

SENATE BILL NO. 379

INTRODUCED BY A. OLSON

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COUNTY ZONING LAWS; REVISING
5 PROCEDURES FOR THE ESTABLISHMENT OR REVISION OF BOUNDARIES FOR A ZONING DISTRICT
6 AND THE ADOPTION OR AMENDMENT OF ZONING REGULATIONS; CLARIFYING ZONING PROTEST
7 REQUIREMENTS; PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY VOTE TO OVERRIDE
8 A SUCCESSFUL PROTEST UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE BOARD OF COUNTY
9 COMMISSIONERS TO DEVELOP FINDINGS OF FACT TO OVERRIDE A ZONING PROTEST; CLARIFYING
10 PROCEDURES FOR THE ADOPTION OF ZONING REGULATIONS AND BOUNDARIES; ~~SUPERSEDING THE~~
11 ~~UNFUNDED MANDATE LAWS~~; AND AMENDING SECTIONS 76-2-101 AND 76-2-205, MCA."

12
13 WHEREAS, exercise of the police power by a governmental entity must be balanced against the
14 legitimate use of private property and other constitutional protections, including Article II, section 29, of the
15 Montana Constitution, which prohibits the taking of private property for a public use without just compensation;
16 and

17 WHEREAS, the government in its exercise of the police power may not disproportionately require some
18 property owners to bear the burdens of advancing the public health, safety, morals, and general welfare when
19 such burdens should be borne by the public as a whole; and

20 WHEREAS, private property rights may be negatively affected by zoning regulations, districts, and
21 amendments that restrict allowable land uses and reduce the value of property.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1, 2, 4 through 9, 11, and 12] is to
26 protect real property owners from unreasonable land use restrictions and reductions in land value due to county
27 zoning by:

- 28 (1) ensuring that owners of real property affected by a proposed zoning action have the right to protest;
29 (2) providing that a board of county commissioners may not proceed with a zoning action if there is a
30 successful protest except under certain circumstances;

1 (3) providing additional procedures for factfinding and public involvement if a board of county
2 commissioners seeks to override a successful protest; and

3 (4) clarifying that owners of real property affected by a zoning action may challenge the zoning action in
4 a court of competent jurisdiction.

5
6 **NEW SECTION. Section 2. Definitions.** For purposes of [sections 1, 2, 4 through 9, 11, and 12], the
7 following definitions apply:

8 (1) (a) "Affected property" means property taxed on an ad valorem basis on the county tax rolls and
9 directly subject to a proposed zoning action.

10 (b) The term does not include adjoining or neighboring property.

11 (2) "Affected property owner" means the owner of affected property, including natural persons,
12 corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity owning
13 land in fee simple, as joint tenants, or as tenants in common.

14 (3) "Protest override procedure" means the procedures described in [sections 6 through 9].

15 (4) "Protesting landowner" means an affected property owner who protests a zoning action.

16 (5) "Successful protest" means a protest by owners of 25% or more of the affected property.

17 (6) "Zoning action" means the establishment or revision of boundaries for a zoning district and any
18 adoption or amendment of zoning regulations.

19
20 **Section 3.** Section 76-2-101, MCA, is amended to read:

21 **"76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of ~~subsection~~
22 ~~(5)~~ [section 5], whenever the public interest or convenience may require and upon petition of 60% of the affected
23 real property owners in the proposed district, the board of county commissioners may create a planning and
24 zoning district and appoint a planning and zoning commission consisting of seven members.

25 (2) A planning and zoning district may not be created in an area that has been zoned by an incorporated
26 city pursuant to 76-2-310 and 76-2-311.

27 (3) For the purposes of this part, the word "district" means any area that consists of not less than 40
28 acres.

29 (4) Except as provided in ~~subsection (5)~~ [section 5], an action challenging the creation of a planning and
30 zoning district must begin within 6 months after the date of the order by the board of county commissioners

1 creating the district.

