

## 1 SENATE BILL NO. 262

2 INTRODUCED BY A. CURTISS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN  
5 ACT PROVIDING THAT IF A PUBLIC ENTITY ENACTS OR ADOPTS A LAND USE REGULATION THAT  
6 RESTRICTS THE USE OF PRIVATE PROPERTY OR AN INTEREST IN PRIVATE PROPERTY OR  
7 ENFORCES THE REGULATION IN A MANNER THAT REDUCES FAIR MARKET VALUE THE OWNER IS  
8 ENTITLED TO JUST COMPENSATION FOR THE TAKING; PROVIDING TIMES FOR SUBMITTING CLAIMS  
9 ARISING FROM LAND USE REGULATIONS; PROVIDING DEFINITIONS; PROVIDING EXEMPTIONS FOR  
10 CERTAIN TYPES OF LAND USE REGULATION; AMENDING SECTIONS 7-15-2101, 76-1-102, 76-1-603,  
11 76-2-102, 76-2-201, 76-2-301, 76-3-102, 76-4-101, 76-5-102, AND 76-12-103, MCA; AND PROVIDING AN  
12 EFFECTIVE DATE."

13

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

15

16 NEW SECTION. **Section 1. Purpose.** The purpose of 7-15-2101(2), 76-1-102(3), 76-1-603(4),  
17 76-2-102(4), 76-2-201(3), 76-2-301(2), 76-3-102(2), 76-4-101(2), 76-5-102(3), and 76-12-103(3) and [sections  
18 1 through 3] is to ensure that the citizens of the state of Montana are able to acquire, possess, and protect their  
19 property and seek their safety, health, and happiness, as is their inalienable right pursuant to Article II, section  
20 3, of the Montana constitution, without undue regulation from the state and local governments.

21

22 NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 3], the following  
23 definitions apply:

24 (1) "Family member" means any person related or connected by consanguinity within the fourth degree  
25 or by affinity within the second degree.

26 (2) "Land use regulation" includes but is not limited to:

27 (a) any statute regulating the use of land or any interest in land;

28 (b) regulations for urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

29 (c) regulations for housing authority purposes as provided in Title 7, chapter 15, part 44;

30 (d) policies adopted by a planning board pursuant to Title 76, chapter 1, part 1;

- 1 (e) a growth policy adopted pursuant to Title 76, chapter 1, part 6;
- 2 (f) provisions adopted by a county planning and zoning commission pursuant to Title 76, chapter 2, part
- 3 1;
- 4 (g) county zoning regulations adopted pursuant to Title 76, chapter 2, part 2;
- 5 (h) municipal zoning regulations adopted pursuant to Title 76, chapter 2, part 3;
- 6 (i) regulations regarding subdivisions as provided in Title 76, chapter 3, parts 1 and 5, or Title 76,
- 7 chapter 4;
- 8 (j) regulations regarding a flood plain or floodway pursuant to Title 76, chapter 5, parts 2 through 4; and
- 9 (k) natural area designations as provided in Title 76, chapter 12, part 1.
- 10 (3) "Public entity" means the state, a county commission, a city commission, a town council, or any other
- 11 entity authorized to impose land use regulations.
- 12

- 13 **NEW SECTION. Section 3. Land use regulations impact on private property -- just compensation**
- 14 **-- exemptions.** (1) Except as provided in subsection (7), if a public entity enacts or adopts a land use regulation
- 15 or enforces a land use regulation prior to [the effective date of this act] that restricts the use of private real
- 16 property or any interest in private real property and the enactment reduces the fair market value of the property
- 17 or any interest in the property, the owner of the property must be paid just compensation.
- 18 (2) (a) Just compensation must be equal to the reduction in fair market value of the affected property
- 19 interest resulting from enactment, adoption, or enforcement of the land use regulation.
- 20 (b) For the purpose of assessing compensation, the right to compensation is considered to have
- 21 accrued at the date that the owner makes written demand to the public entity for compensation.
- 22 (3) Just compensation under subsection (1) must be paid to the owner of the property if the land use
- 23 regulation continues to be enforced against the property 180 days after the owner of the property makes written
- 24 demand for compensation under this section to the public entity enacting, adopting, or enforcing the land use
- 25 regulation.
- 26 (4) (a) For claims arising from land use regulations enacted or adopted prior to [the effective date of this
- 27 act], written demand for compensation under subsection (3) must be made within 2 years of [the effective date
- 28 of this act] or the date the public entity applies the land use regulations as an approval criteria to an application
- 29 submitted by the owner of the property, whichever is later.
- 30 (b) For claims arising from land use regulations enacted or adopted after [the effective date of this act],

