

AMOUNT 28
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HB

HB 590

"GROWTH POLICY REVISIONS"

REASONS TO SUPPORT HB 590

1. Montana citizens have always valued their individual property rights. Since the Growth Policy statutes are written to directly control the use of private property, it is extremely important that "Individual Private Property rights" be addressed in a Growth Policy. Citizens need to know how their individual property rights will be addressed in the Growth Policy.
2. In Flathead County, we have been working through the Growth Policy process. We had many public hearing and forums with regards to the Growth Policy. One of the most important issues continually brought up in these forums was property rights. Property rights were so important that it became one of the seven main elements citizens wanted addressed in the Growth Policy. Yet, the current Growth Policy statute mentions nothing about addressing this important issue. That is why we need HB 590, it makes the community address this issue during the Growth Policy process.
3. Finally HB 590 requires that 60 % of property owners by number and 50% of property owner by land mass be in favor of developing a neighborhood plan prior to allowing the governing body to proceed. This requirement is necessary so a small minority of land owners can not control their neighbors property without their consent. If you do not have at least 60 % of your neighbors support for a plan, you do not have a neighborhood. In Flathead County, we recently had an attempt by 10 or 11 property owners who have been attempting to take over 52 square miles of Flathead County. The main proponent lives in San Francisco and correspondence is often sent from San Francisco. Some neighborhood. A few years ago Flathead County spent approximately \$35,000 to prepare a neighborhood plan and when it got to the commissioners, it was clear that a majority of citizens were against it. The commissioners rejected it. HB 590 will prevent this tremendous waste of tax payer dollars.

4. During our recent Growth Policy forums and hearings, it was obvious that large land owners, including farmers and timber land owners such as Stoltz lumber wanted protection from a large number of small acreage property owners forming a neighborhood plan and regulating them out of business. The provisions in HB 590 will protect these large lot owners. The bill requires that a neighborhood plan get the consent of both small and large lot property owners. This bill will make all lot owners communicate with each other and reach a consensus.

5. These two provisions compliment each other. The property rights section is complimented by the neighborhood plan protections.

6. No guidelines exist for neighborhood plans. Almost all land-use issues have guideline, we need guidelines for neighborhood plans.

THE CONSTITUTION OF THE STATE OF MONTANA
ARTICLE II. DECLARATION OF RIGHTS

Section 1. Popular sovereignty.

Section 2. Self-government.

Section 3. Inalienable rights.

Section 4. Individual dignity.

Section 5. Freedom of religion.

Section 6. Freedom of assembly.

Section 7. Freedom of speech, expression, and press.

Section 8. Right of participation.

Section 9. Right to know.

Section 10. Right of privacy.

Section 11. Searches and seizures.

Section 12. Right to bear arms.

Section 13. Right of suffrage.

Section 14. Adult rights.

Section 15. Rights of persons not adults.

Section 16. The administration of justice.

Section 17. Due process of law.

Section 18. State subject to suit.

Section 19. Habeas corpus.

Section 20. Initiation of proceedings.

Section 21. Bail.

Section 22. Excessive sanctions.

Section 23. Detention.

Section 24. Rights of the accused.

Section 25. Self-incrimination and double jeopardy.

Section 26. Trial by jury.

Section 27. Imprisonment for debt.

Section 28. Criminal justice policy -- rights of the convicted.

Section 29. Eminent domain.

Section 30. Treason and descent of estates.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges.

Section 32. Civilian control of the military.

Section 33. Importation of armed persons.

Section 34. Unenumerated rights.

Section 35. Servicemen, servicewomen, and veterans.

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2-10-103. Definitions. As used in this part, the following definitions apply:

(1) "Action with taking or damaging implications" means a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution. It does not include:

- (a) proposed eminent domain proceedings;
- (b) a proposed seizure of property by law enforcement officials as evidence or under a state forfeiture statute;
- (c) a proposed forfeiture of property during or as a result of criminal proceedings; or
- (d) a proposal to repeal a rule, discontinue a government program, or implement a proposed change that has the effect of reducing regulation of private property.

(2) "Private property" means all real property, including but not limited to water rights.

(3) "State agency" means an officer, board, commission, department, or other entity within the executive branch of state government.

(4) "Taking or damaging" means depriving a property owner of private property in a manner requiring compensation under the 5th and 14th amendments to the constitution of the United States or Article II, section 29, of the Montana constitution.

History: En. Sec. 3, Ch. 462, L. 1995.

Provided by Montana Legislative Services

45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and
- (k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

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82-11-173. Legislative findings -- purpose. (1) The legislature finds that a delay in the development of certain coal bed methane wells may inadvertently result in the loss of coal bed methane resources.

(2) The legislature further finds that because of the nature of this subsurface mineral resource, it is highly susceptible to collateral extraction and use through development efforts on adjacent federal, tribal, or other states' lands to the economic detriment of Montana and its citizens.

(3) The legislature further finds that there is a compelling state interest to authorize the board through this limited program to act in a timely and expeditious manner to permit coal bed methane wells to offset the collateral permitting of wells by other entities on nonjurisdictional lands that are not subject to permitting by the board under [82-11-103](#) in order to:

- (a) protect coal bed methane mineral reserves from collateral extraction by others;
- (b) provide economic benefits to the state;
- (c) protect the private property rights of the owners of the mineral reserves;
- (d) promote the balanced development of state lands and protect the mineral reserve interest held in trust for the benefit of state schools; and
- (e) assist in providing much needed energy resources to the region.

History: En. Sec. 2, Ch. 578, L. 2001.

Provided by Montana Legislative Services

Montana Code Annotated 2003

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Montana Constitution, Article IX

Section 7. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

History: En. Sec. 1, Const. Amend. No. 41, approved Nov. 2, 2004.

Effective Nov. 2, 2004--Sec. 2, Const. Amend. No. 41.

Provided by Montana Legislative Services