

SENATE BILL NO. 345
INTRODUCED BY B. HAWKS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING SETBACK REQUIREMENTS FOR CERTAIN STREAMS; REQUIRING POLITICAL SUBDIVISIONS TO ESTABLISH SETBACK REGULATIONS; AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE VARIANCES AND COLLECT FEES; AUTHORIZING POLITICAL SUBDIVISIONS TO ADOPT LOCAL REGULATIONS IN LIEU OF STATE STANDARDS THAT MEET CERTAIN REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana Stream Legacy Act".

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

(2) The legislature finds that:

- (a) impacts of development on Montana's rivers and streams, including increased downstream erosion and diminished water quality, are often manifested across local government jurisdictional boundaries;
- (b) the state has a duty and legitimate interest in protecting the integrity of its rivers and streams on behalf of all its citizens;
- (c) the state has a duty and legitimate interest in protecting people and private property by reducing property loss from flooding and erosion;
- (d) maintenance of the integrity of rivers and streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use;
- (e) rivers and streams are highly susceptible to impacts from land development;
- (f) fish and wildlife that rely on rivers and streams for habitat belong to all Montanans;

(g) development practices on lands adjacent to rivers and streams in many cases are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of the state's rivers and streams; and

(h) through careful management of the lands adjacent to rivers and streams, property owners and developers can achieve their goals without sacrificing water quality or impairing the beneficial uses of the water.

(3) The legislature recognizes that Montana's rivers and streams provide important natural resources that belong to the people of the state and that support the economy, the environment, and the quality of life that Montanans enjoy. It is the policy of the state to ensure that development along rivers and streams proceeds in a way that:

- (a) protects property from flooding and erosion;
- (b) protects water quality and quantity;
- (c) provides opportunities for recreation;
- (d) protects valuable water recharge areas;
- (e) preserves fish and wildlife habitat; and
- (f) preserves the use and enjoyment of private property.

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

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

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

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

(4) "Setback" means an area of varying width adjacent to a stream where certain uses have the potential to significantly affect private property, wildlife habitat, water quality, fish, or other aquatic resources. Setbacks may not be smaller than the vegetative buffer.

(5) "Tier I streams" includes the following streams as defined by the United States geological survey:

- (a) Beaverhead River;
- (b) Big Hole River;
- (c) Bighorn River;
- (d) Bitterroot River;
- (e) Bitterroot River, West Fork;
- (f) Blackfoot River;

- (g) Boulder River as it flows through Jefferson County;
- (h) Boulder River as it flows through Park and Sweet Grass Counties;
- (i) Clark Fork River;
- (j) Clark's Fork of the Yellowstone River;
- (k) Clearwater River;
- (l) Dearborn River;
- (m) East Gallatin River;
- (n) Flathead River;
- (o) Flathead River, Middle Fork;
- (p) Flathead River, North Fork;
- (q) Flathead River, South Fork;
- (r) Gallatin River;
- (s) Jefferson River;
- (t) Jocko River;
- (u) Judith River;
- (v) Kootenai River;
- (w) Little Blackfoot River;
- (x) Madison River;
- (y) Marias River;
- (z) Milk River;
- (aa) Missouri River;
- (bb) Musselshell River;
- (cc) Poplar River;
- (dd) Powder River;
- (ee) Red Rock River;
- (ff) Rock Creek as it flows through Missoula and Granite Counties;
- (gg) Rock Creek as it flows through Carbon County;
- (hh) Ruby River;
- (ii) Shields River;
- (jj) Smith River;
- (kk) Stillwater River as it flows through Park and Stillwater Counties;

- (ll) Stillwater River as it flows through Lincoln and Flathead Counties;
- (mm) Stillwater River, West Fork, as it flows through Sweet Grass and Stillwater Counties;
- (nn) Sun River;
- (oo) Swan River;
- (pp) Teton River;
- (qq) Thompson River;
- (rr) Tongue River;
- (ss) Whitefish River;
- (tt) Yaak River; and
- (uu) Yellowstone River.

(6) "Tier II streams" means perennial streams that are direct tributaries of tier I streams and that drain an area 25 square miles or greater.

(7) "Vegetative buffer" means the portion of the setback closest to the stream that is designated to remain undisturbed.

NEW SECTION. Section 4. Setback regulation jurisdiction. (1) With the exception of [section 9], the provisions of [sections 1 through 10] do not apply to:

- (a) incorporated cities and towns;
- (b) unincorporated entities established prior to [the effective date of this act] that are classified as census-designated places by the United States bureau of the census, are within the boundary of a metropolitan sanitary sewer district created pursuant to 7-13-111, and are served by that metropolitan sanitary sewer district;
- (c) zoned areas with regulations established on or before [the effective date of this act] that have residential densities of at least 1 unit per acre and are served by municipal sewer and water systems; or
- (d) tier I streams or tier II streams regulated by local setback regulations adopted prior to [the effective date of this act] that prohibit all new building construction within 150 feet of streams.

