its procedures. The rules must be in accordance with this chapter and with the ordinance establishing the board  
4 of adjustment.

5           (2) The board shall ~~annually~~ elect a presiding officer from among its members. Meetings of the board  
6 must be held at the call of the presiding officer and at other times that the board may determine. Any two  
7 members of the board constitute a quorum. The presiding officer or in the presiding officer's absence another  
8 member of the board that the presiding officer may designate to serve as acting presiding officer may administer  
9 oaths and compel the attendance of witnesses.

10           (3) All meetings of the board must be open to the public. The board shall keep a full and accurate record  
11 of all proceedings, of all documents filed with it, and of all orders entered, which must be filed in the office of the  
12 board and are a public record."

13

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

15

- END -