2 ~~(5) If real property owners representing 50% of the titled property ownership in the district protest the~~
3 ~~establishment of the district within 30 days of its creation, the board of county commissioners may not create the~~
4 ~~district. An area included in a district protested under this subsection may not be included in a zoning district~~
5 ~~petition under this section for a period of 1 year."~~

6
7 **NEW SECTION. Section 4. Procedures -- zoning action.** The board of county commissioners shall
8 observe the following procedures for taking a zoning action:

9 (1) Notice of a public hearing on the proposed zoning action must:

10 (a) state:

11 (i) the boundaries of the proposed district that would be affected by the zoning action;

12 (ii) the general character of the proposed zoning action;

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

14 (iv) that the proposed zoning action is on file for public inspection at the office of the county clerk and
15 recorder;

16 (v) a description of the public health, safety, morals, and general welfare that the board of county
17 commissioners is seeking to protect through the proposed zoning action;

18 (b) be posted not less than 45 days before the public hearing in at least five public places, including but
19 not limited to public buildings and adjacent to public rights-of-way within the proposed district; and

20 (c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

21 (2) At the public hearing, the board of county commissioners shall give the public an opportunity to be
22 heard regarding the proposed zoning action.

23 (3) After the public hearing, the board of county commissioners shall review the proposed zoning action
24 and make any revisions or amendments that it determines to be proper.

25 (4) The board of county commissioners may pass a resolution of intention to take a zoning action.

26 (5) The board of county commissioners shall publish notice of passage of a resolution of intention to take
27 a zoning action once a week for 2 weeks in a newspaper of general circulation within the county. The notice must
28 state:

29 (a) the boundaries of the proposed district;

30 (b) the general character of the proposed zoning action;

1 (c) a description of the public health, safety, morals, and general welfare that the board of county
2 commissioners is seeking to protect; and

3 (d) that for 60 days after the date that notice of the resolution of intention to adopt a proposed zoning
4 action is first published, the board of county commissioners will receive written protests to the zoning action from
5 affected property owners.

6
7 **NEW SECTION. Section 5. Protest.** (1) Within 60 days of the date that notice of passage of the
8 resolution of intention to take a zoning action pursuant to [section 4] is first published, affected property owners
9 may protest the proposed zoning action by delivering written notification to the board of county commissioners.

10 (2) If a successful protest is not achieved, the board of county commissioners may in its discretion
11 proceed with the proposed zoning action within 30 days of the expiration of the protest period.

12
13 **NEW SECTION. Section 6. Override of successful protest.** (1) (a) Following a successful protest,
14 a board of county commissioners may in its discretion either abandon the proposed zoning action or, subject to
15 [sections 6 through 9], override a successful protest and adopt the proposed zoning action by:

- 16 (i) a unanimous vote of the county commissioners whenever a county has three commissioners;
17 (ii) a vote of four elected commissioners whenever a county has five commissioners; or
18 (iii) two-thirds of the elected commissioners whenever a county has more than five commissioners.

19 (b) A commissioner may not abstain from voting unless a proven conflict of interest exists.

20 (2) If the protest override procedure is not successful, the board of county commissioners may not adopt
21 the proposed zoning action and a subsequent proposal for a zoning action may not be proposed for the affected
22 property for a period of 1 year.

23 (3) Prior to holding a vote to override a successful protest, a board of county commissioners must:

24 (a) accept evidence and prepare findings of fact on the potential economic impact of the proposed zoning
25 action on the property values of protesting landowners; and

26 (b) accept evidence and prepare findings of fact on whether no less restrictive means exist to protect
27 the public health, safety, morals, and general welfare of the residents of the county.

28 (4) The board of county commissioners shall complete the findings of fact within 30 days of the public
29 hearing and shall provide written notice to all affected property owners of its findings within 40 days of the public
30 hearing.

1
2 **NEW SECTION. Section 7. Evidence of economic impact.** (1) In accepting evidence of economic
3 impact pursuant to [section 6], the board of county commissioners shall allow any interested person to submit
4 evidence of the potential economic impact of the proposed zoning action on the property value of a protesting
5 landowner. Interested persons may submit any relevant evidence, including but not limited to:

6 (a) evidence regarding the fair market value of property owned by a protesting landowners and any
7 diminution in the fair market value of the property that may result from the proposed zoning action;

8 (b) evidence regarding reduction in types of allowable land use that may occur as a result of the proposed
9 zoning action;

10 (c) evidence regarding whether the proposed zoning action deprives a protesting landowner of
11 economically viable uses of the protesting landowner's property; and

12 (d) evidence regarding whether the expected benefits of the proposed zoning action are proportional to
13 the probable impacts of the proposed zoning action on the property of protesting landowners.

