

1 HOUSE BILL NO. 457

2 INTRODUCED BY D. HAINES

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COUNTY TO CONDUCT A SPECIAL MAIL
5 BALLOT ELECTION AT MUNICIPAL GOVERNMENT EXPENSE WHEN A MUNICIPALITY REQUESTS AN
6 ELECTION TO APPROVE OR DISAPPROVE THE APPLICATION OF THE MUNICIPALITY'S BUILDING CODE
7 JURISDICTION TO ALL OR PART OF AN AREA NOT TO EXCEED 4 1/2 MILES BEYOND THE
8 MUNICIPALITY'S CORPORATE LIMITS; ESTABLISHING A MORATORIUM ON THE APPLICATION AND
9 ENFORCEMENT OF MUNICIPAL BUILDING CODES IN EXISTING AREAS OF EXTENDED JURISDICTION
10 UNTIL AN ELECTION IS HELD; AMENDING SECTIONS 13-19-106, 50-60-101, 50-60-301, AND
11 50-60-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

12

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

14

15 NEW SECTION. **Section 1. Purpose -- definition.** (1) The legislature finds that a municipality's
16 extension of its jurisdictional area with respect to the application and enforcement of municipal building
17 codes without the approval of the owners of real estate and other electors in the affected area constitutes
18 an unjust expansion of municipal authority. The legislature further finds that the best way to remedy this
19 injustice is to subject a municipality's decision to extend its jurisdictional area or maintain its extended
20 jurisdictional area to an election in which all qualified electors in the affected area have the opportunity
21 to express their support for or objection to municipal building code authority.

22 (2) As used in this part, "affected area" means:

23 (a) the area outside the limits of an incorporated municipality in which building code jurisdiction
24 has been extended at the written request of a municipality prior to [the effective date of this act]; or25 (b) the area outside the limits of an incorporated municipality in which a municipality proposes to
26 extend its building code jurisdiction by means of a special mail ballot election as provided in 13-19-106
27 and [sections 1 through 4].

28

29 NEW SECTION. **Section 2. Resolution of intention to extend municipal jurisdiction -- notice**
30 **requirements.** (1) Before requesting a county to conduct an election to extend a municipality's building

1 code jurisdiction or to maintain its building code jurisdiction beyond incorporated boundaries, the
2 municipality shall pass a resolution of intention to do so, designating in the resolution the precise
3 boundaries of the affected area. Distances must be measured in a straight line on a horizontal plane, and
4 the boundary of the affected area may not extend beyond 4 1/2 miles of the corporate limits of the
5 municipality.

6 (2) Notice of passage of the resolution must be published for 5 days in a daily newspaper or in
7 one issue of a weekly newspaper published in both the municipality and in the county that contains the
8 affected area or, if a newspaper is not published in both the municipality and the county, by posting the
9 notice for 5 days in three public places in both the municipality and the county. A copy of the notice must
10 be mailed to every qualified elector in the affected area.

11 (3) The notice must describe in detail:

12 (a) the general purpose and the fiscal ramifications of the expansion or continuation of municipal
13 building code jurisdiction; and

14 (b) the fee schedule and any other costs that will be borne by residents and owners of real estate
15 in the affected area if the extension or continuation of jurisdiction is approved.

16 (4) The notice must contain the complete text of the resolution provided for in subsection (1) and
17 must be mailed to each qualified elector in the affected area so that the elector receives the notice prior
18 to the election date.

19 (5) Failure to comply with the notice requirements in this section will nullify the election results.

20

21 **NEW SECTION. Section 3. Authorization -- mail ballot election mandate -- costs paid by**
22 **municipality.** (1) A county is authorized to conduct a mail ballot election at the request of a municipality
23 within the county for the purpose of the municipality's extension of its jurisdictional area or maintaining
24 its extended jurisdiction that was adopted pursuant to the former provisions of 50-60-101 relating to
25 municipal jurisdictional areas.

26 (2) The mail ballot election must be conducted in accordance with the procedures set forth in Title
27 13, chapter 19.

28 (3) The costs of conducting and administering the mail ballot election provided for in subsection
29 (2) must be paid by the municipality that requests the election. The municipality shall pay to the county
30 all charges associated with the election provided for in subsection (2) within 60 days of receiving a bill for

1 these charges from the county clerk and recorder.

2

3 NEW SECTION. **Section 4. Moratorium on extended municipal building code jurisdiction.** A
4 municipality that has extended its building code jurisdiction to all or part of an area within 4 1/2 miles of
5 the corporate limits of the municipality prior to [the effective date of this act] may not continue to exercise
6 the jurisdiction until a special mail ballot election has been held in accordance with the provisions in
7 13-19-106 and [sections 1 through 4].

8

9 **Section 5.** Section 13-19-106, MCA, is amended to read:

10 **"13-19-106. General requirements for mail ballot election -- exception for municipal building code**
11 **jurisdiction election.** A mail ballot election must be conducted substantially as follows:

12 (1) Official ballots must be prepared and all other initial procedures followed as otherwise provided
13 by law, except that mail ballots are not required to have stubs.

