

HOUSE BILL NO. 383

INTRODUCED BY K. WHITE

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

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

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

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

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

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

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

(5) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final

1 written decision regarding the dispute.

2 (b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors'
3 decision, the applicant shall, within ~~45~~ 60 working days of receipt of the supervisors' decision:

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

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

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

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

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

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

19 (a) the purpose of the project; and

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

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

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

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

28 (iv) the effects on stream channel alteration;

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

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

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

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

6 - END -