

1 HOUSE BILL NO. 646

2 INTRODUCED BY M. NOLAND, G. HERTZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES;
5 ESTABLISHING AN AGENCY OVERSIGHT COMMITTEE; AUTHORIZING COUNTY INVASIVE SPECIES
6 ORDINANCES; ESTABLISHING THE COLUMBIA HEADWATERS INVASIVE SPECIES MANAGEMENT AREA;
7 AUTHORIZING A PILOT PROGRAM; AUTHORIZING LOCAL USE BOAT STICKERS; PROVIDING
8 RULEMAKING AUTHORITY; REVISING PENALTIES; REQUIRING A CONTAINMENT AND QUARANTINE
9 PROGRAM IN THE MISSOURI RIVER SYSTEM; AND AMENDING SECTIONS 80-7-1007, 80-7-1014, AND
10 80-7-1015, MCA."

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

13
14 NEW SECTION. **Section 1. Invasive species agency oversight committee.** (1) There is an invasive
15 species agency oversight committee. The committee is allocated to the department of agriculture for
16 administrative purposes only as provided in 2-15-121.

17 (2) The following members are voting members appointed by the governor:

- 18 (a) a member nominated by an organization of Montana counties;
19 (b) a member nominated by an organization of Montana cities and towns;
20 (c) a representative of each tribal government in Montana;
21 (d) a member with interest in wildlife or conservation;
22 (e) a member with interest in tourism;
23 (f) a member with interest in industry; and
24 (g) a member with interest in irrigation.

25 (3) The following are nonvoting members:

- 26 (a) representatives of the department of fish, wildlife, and parks, the department of transportation, the
27 department of agriculture, and the department of natural resources and conservation, who are appointed by the
28 agencies' directors;
29 (b) a legislator appointed by the speaker of the house; and
30 (c) a legislator appointed by the president of the senate.

1 (4) The committee shall seek active input and participation in its deliberations from the U.S. bureau of
2 reclamation, the U.S. army corps of engineers, the U.S. forest service, and the national park service.

3
4 **NEW SECTION. Section 2. Invasive species ordinances.** Counties located within the Columbia
5 headwaters invasive species management area may adopt ordinances and resolutions regarding the prevention
6 or control of invasive species, as defined in 80-7-1003, within the county.

7
8 **NEW SECTION. Section 3. Invasive species committee -- duties.** (1) The invasive species committee
9 established in [section 1] shall review activities undertaken pursuant to this part and provide recommendations
10 to the departments on future activities.

11 (2) The committee shall report its recommendations to the environmental quality council.

12
13 **NEW SECTION. Section 4. Columbia headwaters invasive species management area -- pilot**
14 **program -- rulemaking.** (1) There is a Columbia headwaters invasive species management area located west
15 of the continental divide.

16 (2) Within the Columbia headwaters invasive species management area:

17 (a) the department of fish, wildlife, and parks shall operate a series of check stations at locations along
18 and adjacent to the continental divide to conduct mandatory inspections of vessels entering from the Missouri
19 river basin, where invasive mussels have been detected;

20 (b) the Flathead basin commission, established in 2-15-3330, shall administer a pilot program within the
21 Flathead basin, as defined in 75-7-303, to enhance protections in that basin against invasive species and may:

22 (i) require inspection of all vessels before they are launched;

23 (ii) within or adjacent to the Flathead basin, use certification stations that may provide voluntary watercraft
24 inspections and decontamination services but at which watercraft are not required to stop. Certification stations
25 may be operated by governmental or private entities that are trained, certified, and monitored for quality
26 assurance by the Flathead basin commission.

27 (iii) close launch sites, as needed;

28 (iv) restrict vessels on fouled waters to local vessels that can be visibly tracked using certification stickers
29 purchased at locations and for a fee prescribed by the commission. Local vessels operated pursuant to this
30 subsection (2)(b)(iv) may not be used on water bodies that are not fouled by invasive mussels.

1 (v) band or track vessels that have been inspected, require decontamination, or are local vessels
2 operated pursuant to subsection (2)(b)(iv);

3 (vi) implement a boat sticker program to raise funds for prevention efforts;

4 (vii) use automated inspection and detection devices;

5 (viii) prohibit or restrict certain vessels and equipment, such as waterborne planes, ballast boats, and
6 aquatic weed harvesters from use on specific or all water bodies within the basin;

7 (ix) prohibit or restrict certain types of dead and live bait;

8 (x) close waters where invasive mussels are detected until a containment strategy can be implemented;

9 and

10 (xi) adopt rules to implement this subsection (2)(b).

11 (3) At a check station established pursuant to this section, the departments may examine vessels and
12 equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant
13 to 80-7-1007. Examination of any interior portion of a vessel or equipment that may contain water, including
14 bilges, livewells, and bait containers, for compliance may only occur if inspection of interior portions is included
15 as part of quarantine measures established pursuant to rules adopted under 80-7-1007.