14 (2) (a) Except as provided in subsection (2)(b), an ~~An~~ official ballot must be mailed to every
15 qualified elector of the political subdivision conducting the election.

16 (b) In an election to determine whether a municipality may extend its building code jurisdiction or
17 maintain its extended jurisdiction, an official ballot must be mailed to every qualified elector in the affected
18 area as provided in Title 50, chapter 60, part 3. The election administrator shall, at the expense of the
19 municipality seeking to extend or maintain its jurisdiction, prepare and keep on file as a public record a list
20 of the relevant electors.

21 (3) Each return/verification envelope must contain a form prescribed by the secretary of state for
22 the elector to verify the accuracy of the elector's address or notify the election administrator of the
23 elector's correct mailing address and to return the corrected address with the voted ballot in the manner
24 provided by 13-19-306.

25 (4) The elector shall mark the ballot at home and place it in a secrecy envelope.

26 (5) The elector shall then place the secrecy envelope containing the elector's ballot in a
27 return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit
28 designated by the election administrator so that it is received before a specified time on election day.

29 (6) Once returned, election officials shall first qualify the submitted ballot by examining the
30 return/verification envelope to determine whether it is submitted by a qualified elector who has not

1 previously voted.

2 (7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification
3 envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official
4 ballot box.

5 (8) After the close of polls on election day, voted ballots must be counted and canvassed as
6 otherwise provided by law."

7

8 **Section 6.** Section 50-60-101, MCA, is amended to read:

9 **"50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the
10 context requires otherwise, the following definitions apply:

11 (1) "Alteration" means any change, addition, or modification in construction or occupancy.

12 (2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form
13 a structure and the related facilities for the use or occupancy by persons or property. The term must be
14 construed as though followed by the words "or part or parts thereof".

15 (3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code,
16 general or special, or compilation thereof enacted or adopted by the state or any municipality, including
17 departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to
18 the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and
19 installation of equipment in buildings.

20 (b) The term does not include zoning ordinances.

21 (4) "Code enforcement program" means the plan for enforcement of the building regulations
22 adopted by a municipality or county and includes the local building department and the staff associated
23 with executing any aspect of the program's purposes or functions.

24 (5) "Construction" means the original construction and equipment of buildings and requirements
25 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

26 (6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

27 (7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating
28 equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

29 (8) (a) "Factory-built building" means a factory-assembled structure or structures equipped with
30 the necessary service connections but not made so as to be readily movable as a unit or units and

1 designed to be used with a permanent foundation.

2 (b) The term does not include manufactured housing constructed after June 15, 1976, under the
3 National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.).

4 (9) "Local building department" means the agency or agencies of a municipality charged with the
5 administration, supervision, or enforcement of building regulations, the approval of plans, the inspection
6 of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required
7 by state or local building regulations.

8 (10) "Local legislative body" means the council or commission charged with governing the
9 municipality.

10 (11) ~~(a)~~ "Municipal jurisdictional area" means the area within the limits of an incorporated
11 municipality unless the area is extended ~~at the written request of a municipality~~ as the result of a special
12 mail ballot election as provided in 13-19-106 and [sections 1 through 4].

13 ~~(b) Upon request of a municipality with the written consent of the county in which the municipality~~
14 ~~is located, the department may approve extension of the jurisdictional area to include:~~

15 ~~—— (i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;~~

16 ~~—— (ii) all of any platted subdivision that is partially within 4 1/2 miles of the corporate limits of a~~
17 ~~municipality; and~~

18 ~~—— (iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially~~
19 ~~within 4 1/2 miles of the corporate limits of a municipality.~~

20 ~~—— (c) Distances must be measured in a straight line on a horizontal plane.~~

21 ~~—— (d) The initial written consent by a county to an extended municipal jurisdiction area must disclose~~
22 ~~the scope of the building codes to be enforced, the type of structures to be subject to the building codes,~~
23 ~~and the schedule of fees to be charged for permits. If after the county's initial written consent, the~~
24 ~~municipality wishes to change either the scope of the building codes enforced or the type of structures~~
25 ~~covered, the changes must first be approved in writing by the county. Unapproved changes result in the~~
26 ~~rescission of the county approval of the extended municipal jurisdiction area.~~

27 (12) "Municipality" means any incorporated city or town and its jurisdictional area as defined in
28 this section.

29 (13) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee
30 in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation

1 in control of a building.

2 (14) "Primary function area" means an area of a building or facility in which a major activity for
3 which the building or facility is designed is carried out. Primary function areas include but are not limited
4 to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a
5 conference center. Areas that are not primary function areas include but are not limited to boiler rooms,
6 storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

7 (15) "Public building" means a building or facility owned or operated by a governmental entity or
8 a private sector building or facility that is open to members of the public.

9 (16) "Public sidewalk" means a sidewalk located in a public right-of-way.

10 (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living
11 quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on
12 or towed by another vehicle, including but not limited to a:

13 (a) travel trailer;

14 (b) camping trailer;

15 (c) truck camper; or

16 (d) motor home.

