

SB 345: Montana Stream Legacy Act

Protecting People, Property, and Montana's Streams and Rivers

Why Montana needs SB 345

- Development along Montana's rivers and streams is occurring at an unprecedented rate.
- More people and homes are unwittingly being placed too close to the river's edge, in harm's way.
- More riverside development leads to more river channelization projects (e.g. riprap and levees), which increase the frequency and severity of floods and send problems to downstream landowners and communities.
- SB 345 provides balance by giving Montana's rivers room to breathe while protecting the rights of property owners.
- Water quality is being degraded.
- Valuable fish and wildlife habitat is being harmed.

How SB 345 Works

- SB 345 requires new homes and commercial buildings to be set back at least 250 ft from the ordinary high water mark of most major rivers—or Tier 1 streams (SB 345 contains a list of Tier I streams, which includes most Montana rivers) and 150 ft from larger streams, or Tier 2 streams (direct tributaries of Tier 1 streams with a drainage area of at least 25 square miles).
- SB 345 gives counties the freedom to adopt local setback standards in lieu of state standards that better suit local conditions as long as local standards are based on sound science (e.g. floodplain studies, aerial photos, etc.).
- Where practical alternatives exist, SB 345 keeps new roads away from rivers and streams.
- To keep rivers healthy, SB 345 prohibits the removal of native vegetation within 100 ft of Tier 1 streams and 50 ft of Tier 2 streams.
- SB 345 applies only to rivers and streams—and not to lakes and reservoirs.
- SB 345 recognizes that all properties are unique, and provides a variance process to ensure that no landowner loses the ability to build on an existing lot.
- This bill includes a grandfather clause to make sure that existing homes and other developments are not impacted by this law, ensuring that if existing buildings are destroyed, they can be rebuilt.

Commonly Asked Questions

What is a stream setback?

A stream setback is a strip of land along all major rivers and streams in the state. It is measured from the ordinary high water mark.

What is prohibited in the setback area?

The focus of this legislation is narrow: it requires landowners to site new residential, commercial or industrial buildings—including septic tanks and drain fields—far enough away from rivers and streams to keep them out of harm's way. And, with the exception of areas necessary to cross a river or stream, the bill keeps new roads and parking areas likewise out of harm's way..

How does the legislation impact agricultural operations?

Agricultural uses are specifically excluded from SB 345.

What about buildings already in the corridor?

All existing buildings are excluded from the requirements of this legislation. Even if these buildings are destroyed by fire or other disasters, they can be rebuilt.

What happens when small lots are too close to a stream or river? A generous variance process will ensure landowners can build on existing lots, regardless of proximity to the river. Specifically, the legislation provides for a variance process if complying with the conditions of the act would result in “unnecessary or undue hardship” because the law would unreasonably restrict the use of a parcel or building on land.

Many of Montana cities and towns are located on major rivers or streams. What will the impact be on cities and towns? Incorporated cities and towns are specifically excluded from the requirements of the legislation. Unincorporated cities and towns with sewer districts are also excluded from the setback.

What about local control?

This bill provides clear criteria that local governments can use to establish their own setbacks for new buildings. These local setbacks—which can be wider or narrower than the state setbacks established by SB 345—would replace the state setbacks.

What about local governments with setbacks already in place?

Setback regulations adopted at the local government level generally only apply to new subdivisions. Because buildings cumulatively impact streams, it is important that all new buildings honor setbacks. SB 345 has an exemption for two local governments that regulate all new buildings: Choteau County (with a 400-foot and 3-mile setback along different portions of the Missouri River) and the Big Hole River (where meander studies show that new buildings can be a *minimum* of 150 feet from the river).

How will the program be administered by local governments?

Local governments will need to adopt a permitting or certification process that implements their setback program. It will be up to local governments to decide which staff or departments oversee this program. Additionally, local government can grant variances. This variance process makes sure that no one loses the ability to build on an existing lot, and local governments could collect a reasonable fee from the developer to pay for costs related to permitting.

A Final Word

Streamside development:

- Sacrifices the feeling of remoteness floating a Montana river or stream;
- Detracts from the naturalness Montanans treasure about our rivers and streams;
- Degrades the very resource that attracts people to build along streams in the first place—clean water, fish, wildlife and recreation; and
- Can put people and their homes in the path of devastating floods.

The best way to address these issues is to establish a statewide system of stream setbacks that protect allow Montana’s streams and rivers to flood and meander, without putting homes at risk of flooding and from erosion of the riverbank. This legislation is a fair and sensible solution to the development pressures facing our rivers and streams.