14 (2) The board of county commissioners shall give due weight and consideration to any evidence
15 submitted pursuant to subsection (1).

16 (3) (a) If a protesting landowner submits credible evidence showing that the proposed zoning action will
17 result in a 30% or more diminution in value of the protesting landowner's property, a prima facie negative impact
18 is established.

19 (b) Upon the establishment of a prima facie negative impact, the burden shifts to the board of county
20 commissioners to determine whether credible evidence has been submitted establishing that the expected
21 benefits of the proposed zoning action outweigh the diminution in value of each property owned by the protesting
22 landowner.

23 (4) If the board of county commissioners is unable to determine by credible evidence that the expected
24 benefits of the proposed zoning action outweigh the diminution in value of the property owned by the protesting
25 landowner, the board of county commissioners may not adopt the proposed zoning action.

26
27 **NEW SECTION. Section 8. Evidence of no less restrictive means.** (1) In accepting evidence of
28 whether no less restrictive means exist to protect the public health, safety, morals, and general welfare pursuant
29 to [section 6], the board of county commissioners shall allow any interested person to submit any relevant
30 evidence, including but not limited to:

1 (a) alternatives to the proposed zoning action to further the public health, safety, morals, and general
2 welfare; and

3 (b) modifications to the proposed zoning action that would mitigate adverse economic impacts or mitigate
4 unreasonable limitations on land uses on the property owned by a protesting landowner.

5 (2) The board of county commissioners shall give due weight and consideration to any evidence
6 submitted pursuant to subsection (1).

7 (3) If the board of county commissioners finds that less restrictive means exist to protect the public health,
8 safety, morals, and general welfare, the board may not adopt the proposed zoning action.

9

10 **NEW SECTION. Section 9. Findings -- public notice and comment.** (1) The board of county
11 commissioners shall hold a public hearing to accept public comment regarding the protest, the evidence
12 submitted on the economic impact of the proposed zoning action, and the evidence submitted on whether no less
13 restrictive means than the proposed zoning action exist.

14 (2) Notice of the public hearing required in subsection (1) must include:

15 (a) a summary of the evidence submitted to the board of county commissioners on the economic impact
16 of the proposed zoning action and on whether no less restrictive means than the proposed zoning action exist;

17 (b) the potential impact of the evidence submitted to the board of county commissioners on the property
18 of protesting landowners;

19 (c) the time and place of the public hearing;

20 (d) that the evidence submitted to the board of county commissioners pursuant to [sections 7 and 8] is
21 on file for public inspection at the office of the county clerk and recorder.

22 (3) Notice of the public hearing required in subsection (1) must be:

23 (a) posted not less than 45 days before the public meeting and in at least 5 public places, including but
24 not limited to public buildings and adjacent to public rights-of-way within the proposed district or on the land
25 affected by the proposed zoning action;

26 (b) published once a week for 2 weeks in a newspaper of general circulation within the county; and

27 (c) delivered via first class mail to each affected property owner.

28 (4) The board of county commissioners shall issue written findings of fact upon conclusion of the public
29 hearing pursuant to subsection (1). The written findings of fact must include findings regarding:

30 (a) the estimated percentage, if any, of diminution in value of the property owned by a protesting

- 1 landowner;
- 2 (b) any reduction in types of allowable land use on the property owned by a protesting landowner;
- 3 (c) whether the proposed zoning action deprives a protesting landowner of economically viable uses of
- 4 the affected property;
- 5 (d) whether the expected benefits of the proposed zoning action are proportional to the probable impacts
- 6 of the proposed zoning action;
- 7 (e) whether alternatives to the proposed zoning action exist to protect the public health, safety, morals,
- 8 and general welfare;
- 9 (f) whether modifications to the proposed zoning action exist that would mitigate adverse economic
- 10 impacts or mitigate unreasonable limitations on land uses on property owned by protesting landowners; and
- 11 (g) whether credible evidence exists to dispute the rationale used to support the proposed zoning action
- 12 as a means to protect the public health, safety, morals, and general welfare.
- 13 (5) The written findings of fact provided by the board of county commissioners pursuant to this section
- 14 may be appealed as provided in 76-2-110. An affected real property owner has 30 days from the date the real
- 15 property owner receives notice of the written findings to appeal.

