

## HOUSE BILL NO. 383

INTRODUCED BY K. WHITE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TIME PERIOD TO APPEAL A CONSERVATION  
5 DISTRICT DECISION ON AN APPLICATION TO ALTER A STREAMBED UNDER THE NATURAL STREAMBED  
6 AND LAND PRESERVATION ACT OF 1975; AND AMENDING ~~SECTION~~ SECTIONS 75-7-112 AND 75-7-113,  
7 MCA."

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

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11 **Section 1.** Section 75-7-112, MCA, is amended to read:

12 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a proposed  
13 project, the district or the district's authorized representative shall, within 10 working days, notify the department  
14 of the project. If at any time during the review process the supervisors determine that provisions of this part do  
15 not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors.  
16 The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the  
17 department requests an onsite inspection by a team.

18 (2) The supervisors shall call a team together within 20 days of receipt of the request of the department  
19 for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after  
20 notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the  
21 department does not request an onsite inspection within the time specified in this subsection, the supervisors may  
22 deny, approve, or modify the project.

23 (3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial,  
24 approval, or modification of the project to the supervisors. The applicant may waive participation in this  
25 recommendation.

26 (4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team  
27 recommendations and notify the applicant and team members, within 60 days of the date of application, of their  
28 decision.

29 (5) (a) When a member of the team, other than an applicant ~~that has not agreed to arbitration~~, disagrees  
30 with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors'

1 decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final  
2 written decision regarding the dispute.

3 (b) When an applicant ~~that has not agreed to arbitration under 75-7-114~~ disagrees with the supervisors'  
4 decision, the applicant shall, within ~~45~~ 60 ~~30~~ working days of receipt of the supervisors' decision:

5 (i) agree to arbitration under this section and request that an arbitration panel, as provided for in  
6 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

7 (ii) appeal the decision of the supervisors to the district court for the county where the project is located.

8 (6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within  
9 ~~45~~ 30 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work  
10 may not be commenced on a project before the end of ~~the~~ a 15-day waiting period unless written permission is  
11 given by all team members and the district.

12 (7) The supervisors may extend, upon the request of a team member, the time limits provided in  
13 subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes  
14 of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must  
15 be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately  
16 of any subsequent time extensions.

17 (8) Work on a project under this part may not take place without the written consent of the supervisors.

18 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying  
19 a project, shall determine:

20 (a) the purpose of the project; and

21 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed  
22 project. To determine if the project is reasonable, the following must be considered:

23 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the  
24 project and the nature and economics of the various alternatives;

25 (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce  
26 the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

27 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or  
28 downstream;

29 (iv) the effects on stream channel alteration;

30 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of

1 ground cover; and

2 (vi) the effect on fish and aquatic habitat.

3 (10) If the supervisors determine that a proposed project or part of a proposed project should be modified,  
4 they may condition their approval upon the modification.

5 (11) The supervisors may not approve or modify a proposed project unless the supervisors determine  
6 that the purpose of the proposed project will be accomplished by reasonable means."

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8 **SECTION 2. SECTION 75-7-113, MCA, IS AMENDED TO READ:**

9 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions that  
10 are necessary to safeguard life or property, including growing crops, during periods of emergency. The person  
11 responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action  
12 taken as a result of an emergency.

13 (2) The emergency notice given under subsection (1) must contain the following information:

14 (a) the location of the action taken;

15 (b) a general description of the action taken;

16 (c) the date on which the action was taken; and

17 (d) an explanation of the emergency causing the need for the action taken.

18 (3) If the supervisors determine that the action taken meets the definition of a project, the supervisors  
19 shall send one copy of the notice, within 5 working days of its receipt, to the department.

20 (4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days  
21 of receipt of the emergency notice.

22 (5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency  
23 notice, denial, approval, or modification of the project.

24 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team  
25 recommendations and notify the applicant and team members of their decision within 60 days of receipt of the  
26 emergency notice.

27 (7) A person who has undertaken an emergency action that is denied or modified shall submit written  
28 notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream  
29 caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation.  
30 Notice under this subsection must be filed within 90 days after the supervisors' decision.