1 written demand for compensation under subsection (3) must be made within 2 years of the enactment of the land  
2 use regulation or the date the owner of the property submits a land use application in which the land use  
3 regulation is an approval criteria, whichever is later.

4 (5) If a land use regulation continues to apply to the subject property more than 180 days after the  
5 present owner of the property has made written demand for compensation under [sections 1 through 3], the  
6 present owner of the property or of any interest in the property has a cause of action for compensation under  
7 [sections 1 through 3] in the district court for the county where the real property is located. The present owner  
8 of the real property is entitled to reasonable costs and attorney fees incurred to collect the compensation.

9 (6) A public entity may adopt or apply procedures for the processing of claims under [sections 1 through  
10 3]. These procedures may not act as a prerequisite to the filing of a compensation claim pursuant to subsection  
11 (4). The failure of an owner of property to file an application for a land use permit may not serve as grounds for  
12 dismissal, abatement, or delay of a compensation claim pursuant to subsection (4).

13 (7) Subsection (1) does not apply to a land use regulation that:

14 (a) restricts or prohibits activities commonly and historically recognized as public nuisances under  
15 common law;

16 (b) restricts or prohibits activities for the protection of public health and safety;

17 (c) is required to comply with federal law;

18 (d) restricts or prohibits the use of property for the purpose of selling pornography or performing nude  
19 dancing. This subsection is not intended to affect or alter rights provided by the Montana or United States  
20 constitution.

21 (e) is enacted prior to the date of acquisition of the property by the owner or a family member of the  
22 owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

23 (8) (a) Claims made under this section must be paid from funds, if any, specifically allocated by the  
24 legislature or public entity for payment of claims under [sections 1 through 3].

25 (b) If a claim has not been paid within 2 years from the date on which it accrues, the owner may use  
26 the property as permitted at the time the owner acquired the property.

27 (9) The remedy created by [sections 1 through 3] is in addition to any other remedy under the Montana  
28 or United States constitution and is not intended to modify or replace any other remedy.

29

30 **Section 4.** Section 7-15-2101, MCA, is amended to read:

1           **"7-15-2101. Findings and policy. (1)** It is hereby declared that:

2           ~~(1)(a)~~ unsanitary or unsafe dwelling accommodations exist in rural areas throughout the state; and ~~such~~  
3 ~~that those~~ unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete  
4 and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and  
5 space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions  
6 ~~which that~~ endanger life or property by fire and other causes;

7           ~~(2)(b)~~ in ~~such~~ rural areas, many persons of low income are forced to reside in unsanitary or unsafe  
8 dwelling accommodations;

9           ~~(3)(c)~~ in ~~such~~ rural areas, there is a lack of safe or sanitary dwelling accommodations available to all  
10 the inhabitants thereof, and, consequently, many persons of low income are forced to occupy overcrowded and  
11 congested dwelling accommodations;

12           ~~(4)(d)~~ these conditions cause an increase in and spread of disease and crime and constitute a menace  
13 to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

14           ~~(5)(e)~~ these conditions cannot be remedied by the ordinary operations of private enterprise;

15           ~~(6)(f)~~ the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing  
16 conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are  
17 public uses and purposes for which public money may be spent and private property acquired;

18           ~~(7)(g)~~ it is in the public interest that work on ~~such~~ projects be instituted as soon as possible; and

19           ~~(8)(h)~~ the necessity for the provisions ~~hereinafter~~ enacted to remedy these conditions is hereby  
20 declared, as a matter of legislative determination, to be in the public interest.

21           (2) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
22 this chapter is subject to assessment for a taking as provided in [section 3]."