17 (18) "Site" means a parcel of land bounded by property lines or a designated portion of a public
18 right-of-way.

19 (19) "State agency" means any state officer, department, board, bureau, commission, or other
20 agency of this state.

21 (20) "State building code" means the state building code provided for in 50-60-203 or any portion
22 of the code of limited application and any of its modifications or amendments."
23

24 **Section 7.** Section 50-60-301, MCA, is amended to read:

25 **"50-60-301. Municipal and county building codes authorized -- exception -- health care facility and**
26 **public health center doors -- fee adjustment for model plans.** (1) Except as provided in subsection (3), the
27 ~~The~~ local legislative body of a municipality or county may adopt a building code by ordinance to apply to
28 the municipal or county jurisdictional area.

29 (2) A municipal or county building code may include only codes adopted by the department.

30 (3) A municipality may not adopt a building code that applies to a municipal jurisdictional area that

1 extends beyond the corporate limits of the municipality unless a majority of qualified electors voting on
 2 the question from the affected area have approved the extension of jurisdiction through a special mail
 3 ballot election as provided in 13-19-106 and [sections 1 through 4].

4 ~~(3)~~(4) Any provision of a building code requiring the installation or maintenance of self-closing or
 5 automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in
 6 50-5-101, or to a public health center, as defined in 7-34-2102.

7 ~~(4)~~(5) (a) When the same single-family dwelling plan is constructed at more than one site, the
 8 municipality or county shall, after the first examination of the plan, adjust the required plan fee to reflect
 9 only the cost of reviewing requirements pertaining to the review of:

- 10 (i) zoning;
- 11 (ii) footings, foundations, and basements;
- 12 (iii) curbs;
- 13 (iv) gutters;
- 14 (v) landscaping;
- 15 (vi) utility connections;
- 16 (vii) street requirements;
- 17 (viii) sidewalks; and
- 18 (ix) other requirements related specifically to the exterior of the building.

19 (b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in
 20 a fashion that substantially affects the building code requirements, the municipality or county may impose
 21 the full examination fee permitted under 50-60-106."

22

23 **Section 8.** Section 50-60-302, MCA, is amended to read:

24 **"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality
 25 may not enforce a building code unless:

26 (a) the code enforcement program has been certified by the department as in compliance with
 27 applicable statutes and department certification rules and, if the program is applicable to an area beyond
 28 the corporate limits of a municipality, a majority of qualified electors voting on the question in the affected
 29 area have voted to approve municipal building code jurisdiction;

30 (b) the current adopted code, a current list of fees to be imposed, and a current plan for

1 enforcement of the code have been filed with and approved by the department; and

2 (c) all inspectors inspecting or approving any installations, which if accomplished commercially
3 require state licensure, must themselves be properly and currently state-licensed as journeymen in that
4 craft or occupation or be certified by a nationally recognized entity for testing and certification of
5 inspectors that is approved by the department before being permitted to inspect or approve any
6 installations.

7 (2) The department shall adopt additional rules and standards governing the certification of
8 municipal and county building code enforcement programs ~~which~~ that must include provisions for prompt
9 revocation of certification for refusal or failure to comply with any applicable statute or rule. The
10 department may allow a county or municipality a reasonable amount of time, not to exceed 6 months, to
11 correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate
12 threat to the public health, safety, or welfare, in which case the department may require immediate
13 correction. Failure to correct deficiencies within the time set by the department constitutes a basis for
14 immediate decertification of the code enforcement program. Continued operation of a county or municipal
15 code enforcement program in violation of a department order to correct deficiencies may be enjoined or
16 subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county or
17 municipality is located. The rules and standards must include provisions for the department to ensure that
18 all code enforcement program functions are being properly performed.

19 (3) In addition to maintaining the continued compliance oversight required in subsection (1), the
20 department shall require a detailed and fully documented annual report from a local government with a
21 certified code enforcement program to ensure continued local government compliance with all requirements
22 of applicable statutes and rules. If review of the annual report identifies compliance problems, the
23 department shall immediately conduct an onsite evaluation.

24 (4) If the certification of any local government code enforcement program is revoked for any
25 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within
26 the municipal or county area and the local government retains the responsibility for completion of
27 inspections and issuance of certificates of occupancy on any incomplete construction projects previously
28 permitted by the local government, unless the reason for the decertification is directly related to the
29 protection of health, safety, and welfare of the public.

30 (5) If a local government voluntarily decertifies its code enforcement program, the department

1 must be given written notification of the intended decertification at least 90 days prior to the date of
2 decertification. The local government retains the responsibility for completion of inspections and issuance
3 of certificates of occupancy on any incomplete construction projects permitted by the local government
4 prior to decertifying its code enforcement program."

5

6 NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 4] are intended to be
7 codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part
8 3, apply to [sections 1 through 4].

9

10 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2001.

11

12 NEW SECTION. **Section 11. Applicability.** [This act] applies to proceedings begun after June 30,
13 2001. A building permit issued prior to July 1, 2001, is subject to the conditions in effect at the time that
14 the permit was issued.

15

- END -