

SENATE BILL NO. 313

INTRODUCED BY J. SESSO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~CREATING EXEMPTIONS FROM FLOOD PLAIN PERMITTING~~  
5 ALLOWING VARIANCES FOR STREAM RESTORATION PROJECTS LOCATED IN A FLOOD PLAIN;  
6 DEFINING "STREAM RESTORATION"; REQUIRING RULEMAKING; PROVIDING LEGISLATIVE INTENT;  
7 REQUIRING AN APPLICATION FEE; AMENDING SECTION 76-5-103, MCA; AND PROVIDING AN IMMEDIATE  
8 EFFECTIVE DATE."

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10 WHEREAS, landowners who voluntarily return a stream as near as possible to its natural condition  
11 provide many benefits to the state, including improved water quality as well as habitat for fish and wildlife; and

12 WHEREAS, flooding causes more damage to infrastructure and property than other natural disasters,  
13 including fire; and

14 WHEREAS, stream restoration provides an inexpensive and natural way to slow and store flood waters  
15 while stabilizing banks to protect infrastructure; and

16 WHEREAS, many permits are required to work in the flood plain, and engineering costs to meet state  
17 and federal requirements for stream restoration projects are more expensive than most landowners and other  
18 entities can afford.

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

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22 NEW SECTION. Section 1. Stream ~~VARIANCE FOR STREAM~~ restoration projects ~~--exemption --~~  
23 rulemaking -- LEGISLATIVE INTENT. (1) The department shall adopt rules by July 1, 2018, that allow stream  
24 ~~restoration projects to be exempt~~ FOR VARIANCES from flood plain permitting regulations FOR STREAM RESTORATION  
25 PROJECTS.

26 (2) The rules may apply only to communities enrolled in the national flood insurance program that have  
27 adopted a digital flood insurance rate map.

28 (3) The rules must include but are not limited to:

29 (A) the establishment of ELIGIBILITY CRITERIA, INCLUDING:

30 (a) ~~an exemption for stream restoration projects up to 1,000 linear feet in size;~~



1 ~~(b)(i)~~ criteria for an exemption that includes a maximum size for a stream restoration project more than  
 2 1,000 linear feet based on the characteristics of the stream, including volume; and

3 ~~(e)(ii)~~ a minimum distance a stream restoration project must be located from the nearest flood-insured  
 4 property to be eligible for an exemption, based on the characteristics of the stream, the flood history of the stream,  
 5 and the characteristics of the surrounding property;

6 (B) THE VARIANCE PROCEDURE USED IN 76-5-405;

7 (C) A PROCEDURE FOR THE LOCAL FLOOD PLAIN ADMINISTRATOR TO APPROVE A VARIANCE; AND

8 (D) THE ESTABLISHMENT OF A \$25 SUBMISSION FEE FOR A VARIANCE APPLICATION.

9 (4) IT IS THE LEGISLATURE'S INTENT THAT RULES ADOPTED UNDER THIS PART ENSURE ELIGIBILITY FOR PROPERTY  
 10 OWNERS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM ADMINISTERED BY THE FEDERAL EMERGENCY MANAGEMENT  
 11 AGENCY.

12

13 **Section 2.** Section 76-5-103, MCA, is amended to read:

14 **"76-5-103. Definitions.** As used in parts 1 through 4 of this chapter, unless the context otherwise  
 15 requires, the following definitions apply:

16 (1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam,  
 17 wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification,  
 18 bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along,  
 19 across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow  
 20 of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural  
 21 flow of the water would carry the same downstream to the damage or detriment of either life or property.

22 (2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse  
 23 or drainway.

24 (3) "Department" means the department of natural resources and conservation provided for in Title 2,  
 25 chapter 15, part 33.

26 (4) "Designated flood plain" means a flood plain whose limits have been designated pursuant to part 2  
 27 of this chapter.

28 (5) "Designated floodway" means a floodway whose limits have been designated pursuant to part 2 of  
 29 this chapter.

30 (6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction

1 to a current of water less than 9 months of the year and having a bed and well-defined banks.

2 (7) "Establish" means construct, place, insert, or excavate.

3 (8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the  
4 channel and banks of the watercourse or drainway.

5 (9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once  
6 every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

7 (10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the  
8 floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per  
9 occurrence and are considered "zone B" or a "shaded X zone" by the federal emergency management agency.

10 (11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain  
11 adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or  
12 drainway.

13 (12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction  
14 and has been located within the flood plain or floodway by a nonhuman cause.

15 (13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

16 (14) "Political subdivision" means any incorporated city or town or any county organized and having  
17 authority to adopt and enforce land use regulations.

18 (15) "Responsible political subdivision" means a political subdivision that has enacted land use  
19 regulations in accordance with parts 1 through 4.

20 (16) "Stream restoration" means the manipulation of the physical or biological characteristics of a site with  
21 the goal of returning as nearly as possible to the natural or historic functions of a former or degraded aquatic  
22 resource. The term includes:

23 (a) enhancement of a site that does not result in a gain in aquatic resource area, but results in the gain  
24 of selected aquatic resource functions;

25 (b) reestablishment of a site that results in rebuilding a former aquatic resource and results in a gain in  
26 aquatic resource area; and

27 (c) rehabilitation of a site with the goal of repairing natural or historic functions to a degraded aquatic  
28 resource and results in a gain in aquatic resource function but not a gain in aquatic resource area.

29 ~~(16)~~(17) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to  
30 give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

1 (b) Upon order of the department, the term also includes any particular depression that would not  
2 otherwise be within the definition of watercourse."

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4 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 76, chapter 5, part 1, and the provisions of Title 76, chapter 5, part 1, apply to [section 1].

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

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