

Unofficial Draft Copy

As of: June 26, 2012 (2:47pm)

LC8010

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for the ownership of a channel and former channel of a navigable river or stream following an avulsion; providing rulemaking authority; amending sections 77-1-102 and 77-1-103, MCA; repealing section 70-18-202, MCA; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Sudden change in bed of navigable river or stream.** (1) Subject to subsections (2) and (3), if a navigable river or stream abandons its channel and forms a new channel as a result of an avulsion, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking title to the land described in subsection (1) shall notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the new channel. The owner shall also provide the department with a survey and any other information the department considers necessary.

(3) Upon receiving the information from the owner, the

Unofficial Draft Copy

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LC8010

department shall verify the information and determine whether the new channel was created by an avulsion. The department shall also verify whether the land constituting the old channel is in equal value and, as closely as possible, equal in area to the land constituting the new channel. If the land constituting the old channel is greater in value or area, the owner shall pay the full market value of the difference upon the transfer of title.

Ownership may not vest in the owner unless the board of land commissioners approves the exchange or sale. Upon approval by the board, the owner shall notify the department of revenue of the change in ownership and submit any information necessary to update the applicable ownership records.

(4) The land constituting the old channel is subject to property taxation payable by the affected owner from the date the board approves the transfer or sale.

(5) The department of natural resources and conservation and the department of revenue may adopt rules to implement the provisions of this section.

(6) Ownership remains unchanged for land that constituted an island before the avulsion occurred and that is not wholly surrounded by water after the river has abandoned the old channel.

(7) If the affected owner described in subsection (1) receives title to the former channel, the land under the water of the new channel belongs to the state pursuant to 70-1-202.

(8) For purposes of this section:

(a) "avulsion" means a sudden and perceptible change in the

Unofficial Draft Copy

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course of a river or stream that results in the creation of a new river or stream channel;

(b) "navigable river" has the meaning provided in 77-1-102.

Section 2. Section 77-1-102, MCA, is amended to read:

"77-1-102. Ownership of certain islands, abandoned

riverbeds, and riverbeds. (1) The Except as provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, the following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of the stream or lake as shown by the United States survey of the stream or lake;

(b) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and

(c) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake, ~~except those lands that are occupied by and belong to the adjacent landowners as accretions.~~

(2) This section does not apply to lands that are occupied by and belong to riparian landowners if the lands were formed by accretions.

~~(2)~~ (3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X,

Unofficial Draft Copy

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LC8010

section 11, of the Montana constitution.

(4) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it;

(b) "navigable river" means a river adjudicated as navigable for title purposes by a court of competent jurisdiction."

{ Internal References to 77-1-102:

x77-1-103 x77-1-103 x77-1-103 x77-1-103
x77-1-103 x77-1-103 x77-1-104 }

Section 3. Section 77-1-103, MCA, is amended to read:

"77-1-103. Administration of lands. (1) The board shall sell lands under 77-1-102(1) and [section 1] in the same manner as other school lands of the state are sold.

(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the leasing and sale of the lands under 77-1-102 and [section 1] must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102~~(2)~~(3) must be deposited in accordance with 17-3-1003(5)."

{ Internal References to 77-1-103:

x17-3-1003 }

Unofficial Draft Copy

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NEW SECTION. **Section 4. {standard} Repealer.** The following section of the Montana Code Annotated is repealed:

70-18-202. Sudden removal of bank -- right of owner to reclaim.

{Internal References to 70-18-202: None.}

NEW SECTION. **Section 5. {standard} Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 6. {standard} Applicability.** [This act] applies to avulsions occurring on or after October 1, 2013.

- END -

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Kolman, Joe

From: Thigpen, Helen
Sent: Wednesday, August 08, 2012 1:38 PM
To: Kolman, Joe
Subject: FW: Technical comments on Avulsion Bill, LC 1080

From: Butler, Tom (DNRC)
Sent: Wednesday, August 08, 2012 11:40 AM
To: Thigpen, Helen
Cc: Thomas, Shawn
Subject: Technical comments on Avulsion Bill, LC 1080

Helen:

Please accept my technical comments on the Avulsion Bill, LC 1080, as follows:

The proposed legislation unintentionally creates some ambiguity by defining "avulsion" as the creation of a new channel instead of the abandonment of one channel for another. The result is that one could have an avulsion which extinguishes State ownership of an active "old" channel, where a new channel is created, yet water continues to flow at the low water mark in both the new and old channels.

The American Geological Institute's "AGI Glossary of Geology", AGI Institute, Washington, D.C. (1977) defines an "Avulsion" as:

A sudden cutting off or separation of land by a flood or by an abrupt change in the course of a stream, as by a stream breaking through a meander or by a sudden change in current whereby the stream deserts its old channel for a new one.

Where a River channel is abandoned due to a new avulsively-formed channel, it would be easier for Courts to discern this property change, and to preserve State ownership of the active beds of navigable waters.

There is one other aspect of this proposed legislation to consider. The U.S. Supreme Court in the recent PPL Montana v. Montana decision cautioned that rules for property boundaries cannot be made retroactive. ("It is not for a State by courts or legislature, in dealing with the general subject of beds or streams, to adopt a retroactive rule for determining navigability . . .") PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 1235, 182 L. Ed. 2d 77 (2012)

Although the obvious intent of the legislation is to clarify and simplify property boundary rules, this legislation would have the opposite effect. This proposed legislation would create different property boundary rules for different time periods, which will inevitably require landowners in land title disputes to obtain evidence of the River location prior to the effective date of this legislation, and its location afterward. This would create difficult evidentiary burdens for landowners to satisfy.

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