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Bill Memo

HB 366 – Revising county interim zoning requirements and procedures

Sponsor: Rep. Matt Rosendale

Hearing

Senate Local Government, Wed., Mar. 9, 3 p.m., Rm 405

Bill Purpose

As written, MCA 76-2-206 allows county commissioners to enact sweeping interim zoning regulations in a myriad of situations, including non-emergency situations, that last for an entire year. It further allows commissioners to extend interim zoning regulations for another year with no notice or protections provided to affected landowners. Therefore, county interim zoning authority can tie up land for as many as two years.

The primary purpose of this proposal is to revise interim zoning requirements and procedures to clarify that interim zoning may only be enacted to respond to an emergency situation that poses a threat to the public health, safety, morals, or general welfare. It removes vague grants of authority to enact zoning for purposes relating to growth policies and “exigent circumstances.” It also modifies the current statute’s requirement that commissioners *intend* to conduct a study regarding the emergency giving rise to the interim zoning regulations by requiring that the county *initiate* a study to determine whether an actual emergency exists.

Following other states’ example, this proposal seeks to reduce the time an interim zoning regulation remains in effect (without an extension) from 1 year to 182 days. The reasoning behind this reduction is that a county should be able to ascertain and respond to an emergency within six months.

This proposal also seeks to provide greater protections to landowners affected by interim zoning regulations by (1) requiring commissioners to verify that an emergency exists prior to extending interim zoning regulations, (2) requiring notice to affected landowners of proposed extensions of interim zoning measures, (3) providing for public hearing and comment regarding the proposed extension of interim zoning regulations, and (4) by giving affected landowners the right to protest the extension of interim zoning regulations. These heightened protections to landowners are reasonable given that an extension of interim zoning regulations lasts for one year, during which time landowners’ ability to use their property for legitimate purposes may be substantially diminished.

Analysis by Subsection:

Subsection 1. Subsection 76-2-206(1) is amended to read:

76-2-206. Interim zoning district or regulation. (1) Subject to subsection (3), the board of county commissioners may establish an interim zoning district or interim regulation as to address an emergency measure in order to promote that poses a threat to the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify ~~and regulate~~ those uses and related matters that ~~constitute~~ must be regulated to mitigate the emergency; and

(b) the county: initiates within 30 working days a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency.

~~–(i) is conducted or in good faith intends to conduct studies within a reasonable time; or~~

~~–(ii) has held or is holding a hearing for the purpose of considering any of the following:~~

(A) a growth policy;
(B) zoning regulations; or
(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

Rationale:

The main thrust of the proposed revisions to subsection 206(1) is to clarify that county commissioners are only authorized to enact interim zoning as a response to an actual emergency. As written, the statute appears to confer upon local government a dual authority for adopting interim zoning regulations which include (1) the authority to address an actual emergency, and (2) the authority to adopt a growth moratorium if it is considering a growth policy, zoning regulations or revisions to a growth policy. We believe that the fundamental intent of the statute was to address a verified emergency, and the statute should be modified to clarify this intent.

As written, this subsection is confusing insofar as it fails to contain a definition of what constitutes an "emergency." Subsection (1) of the statute states that local government may establish an interim zoning district or regulation as an "emergency measure" to "promote" public health, safety and welfare." Establishing an interim district or regulation as an "emergency measure" is different than establishing an interim regulation to address a bona fide emergency. The word "measure" creates confusion as to whether the statute confers the authority to address an actual emergency or some other matter related to zoning.

Furthermore, the word "promote" in subsection (1) implies that local government can proactively enact interim zoning for purposes other than an emergency. The concept of "promoting" the public health, safety and general welfare seems to be tied to subsection (b)(ii) of the statute, which allows local government to approve an interim zoning regulation if it is "(i) conducting or in good faith intends to conduct studies within a reasonable time; or (ii) has held or is holding a hearing for purposes of considering any of the following: (A) a growth policy; (B) zoning regulations; or (C) a revision to a growth policy, to a master plan, as provided for in §76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part." If the purpose of the statute is to address an emergency, then tying it to consideration of a growth policy or general zoning regulations is illogical.

Subsection (1)(b)(i) allows local government to adopt an emergency interim zoning ordinance if it is "conducting or in good faith intends to conduct studies within a reasonable time." This language is also vague and ambiguous and fails to specify the purpose of the studies or the type of studies required. The language should be modified to clarify that the purpose of the studies is to confirm the extent and legitimacy of an emergency, and that the necessity of the interim zoning regulation is confirmed by verifiable information obtained through an appropriate investigation.

