

SENATE BILL NO. 167

INTRODUCED BY B. HAWKS

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING COUNTIES TO DESIGNATE THE BOUNDARIES OF THE WILDLAND-URBAN INTERFACE AND IMPOSE DEVELOPMENT STANDARDS IN THOSE AREAS THROUGH ZONING AND IN ACCORDANCE WITH OTHER LAND USE LAWS; REQUIRING COUNTIES THAT DO NOT DESIGNATE THE INTERFACE BY A CERTAIN TIME TO REIMBURSE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR WILDLAND FIRE SUPPRESSION COSTS IN THOSE COUNTIES; REQUIRING GROWTH POLICIES TO INCLUDE A STRATEGY FOR FIRE AND WILDLAND FIRE; REQUIRING ZONING REGULATIONS TO DESIGNATE THE WILDLAND-URBAN INTERFACE AND ESTABLISH STANDARDS FOR DEVELOPMENT; REQUIRING SUBDIVISION REGULATIONS TO PROHIBIT SUBDIVISIONS IN CERTAIN HAZARDOUS AREAS UNLESS HAZARDS CAN BE OVERCOME BY SPECIFIC MITIGATION MEASURES; AMENDING SECTIONS 7-33-2210, 76-1-601, 76-2-203, 76-3-501, AND 76-3-504, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 7-33-2210, MCA, is amended to read:

"7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties -- counties may designate wildland-urban interface. (1) A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

(2) A county may designate the wildland-urban interface within its jurisdictional area and adopt standards for new development within the interface that consider and address, at a minimum, defensible space, ingress and egress, and water supply for wildland fire suppression.

(3) If a county designates the wildland-urban interface as provided in subsection (2), the designation and the adoption of standards must be:

(a) accomplished through zoning regulations that are in accordance with 76-2-203 and that are adopted

1 as provided in 76-2-205, even though zoning is not mandatory under Title 76, chapter 2, part 2;

2 (b) in accordance with a growth policy that is consistent with 76-1-601 and that is adopted pursuant to
3 76-1-604, even though a growth policy is not required under Title 76, chapter 1, part 6; and

4 (c) consistent with subdivision regulations adopted pursuant to 76-3-504.

5 (4) A county that does not designate the wildland-urban interface, as provided in subsections (2) and
6 (3), by July 1, 2011, shall, after that date, reimburse the state for any general fund appropriation expenditure
7 made by the department of natural resources and conservation for wildland fire suppression within the county's
8 geographic area, excluding areas within the limits of incorporated cities and towns.

9 (5) For the purposes of 76-1-601, 76-2-203, and this section, the following definitions apply:

10 (a) "Defensible space" means an area around a structure where fuels and vegetation are treated,
11 cleared, or reduced to slow the spread of wildfire toward the structure.

12 (b) "Wildland-urban interface" means the line, area, or zone where structures and other human
13 development meet or intermingle with undeveloped wildland or vegetative fuels."

14
15 **Section 2.** Section 76-1-601, MCA, is amended to read:

16 **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional area.

17 (2) A growth policy must include the elements listed in subsection (3) ~~by October 1, 2006~~. The extent
18 to which a growth policy addresses the elements of a growth policy that are listed in subsection (3) is at the full
19 discretion of the governing body.

20 (3) A growth policy must include:

21 (a) community goals and objectives;

22 (b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional
23 area, including:

24 (i) land uses;

25 (ii) population;

26 (iii) housing needs;

27 (iv) economic conditions;

28 (v) local services;

29 (vi) public facilities;