16 (4) The owner, operator, or person in possession of a vessel or equipment shall:

17 (a) comply with this section and rules imposed under 80-7-1007; and

18 (b) stop at any check station established pursuant to this section unless a medical emergency makes
19 stopping likely to result in death or serious bodily injury.

20 (5) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that
21 vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated
22 in a manner established in accordance with rules adopted pursuant to 80-7-1007. The departments or the
23 Flathead basin commission shall make every effort to ensure decontamination of the vessel or equipment as
24 expeditiously as possible.

25

26 **Section 5.** Section 80-7-1006, MCA, is amended to read:

27 **"80-7-1006. Departmental responsibilities.** (1) The departments shall prepare a list of invasive species
28 and identify those departments and other public agencies with jurisdiction over each species on the list. The
29 jurisdiction of each department for the prevention and control of invasive species is according to the department's
30 powers and duties as established by law.

1 (2) For those invasive species under the jurisdiction of more than one department, the departments with
2 jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

3 (3) Working in collaboration with each other, the departments, individually or collectively, shall develop
4 and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans
5 shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

6 (a) public awareness and education;

7 (b) prevention and detection of invasive species, including the use of invasive species management
8 areas authorized under 80-7-1008 and the statewide invasive species management area established in
9 80-7-1015;

10 (c) management, control, and restoration of infested areas; and

11 (d) emergency response.

12 (4) The departments shall enforce quarantine regulations and measures imposed by law or rule in an
13 invasive species management area established under 80-7-1008 and in the statewide invasive species
14 management area established in 80-7-1015, including the mandatory inspection of any interior portion of a vessel
15 or equipment that may contain water for the presence of an invasive species.

16 (5) The departments may designate employees to carry out the provisions of this part.

17 (6) The department of fish, wildlife, and parks shall authorize a request by another entity to operate a
18 check station pursuant to this part if the entity agrees to the conditions of an agreement established by all parties,
19 any cooperative funding requirements, and rules adopted under this part. The department of fish, wildlife, and
20 parks retains oversight authority over the operation of a check station pursuant to this subsection.

21 (7) The departments shall implement education and outreach programs that increase public knowledge
22 and understanding of prevention, early detection, and control of invasive species.

23 (8) The departments shall report on the activities undertaken pursuant to this part to the invasive species
24 agency oversight committee established in [section 1]."

25

26 **Section 6.** Section 80-7-1007, MCA, is amended to read:

27 **"80-7-1007. Rulemaking authority.** (1) Unless otherwise provided in Title 81, chapters 2 and 7, or this
28 chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive
29 species under the departments' jurisdiction, including rules for the:

30 (a) implementation of the invasive species strategic plan adopted pursuant to 80-7-1006;

- 1 (b) transportation of an invasive species or any agent likely to be a carrier of an invasive species;
 2 (c) designation, regulation, and treatment of an invasive species management area under 80-7-1008,
 3 including rules pertaining to:
 4 (i) the use of quarantine regulations and measures;
 5 (ii) the movement of vessels and equipment within, to, or from the area; and
 6 (iii) the inspection and cleaning of vessels and equipment moving within, to, or from the area; and
 7 (d) manner in which vessels and equipment, including bilges, livewells, bait containers, and other
 8 boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence
 9 of an invasive species.

10 (2) The departments shall adopt rules for the administration of the statewide invasive species
 11 management area established in 80-7-1015 and the Columbia river headwaters invasive species management
 12 area established in [section 4], including rules specifying the method or methods for preventing the introduction
 13 or further introduction of invasive species into the state, and shall adopt rules for:

- 14 (a) the use of quarantine measures;
 15 (b) the movement of vessels and equipment into the state; ~~and~~
 16 (c) the manner in which check stations will be used to inspect, clean, and decontaminate vessels and
 17 equipment moving into the state; and
 18 (d) the decontamination procedures required for all firefighting equipment."
 19

20 **Section 7.** Section 80-7-1014, MCA, is amended to read:

21 **"80-7-1014. Penalty.** (1) Except as provided in subsection (2), the following penalties apply:

22 (a) The offense of negligently violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015
 23 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species
 24 management area or the statewide invasive species management area is a misdemeanor punishable by a fine
 25 not to exceed \$500 for the first offense and \$750 for subsequent offenses.

26 (b) The offense of purposely or knowingly violating the provisions of 80-7-1010 through 80-7-1012 and
 27 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species
 28 management area or the statewide invasive species management area is a misdemeanor punishable by a fine
 29 not to exceed ~~\$1,000~~ \$975. In addition, the person shall forfeit the following as issued by this state:

30 (i) any current fishing license and the privilege to fish in this state for a period of time set by the court;

1 and

2 (ii) any current sticker or decal required under this part to operate a vessel on the waters of this state.