23

24           **Section 5.** Section 76-1-102, MCA, is amended to read:

25           **"76-1-102. Purpose.** (1) It is the object of this chapter:

26           (a) to encourage local units of government to improve the present health, safety, convenience, and  
27 welfare of their citizens and to plan for the future development of their communities to the end that highway  
28 systems be carefully planned;

29           (b) that new community centers grow only with adequate highway, utility, health, educational, and  
30 recreational facilities;

- 1           (c) that the needs of agriculture, industry, and business be recognized in future growth;
- 2           (d) that residential areas provide healthy surroundings for family life; and
- 3           (e) that the growth of the community be commensurate with and promotive of the efficient and
- 4 economical use of public funds.

5           (2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in

6 an advisory capacity to presently established boards and officials.

7           (3) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to

8 this part is subject to assessment for a taking as provided in [section 3]."

9

10           **Section 6.** Section 76-1-603, MCA, is amended to read:

11           **"76-1-603. Adoption of growth policy by planning board.** After consideration of the recommendations

12 and suggestions elicited at the public hearing, the planning board shall by resolution:

13           (1) recommend the proposed growth policy and any proposed ordinances and resolutions for its

14 implementation to the governing bodies of the governmental units represented on the planning board;

15           (2) recommend that a growth policy not be adopted; or

16           (3) recommend that the governing body take some other action related to preparation of a growth policy.

17           (4) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to

18 this part is subject to assessment for a taking as provided in [section 3]."

19

20           **Section 7.** Section 76-2-102, MCA, is amended to read:

21           **"76-2-102. Organization and operation of commission.** (1) The planning and zoning commission

22 consists of the three county commissioners, the county surveyor, two citizen members, each of whom resides

23 in a different planning and zoning district, and a county official appointed by the county commissioners. The

24 citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one

25 member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term.

26 Members of the commission shall serve without compensation other than reimbursement for authorized

27 expenses and must be residents of the county in which they serve.

28           (2) The commission may appoint necessary employees and fix their compensation with the approval

29 of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep

30 permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

1 (3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning  
 2 commission's business and to pay the expenses of the employees and justified expenses of the commission's  
 3 members must be paid from a levy on the taxable value of all taxable property within the district.

4 (4) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
 5 this part is subject to assessment for a taking as provided in [section 3]."  
 6

7 **Section 8.** Section 76-2-201, MCA, is amended to read:

8 **"76-2-201. County zoning authorized.** (1) For the purpose of promoting the public health, safety,  
 9 morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to  
 10 chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with  
 11 the provisions of this part.

12 (2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of  
 13 county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may,  
 14 until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

15 (3) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
 16 this part is subject to assessment for a taking as provided in [section 3]."  
 17

18 **Section 9.** Section 76-2-301, MCA, is amended to read:

19 **"76-2-301. Municipal zoning authorized.** (1) For the purpose of promoting health, safety, morals, or  
 20 the general welfare of the community, the city or town council or other legislative body of cities and incorporated  
 21 towns ~~is hereby empowered to~~ may regulate and restrict:

22 (a) the height, number of stories, and size of buildings and other structures;

23 (b) the percentage of a lot that may be occupied;

24 (c) the size of yards, courts, and other open spaces;

25 (d) the density of population; and

26 (e) the location and use of buildings, structures, and land for trade, industry, residence, or other  
 27 purposes.

28 (2) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
 29 this part is subject to assessment for a taking as provided in [section 3]."  
 30

1           **Section 10.** Section 76-3-102, MCA, is amended to read:

2           **"76-3-102. Statement of purpose.** (1) It is the purpose of this chapter to:

3           ~~(1)~~(a) promote the public health, safety, and general welfare by regulating the subdivision of land;

4           ~~(2)~~(b) prevent overcrowding of land;

5           ~~(3)~~(c) lessen congestion in the streets and highways;

6           ~~(4)~~(d) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress  
7 and egress, and other public requirements;

8           ~~(5)~~(e) require development in harmony with the natural environment;

9           ~~(6)~~(f) promote preservation of open space;

10          ~~(7)~~(g) promote cluster development approaches that minimize costs to local citizens and that promote  
11 effective and efficient provision of public services;

12          ~~(8)~~(h) protect the rights of property owners; and

13          ~~(9)~~(i) require uniform monumentation of land subdivisions and transferring interests in real property by  
14 reference to a plat or certificate of survey.

