HOUSE BILL NO. 678

INTRODUCED BY M. LINDEEN

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DECLARATORY RULING PROCESS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AUTHORIZING THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO ISSUE DECLARATORY RULINGS; PROVIDING FOR JUDICIAL REVIEW OF A DECLARATORY RULING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Jurisdiction -- declaratory ruling -- standards -- judicial review.** (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.

(b) The supervisors' determination pursuant to subsection (1)(a) must be made in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).

(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.

(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.

(3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.

(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without

a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the supervisors;

(c) affected by error of law; or

(d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

(6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Retroactive applicability -- applicability.** (1) [This act] applies retroactively, within the meaning of 1-2-109, to all notices of a project pending before a conservation district on [the effective date of this act].

(2) [Section 1] does not apply retroactively to a declaratory ruling proceeding that was initiated before [the effective date of this act].

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