(2) Changes after [the effective date of this act] to local setback regulations adopted prior to [the effective date of this act] must comply with [sections 1 through 10].

NEW SECTION. Section 5. Requirements for setbacks and vegetative buffers. (1) Along either side of a tier I stream, there must be a setback of at least 250 feet, as measured from the ordinary high-water mark, that must include a vegetative buffer of at least 100 feet.

(2) Along either side of a tier II stream, there must be a setback of at least 150 feet, as measured from the ordinary high-water mark, that must include a vegetative buffer of at least 50 feet.

(3) Within vegetative buffers, native vegetation must be maintained or enhanced, although weed control is permitted.

NEW SECTION. Section 6. Uses within setback -- authorization. (1) Except as provided in [section 8], the following uses are prohibited within setbacks:

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

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

(c) new septic tanks and septic tank drain fields;

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

or

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

(2) The following uses are authorized in a setback:

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

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

(c) agricultural uses, except any use that includes a new building serviced by electricity, water, and sewer;

(d) structures and equipment used to collect and transport water from a river or stream for agricultural or industrial uses, including diversion and intake structures, pipes, pumps and pumphouses, and related equipment; and

(e) limited filling for highway, street, and railroad embankments not associated with stream crossings if:

(i) reasonable alternative transportation routes outside the setback are not available; and

(ii) any encroachment is located as far from the stream channel as possible; and

(f) repair and improvement of existing roads within the setback.

NEW SECTION. Section 7. Political subdivision administration -- requirements -- fees. (1) Before January 1, 2008, any political subdivision that has tier I streams or tier II streams within its boundaries and is

subject to [section 4] must implement a permit or certification program for new construction to ensure that the requirements of [sections 1 through 10] are met.

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

NEW SECTION. Section 8. Variances. (1) A political subdivision may establish criteria for granting variances for uses that otherwise would not be allowed pursuant to [section 6].

(2) An application for a variance must include information that the political subdivision considers necessary to evaluate the variance request, including but not limited to a scientific flood plain analysis, plans, maps, and specifications detailing the request.

(3) In evaluating a variance request, the political subdivision shall consider whether the variance is:

- (a) contrary to the public interest;
 - (b) necessary to prevent unnecessary hardship and will comply with the purpose of [sections 1 through 10];
 - (c) as small as reasonably possible so that the intent of [section 2] is attained to the greatest degree possible;
 - (d) likely to adversely impact water quality;
 - (e) likely to increase stream bank erosion;
 - (f) likely to increase flood heights or velocity; and
 - (g) being requested as a result of a hardship not caused by the applicant.
- (4) The applicant for a variance has the burden of presenting a preponderance of evidence to establish that the criteria for granting a variance are met.

NEW SECTION. Section 9. Local setback standards in lieu of state standards. (1) A political subdivision may enact local setback standards in lieu of state standards that comply with the policy established in [section 2(3)]. The provisions of [section 5] do not apply to tier I streams and tier II streams subject to the provisions of the local setback standards.

(2) Local setback standards adopted pursuant to this section must:

- (a) apply to the entire length of the stream within the jurisdiction of the political subdivision;
- (b) include setbacks based on peer-reviewed science and local conditions that ensure that the prohibited uses in [section 6] do not occur within at least three of the following areas:

- (i) wetlands adjacent to streams;
 - (ii) a 100-year flood plain as determined by either the federal emergency management agency or the department of natural resources and conservation or, in the absence of a designation, a flood plan analysis adopted by a political subdivision;
 - (iii) areas where it is reasonably possible that an active channel of the stream could migrate in the next 100 years because of erosion or avulsion; or
 - (iv) areas of steep slopes adjacent to the stream or its flood plain;
- (c) include vegetative buffers that, based on peer-reviewed science and local conditions, prevent unnatural rates of erosion and sedimentation, protect water quality, and maintain native riparian vegetation.
- (3) A political subdivision may adopt local setback standards for any perennial, intermittent, or ephemeral streams within its jurisdiction.

NEW SECTION. Section 10. Enforcement -- penalties. (1) The proper authorities of the political subdivision, in addition to other remedies, may institute any appropriate action or proceeding to ensure that a person who commences a prohibited use after January 1, 2008, without certification by a political subdivision or a variance shall restore the waterside management corridor to its original condition before the person disturbed it.

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

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

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

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

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

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

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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