30 (vii) natural resources; and

- 1 (viii) other characteristics and features proposed by the planning board and adopted by the governing
2 bodies;
- 3 (c) projected trends for the life of the growth policy for each of the following elements:
- 4 (i) land use;
- 5 (ii) population;
- 6 (iii) housing needs;
- 7 (iv) economic conditions;
- 8 (v) local services;
- 9 (vi) natural resources; and
- 10 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 11 (d) a description of policies, regulations, and other measures to be implemented in order to achieve the
12 goals and objectives established pursuant to subsection (3)(a);
- 13 (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking
14 water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities,
15 roads, and bridges;
- 16 (f) an implementation strategy that includes:
- 17 (i) a timetable for implementing the growth policy;
- 18 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 19 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
20 necessary;
- 21 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
22 explains:
- 23 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
24 county in which the city or town is located on matters related to the growth policy;
- 25 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and
26 towns located within the county's boundaries on matters related to the growth policy;
- 27 (h) a statement explaining how the governing bodies will:
- 28 (i) define the criteria in 76-3-608(3)(a); and
- 29 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in
30 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
(j) a strategy for addressing fire and wildland fire in the jurisdictional area, including, in maps and text, identification of fire and wildland fire hazard areas. The strategy must take into consideration minimum standards for new development within the wildland-urban interface that include but are not limited to:
(i) defensible space around structures;
(ii) adequate ingress and egress to and from structures and developments to facilitate wildland fire suppression activities; and
(iii) adequate water supply for wildland fire suppression.
(4) A growth policy may:
(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
(c) address the criteria in 76-3-608(3)(a);
(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);
(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and
(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.
(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and
- (b) designed to:
 - (i) lessen congestion in the streets;
 - (ii) secure safety from fire, panic, and other dangers;
 - (iii) promote public health and general welfare;
 - (iv) provide adequate light and air;
 - (v) prevent the overcrowding of land;
 - (vi) avoid undue concentration of population; ~~and~~

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and

(viii) designate the wildland-urban interface and establish standards for development within the wildland-urban interface that, at a minimum, address defensible space, ingress and egress, and water supply for wildland fire suppression.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area."

Section 4. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services."

Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

1 (a) list the materials that must be included in a subdivision application in order for the application to be
2 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

3 (b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the
4 governing body an environmental assessment as prescribed in 76-3-603;

5 (c) establish procedures consistent with this chapter for the submission and review of subdivision
6 applications and amended applications;

7 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

8 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
9 unsuitable for subdivision development, ~~and The regulations must prohibit subdivisions in these areas unless the~~
10 ~~hazards can be eliminated or overcome by approved construction techniques;~~ mitigation measures that are
11 acceptable to the governing body. Mitigation measures may include construction techniques related to a specific
12 type of structure and hazard that are adopted as administrative rules by the department of labor and industry
13 under Title 50, chapter 60. If the department of labor and industry does not adopt rules as provided in this
14 subsection (1)(e), then the regulations may identify mitigation measures that the governing body considers
15 appropriate.

16 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year
17 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

18 (g) prescribe standards for:

19 (i) the design and arrangement of lots, streets, and roads;

20 (ii) grading and drainage;

21 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
22 the:

23 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
24 will create one or more parcels containing less than 20 acres; and

25 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
26 containing 20 acres or more and less than 160 acres; and

27 (iv) the location and installation of public utilities;

28 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

29 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
30 local, state, and federal government identified during the preapplication consultation conducted pursuant to

subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

1 (B) the water rights are removed or the process has been initiated to remove the water rights from the
2 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
3 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
4 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
5 document that intent, when applicable, in agreements and legal documents for related sales transactions.

6 (I) require the subdivider, unless otherwise provided for under separate written agreement or filed
7 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
8 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
9 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
10 historic and legal rights;

11 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
12 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
13 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
14 services within the subdivision.

15 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
16 hearings;

17 (o) establish procedures describing how the governing body or its agent or agency will address
18 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

19 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
20 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
21 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
22 the reviewing authority is not the governing body.

23 (q) establish a preapplication process that:

24 (i) allows a subdivider to meet with the agent or agency, other than the governing body, that is
25 designated by the governing body to review subdivision applications prior to the subdivider submitting the
26 application;

27 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
28 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

29 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
30 state, and federal government, and any other entities that may be contacted for comment on the subdivision

1 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
2 the review of the application, the agent or agency designated by the governing body contacts a public utility,
3 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
4 agency shall notify the subdivider of the contact and the timeframe for response.

5 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent
6 or agency receives a written request for a preapplication meeting from the subdivider; and

7 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
8 provided in 76-3-604.

9 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
10 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
11 development.

12 (3) The governing body may establish deadlines for submittal of subdivision applications.

13 (4) Subdivision regulations adopted under this section may not include construction techniques other than
14 those intended to mitigate hazards as provided in subsection (1)(e)."

15
16 **NEW SECTION. Section 6. Effective dates.** (1) [Section 1 and this section] are effective on passage
17 and approval.

18 (2) [Sections 2 through 5] are effective July 1, 2011.

19 - END -