Subsection 2. Subsection 76-2-206(2) is amended to read:

(2) A resolution for an interim zoning district or interim regulation must be limited to ~~1-year~~ 182 days from the date it becomes effective. Subject to ~~subsection (3)~~ subsections (4) and (5), the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

Rationale:

A reasonable time limitation on the initial interim zoning district or regulation should be set forth in the statute. In comparison to the laws of other states, Montana's one year interim zoning time limit appears too long. For example, Idaho only allows emergency interim zoning measures to be effective for up to 182 days. Idaho Code §67-6523. During the time the interim zoning measures are in place, landowners may be negatively impacted by having legitimate uses of their property significantly restricted. Further, a county should be able to ascertain and address an emergency within a six month period.

Subsection 3: Subsection 76-2-205(6) is amended to read:

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county.

The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency ~~or exigent circumstance~~ compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation, including how those uses and related matters that constitute the emergency will be classified and regulated;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation.

Rationale:

Subsection 3(a)(ii) creates confusion by introducing the phrase "exigent circumstance" for the first time without defining it. Subsection 1, which authorizes county commissioners to enact interim zoning measures, does not authorize interim zoning to address "exigent circumstances". Further, "exigent circumstance" is a term that can encompass an infinite amount of situations that are not actual emergencies. As discussed above, this broad and vague language strays from the intent of this statute, which is to address an actual emergency.

New Subsection: Subsection 76-2-206(4):

(4) The board of county commissioners shall observe the following procedures in the extension of an interim zoning district or interim regulation:

(a) The study or investigation required under subsection (1) must be completed prior to the hearing on the proposed extension of the interim zoning district or interim regulation;

(b) Notice of a public hearing on the proposed extension of interim zoning district or of the interim regulation must be published for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the current interim zoning district;

(ii) the specific emergency that compelled the establishment of the existing interim zoning district or regulation and the reason for the proposed extension of the current interim zoning district or current interim zoning regulation;

(iii) the time and place of the public hearing;

(iv) that the proposed extension of the interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder; and

(v) that for 30 days after the public hearing, the board of county commissioners will receive written protests to the proposed extension of the interim zoning district or interim regulation from persons owning real property within the boundaries of the district whose names appear on the last-completed assessment roll of the county. The interim zoning district or interim regulation must remain in effect during the 30-day protest period.

(c) At the public hearing, which must be held prior to the expiration of the interim zoning district or interim zoning regulation, the board of county commissioners shall provide the public an opportunity to comment on the proposed extension.

Rationale:

This subsection requires commissioners to complete a study verifying the emergency prior to extending interim zoning measures. Given that the imposition of zoning for one year may substantially impact affected landowners' ability to use their property for legitimate uses, the requirement that the emergency giving rise to the interim zoning is verified is reasonable.

This subsection further requires published notice of the proposed extension of zoning. Because interim zoning measures can be extended for up to a year, notice is as crucial for the extension of interim measures as it is for the initial adoption of interim zoning measures.

New Subsection: Subsection 76-2-206(5):

(5) Upon expiration of the 30-day period provided in subsection (4)(b)(vi), the board of county commissioners may in its discretion adopt a resolution to extend the interim zoning district or interim regulation. However, if real property owners representing 40% of the titled property ownership in the district protest the proposed extension of the interim zoning district or interim regulation, the board of county commissioners may not adopt the extension and may not include the area in an interim zoning district or as part of an interim regulation for a period of 1 year.

Rationale:

The protest period established in this subsection gives affected landowners the right to protest the extension of interim zoning measures. This protest provision is similar to the same protest rights included in many other M.C.A. provisions, in which affected landowners may protest and thereby halt local government actions. Such provisions include 76-2-101(5) (creation or revision of zoning districts), 76-2-205(6) (adoption or amendment of zoning regulations), 7-2-4710 (municipal annexation), 7-12-2112 (creation of rural improvement districts), 7-12-4110 and 4113 (special improvement districts); 7-12-4407 (creation of street maintenance districts); 7-13-109 (storm sewer districts), 7-13-2007 (creation of water supply and sewer districts), 7-33-2143 (division of rural fire districts).

This protest right extends only to the *extension* of interim zoning regulations, and not the initial *enactment* of interim zoning regulations. This protest right reflects long-established Montana legislative policy favoring citizen participation in government, and the need to provide protection to landowners from government action that impacts their ability to use their land for legitimate purposes. This protest right ultimately will have little impact on county commissioners because if local government diligently verifies the emergency, then it is likely that affected landowners will not protest.