15          (2) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
16 this chapter is subject to assessment for a taking as provided in [section 3]."

17

18          **Section 11.** Section 76-4-101, MCA, is amended to read:

19          **"76-4-101. Public policy.** (1) It is the public policy of this state to extend present laws controlling water  
20 supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage  
21 disposal and individual sewage systems to protect the quality and potability of water for public water supplies  
22 and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to  
23 agriculture, industry, recreation, and wildlife.

24          (2) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
25 this chapter is subject to assessment for a taking as provided in [section 3]."

26

27          **Section 12.** Section 76-5-102, MCA, is amended to read:

28          **"76-5-102. Policy and purposes.** (1) The policy and purposes of parts 1 through 4 of this chapter are  
29 to:

30          (a) guide development of the floodway areas of this state consistent with the enumerated findings;

1 (b) recognize the right and need of watercourses to periodically carry more than the normal flow of  
2 water;

3 (c) provide state coordination and technical assistance to local units in management of floodway areas;

4 (d) coordinate federal, state, and local management activities for floodway areas;

5 (e) encourage local governmental units to manage flood-prone lands, including the adoption,  
6 enforcement, and administration of land use regulations; and

7 (f) provide the department of natural resources and conservation with authority necessary to carry out  
8 a comprehensive floodway management program for the state.

9 (2) Specifically, it is the purpose of parts 1 through 4 to:

10 (a) restrict or prohibit uses that are dangerous to health or safety of property in times of flood or that  
11 cause increased flood heights or velocities;

12 (b) require that uses vulnerable to floods, including public facilities that serve the uses, be provided with  
13 flood protection at the time of initial construction;

14 (c) develop and provide information to identify lands that are unsuited for certain development purposes  
15 because of flood hazard;

16 (d) distinguish between the land use regulations applied to the designated floodway and those applied  
17 to that portion of the designated flood plain not contained within the designated floodway;

18 (e) apply more restrictive land use regulations within the designated floodway;

19 (f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible,  
20 balance the greatest public good with the least private injury.

21 (3) A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
22 this chapter is subject to assessment for a taking as provided in [section 3]."

23

24 **Section 13.** Section 76-12-103, MCA, is amended to read:

25 **"76-12-103. Statement of policy.** (1) It is the intention of the legislature to establish a system for the  
26 protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in  
27 perpetuity.

28 (2) In this connection, the legislature:

29 (a) recognizes the fact that the school trust lands are held in trust for the support of education and for  
30 the attainment of other worthy objects helpful to the well-being of the people of the state;

1           **(b)** recognizes that it is the duty of the board of land commissioners to administer this trust so as to  
2 secure the largest measure of legitimate and reasonable advantage to the state; and

3           **(c)** hereby declares:

4           **(i)** the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of  
5 future generations to be an object worthy of legislative action helpful to the well-being of the people of the state;  
6 and ~~also declares~~

7           **(ii)** that the preservation of natural areas on state trust land has sufficient value to present and future  
8 education to meet the state's obligation for the disposition and utilization of trust lands as specified in The  
9 Enabling Act.

10           **(3)** A land use regulation, as defined in [section 2], that is enacted, adopted, or enforced pursuant to  
11 this chapter is subject to assessment for a taking as provided in [section 3]."

12

13           **NEW SECTION.** **Section 14. Codification instruction.** [Sections 1 through 3] are intended to be  
14 codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 1 through 3].

15

16           **NEW SECTION.** **Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are  
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
18 the part remains in effect in all valid applications that are severable from the invalid applications.

19

20           **NEW SECTION.** **Section 16. Submission to electorate.** This act shall be submitted to the qualified  
21 electors of Montana at the general election to be held in November 2006 by printing on the ballot the full title of  
22 this act and the following:

23           []       FOR requiring just compensation when implementation of a land use regulation causes a  
24 decrease in fair market value of private property.

25           []       AGAINST requiring just compensation when implementation of a land use regulation causes  
26 a decrease in fair market value of private property.

27

28           **NEW SECTION.** **Section 17. Effective date.** This act is effective upon approval of the electorate.

29

- END -