3 (c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any
4 person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine
5 not to exceed ~~\$5,000~~ \$10,000, or both. A person convicted of violating this subsection (1)(c) may also be required
6 to surrender an involved vessel and pay restitution for any cost incurred to mitigate the effect of the violation.

7 (d) A civil penalty not to exceed ~~\$250~~ \$2,500 may be imposed on any person who violates any other
8 provision of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012
9 and 80-7-1015 not enumerated in subsections (1)(a) through (1)(c).

10 (2) A warning without penalty may be issued to any person violating the provisions of 80-7-1010 through
11 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 if it is determined
12 that a warning best serves the public interest.

13 (3) Civil penalties collected under this section must be deposited in the general fund."
14

15 **Section 8.** Section 80-7-1015, MCA, is amended to read:

16 **"80-7-1015. Statewide invasive species management area.** (1) There is established a statewide
17 invasive species management area for the purpose of preventing the introduction, importation, and infestation
18 of invasive species through:

19 (a) the mandatory inspection of vessels and equipment at key entry points to the state on a seasonal
20 basis and the mandatory decontamination of any vessel or equipment on or in which an invasive species is
21 detected; and

22 (b) the administration by the department of fish, wildlife, and parks of a containment and quarantine
23 program for water bodies fouled by invasive mussels in the Missouri river system, including but not limited to:

24 (i) restrictions on moored vessels within the system;

25 (ii) the physical closure of launch sites on all fouled water bodies in the system. Launch sites may only
26 be open if and when check stations and decontamination units are present.

27 (iii) the restriction of operation on fouled waters to local vessels that can be visibly tracked using
28 certification stickers. Stickers must be purchased at locations and for fees prescribed by the department of fish,
29 wildlife, and parks. Local vessels operated pursuant to this subsection (1)(b)(iii) may not be used on water bodies
30 that are not fouled by invasive mussels.

1 (iv) subject to subsection (8), a prohibition against fishing derbies on fouled water bodies.

2 (2) To the greatest extent possible, the department of transportation shall cooperate with the department
3 of fish, wildlife, and parks to utilize ports of entry or adjacent department of transportation facilities as locations
4 for check stations established pursuant to this section.

5 (3) As far as practical, signs indicating that the statewide invasive species management area is in place
6 must be posted in an effective manner along the boundaries of and within the state. The signs must include
7 information about the specific regulations that apply to the area. The signs must be paid for with funds from the
8 invasive species account established in 80-7-1004. The departments may coordinate with any other governmental
9 entity for the posting of signs.

10 (4) At a check station established pursuant to this section, the departments may examine vessels and
11 equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant
12 to 80-7-1007. A department may examine any interior portion of a vessel or equipment that may contain water,
13 including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as
14 part of quarantine measures established pursuant to rules adopted under 80-7-1007.

15 (5) The owner, operator, or person in possession of a vessel or equipment shall:

16 (a) comply with this section and rules imposed under 80-7-1007; and

17 (b) stop at any check station established pursuant to this section unless a medical emergency makes
18 stopping likely to result in death or serious bodily injury.

19 (6) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that
20 vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated
21 in a manner established in accordance with rules adopted pursuant to 80-7-1007. The department shall make
22 every effort to ensure decontamination of the vessel or equipment as expeditiously as possible.

23 (7) After use in a body of water within the statewide invasive species management area, all vessels,
24 equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary
25 systems, must be drained in a way that does not impact any state waters before being transported on land or on
26 a public highway, as defined in 61-1-101, except when allowed by the department of fish, wildlife, and parks.

27 (8) By December 31, 2018, the department of fish, wildlife, and parks shall develop a containment and
28 quarantine plan for the Missouri river system, allowing for public input and comment, and submit the plan to the
29 invasive species agency oversight committee established in [section 1] for approval. The plan may permit the
30 reopening of fouled water bodies if launch site inspectors are properly trained, the necessary infrastructure and

1 equipment is in place, the system is fully tested in advance of deployment, and invasive species are fully
2 contained, after decontamination, to the source water body."

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4 **NEW SECTION. Section 9. Notification to tribal governments.** The secretary of state shall send a
5 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
6 Chippewa tribe.

7
8 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as
9 an integral part of Title 2, chapter 15, part 30, and the provisions of Title 2, chapter 15, part 30, apply to [section
10 1].

11 (2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 22, and the provisions of
12 Title 7, chapter 22, apply to [section 2].

13 (3) [Sections 3 and 4] are intended to be codified as an integral part of Title 80, chapter 7, part 10, and
14 the provisions of Title 80, chapter 7, part 10, apply to [sections 3 and 4].

15 - END -