

LEGAL MEMO

TO: GLENN OPPEL, GOVERNMENT AFFAIRS DIRECTOR, MONTANA
ASSOCIATION OF REALTORS
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: SB195 AS AMENDED IN THE SENATE AND AS PROPOSED TO BE
AMENDED IN HOUSE LOCAL GOVERNMENT
DATE: MARCH 23, 2005

PURPOSE AND DISCLAIMER

You have asked me to prepare a brief summary of SB195 as amended in the Senate and as proposed to be amended in House Local Government. This is provided below.

Please keep in mind that this memo is based on my understanding of the "intent" of the bill and the amendments. Of course, any further amendments to the bill may have serious implications for the accuracy of this memo.

BILL

SB195 – QUALITY GROWTH ACT (LC0578 – Sen. Wheat)

SECTION ANALYSIS

76-1-103: SECTION 1, PAGE 1, LINE 13, THROUGH PAGE 3, LINE 6:

Defines the following terms:

- Growth jurisdiction - Section 1(4);
- Land use management techniques - Section 1(6);
Comments: Concerns were expressed that these "techniques" would be mandatory and that local governments would be required to adopt all of them. SB195 supporters propose to clarify the non-mandatory intent by changing this definition by adding the word "may", making the introductory phrase "may include".
- Market incentives - Section 1(8);
Comments: SB195 supporters also propose adding the word "may" to this definition for the same reasons as above.

- Public facilities – Section 1(13);
- Quality growth area – Section 1(15);
- Rural center – Section 1(16); and
- Transfer of development rights – Section 1(18);

76-1-601: SECTION 2, PAGE 3, LINE 8 THROUGH PAGE 5, LINE 8:

This language brings this section into compliance with the rest of the bill. Except for requiring counties to coordinate with neighboring counties on matters relating to growth policies (see page 4, line 21), I do not believe that these are intended to be substantive changes.

New Section: SECTION 3(1), PAGE 5, LINES 10 THROUGH 15:

This subsection requires “growth jurisdictions” to adopt a growth policy in accordance with SB195 by October 1, 2007. However, if a jurisdiction has adopted a growth policy before October 1, 2006 (as currently required under law), that jurisdiction must ensure that its growth policy is SB195 compliant during the next statutory 5-year growth policy review period.

New Section: SECTION 3(1)(A), PAGE 5, LINE 16, THROUGH PAGE 6, LINE 16:

This subsection requires that:

- each municipal growth jurisdiction identify quality growth areas sufficient to accommodate 20 year growth projections for that municipality;
- counties coordinate with any municipality within its boundaries if that municipality has identified its growth area as including an area within the county’s jurisdiction;
- each growth jurisdiction send a copy of any proposed or adopted growth policy to any local government within 15 miles of its borders.

Note: This subsection no longer requires that county growth jurisdictions identify quality growth areas - but it does allow them to. Also, SB195 supporters are proposing to strike the requirement for the vacant lot inventory found on page 5, line 19.

Comment: This section received much criticism during the public hearing in the House Local Government Committee. Concerns included:

- *SB195 takes power away from the county to control a city's growth outside that city's municipal boundaries.* This is incorrect. Currently, cities can annex, extend services, plan, and even zone outside of their boundaries as authorized under state law. SB195 actually gives counties, and residents within the county, more of a voice in dealing with a city's growth.
- *SB195 reduces the public's involvement in the planning process.* This is incorrect. Again, requiring that cities and counties coordinate their plans for growth should increase the opportunity for citizen involvement in the planning process. Currently, cities can engage in "boundary management" without any public involvement.
- *SB195 harms rural schools, and agriculture in general, by preventing any growth or development in non-quality growth areas.* This is incorrect. Nothing in SB195 prevents or limits growth in any area. However, it may be true that, after the local governments develop their plans, there may more of a tendency to implement those plans through appropriate land use regulations. These regulations will have to be adopted under the local government's zoning statutes which carry built-in due process protections for the citizens. Additionally, the public should have been involved, and under SB195 has more of a voice, in the planning process from the beginning.

New Section: SECTION 3(1)(B), PAGE 6, LINE 17, THROUGH PAGE 7, LINE 16:

This subsection sets out minimum criteria for growth jurisdiction growth policies and includes requirements, and economic standards, for affordable housing. This subsection also allows growth jurisdictions to impose a "long range planning fee" per residential (max \$50) or commercial (max \$250) lot.

Comments: A number of opponents complained that a problem with the current growth policy statute is that it provides no funding mechanism for planning. These individuals remained opponents to SB195 even though SB195 provides that funding mechanism through the planning fee. Additionally, SB195 supporters are proposing changes to clarify that the growth policy is non-regulatory and that the policy can only guide development in appropriate areas.

New Sections: SECTIONS 4 AND 5, PAGE 8, LINES 19 THROUGH 25:
Codification and severability section. No comments.

CONCLUSION

In my opinion, and in brief, SB195 only does three things:

1. SB195 requires growth jurisdictions to answer four questions:
 - a. How many more people do you expect in the next 20 years?
 - b. Where will you put them?
 - c. What kind of infrastructure will be required to serve these new people? and
 - d. Who's going to pay for this infrastructure?
2. SB195 requires increased coordination and cooperation between local governments.
3. SB195 allows growth jurisdictions to impose a planning fee on new development.

However, as mentioned above in Section 3(1)(a), page 3, SB195 may in fact lead toward increased local land use regulations. And while lack of trust concerning the planning process, or the implementation of those plans through duly adopted local land use regulations, may remain an obstacle for supporters of the SB195, the bill itself maintains local control and due process protections.

I hope that this brief review of SB195 is helpful. Please contact me to discuss or if you need additional information.