

SENATE BILL NO. 313

INTRODUCED BY J. SESSO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING EXEMPTIONS FROM FLOOD PLAIN PERMITTING FOR STREAM RESTORATION PROJECTS; DEFINING "STREAM RESTORATION"; REQUIRING RULEMAKING; AMENDING SECTION 76-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

NEW SECTION. **Section 1. Stream restoration projects -- exemption -- rulemaking.** (1) The department shall adopt rules by July 1, 2018, that allow stream restoration projects to be exempt from flood plain permitting regulations.

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

- (3) The rules must include but are not limited to the establishment of:
 - (a) an exemption for stream restoration projects up to 1,000 linear feet in size;
 - (b) criteria for an exemption that includes a maximum size for a stream restoration project more than 1,000 linear feet based on the characteristics of the stream, including volume; and
 - (c) a minimum distance a stream restoration project must be located from the nearest flood-insured property to be eligible for an exemption, based on the characteristics of the stream, the flood history of the stream,



1 and the characteristics of the surrounding property.

2

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

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

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

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

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

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

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

20 (6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction
21 to a current of water less than 9 months of the year and having a bed and well-defined banks.

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

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

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

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

30 (11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain

1 adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or
2 drainway.

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

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

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

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

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

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

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

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

19 ~~(16)~~(17) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to
20 give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

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

23
24 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
25 integral part of Title 76, chapter 5, part 1, and the provisions of Title 76, chapter 5, part 1, apply to [section 1].

26
27 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

28 - END -