16

17 **Section 10.** Section 76-2-205, MCA, is amended to read:

18 **"76-2-205. Procedure for adoption of regulations and boundaries.** The board of county

19 commissioners shall observe the following procedures for taking a zoning action provided in [section 4] in the

20 establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning

21 regulations:.

- 22 ~~(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning~~
- 23 ~~district must:~~
- 24 ~~—— (a) state:~~
- 25 ~~—— (i) the boundaries of the proposed district;~~
- 26 ~~—— (ii) the general character of the proposed zoning regulations;~~
- 27 ~~—— (iii) the time and place of the public hearing;~~
- 28 ~~—— (iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk~~
- 29 ~~and recorder;~~
- 30 ~~—— (b) be posted not less than 45 days before the public hearing in at least five public places, including but~~

1 not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and
 2 ~~———— (c) be published once a week for 2 weeks in a newspaper of general circulation within the county.~~
 3 ~~———— (2) At the public hearing, the board of county commissioners shall give the public an opportunity to be~~
 4 ~~heard regarding the proposed zoning district and regulations.~~
 5 ~~———— (3) After the public hearing, the board of county commissioners shall review the proposals of the planning~~
 6 ~~board and shall make any revisions or amendments that it determines to be proper.~~
 7 ~~———— (4) The board of county commissioners may pass a resolution of intention to create a zoning district and~~
 8 ~~to adopt zoning regulations for the district.~~
 9 ~~———— (5) The board of county commissioners shall publish notice of passage of the resolution of intention once~~
 10 ~~a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:~~
 11 ~~———— (a) the boundaries of the proposed district;~~
 12 ~~———— (b) the general character of the proposed zoning regulations;~~
 13 ~~———— (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk~~
 14 ~~and recorder;~~
 15 ~~———— (d) that for 30 days after first publication of this notice, the board of county commissioners will receive~~
 16 ~~written protests to the creation of the zoning district or to the zoning regulations from persons owning real property~~
 17 ~~within the district whose names appear on the last completed assessment roll of the county.~~
 18 ~~———— (6) Within 30 days after the expiration of the protest period, the board of county commissioners may in~~
 19 ~~its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district.~~
 20 ~~However, if 40% of the real property owners within the district whose names appear on the last completed~~
 21 ~~assessment roll or if real property owners representing 50% of the titled property ownership whose property is~~
 22 ~~taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter~~
 23 ~~44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county~~
 24 ~~commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district~~
 25 ~~for a period of 1 year."~~

26
 27 **NEW SECTION. Section 11. Protest.** (1) Within 60 days of the date notice of the resolution of intention
 28 to adopt a proposed zoning action is first published, affected property owners may protest the proposed zoning
 29 action by delivering written notification to the board of county commissioners.

30 (2) If a successful protest is not achieved, the board of county commissioners may in its discretion

1 proceed with the proposed zoning action within 30 days of the expiration of the protest period.

2

3 NEW SECTION. Section 12. Override of successful protest. (1) Following a successful protest, a
4 board of county commissioners may in its discretion either abandon the proposed zoning action or, subject to the
5 protest override procedures set forth in [sections 6 through 9], override a successful protest and adopt the
6 proposed zoning action by a vote subject to the provisions of [section 6(1)]. A commissioner may not abstain from
7 voting unless a proven conflict of interest exists.

8 (2) If the protest override procedure is not successful, the board of county commissioners may not adopt
9 the proposed zoning action and a subsequent zoning proposal may not be proposed for the affected property for
10 a period of 1 year.

11 (3) Prior to holding a vote to override a successful protest, a board of county commissioners must comply
12 with the protest override procedures provided in [sections 6 through 9].

13 (4) The written findings of fact provided by the board of county commissioners pursuant to [section 9] may
14 be appealed pursuant to 76-2-226 and 76-2-227. An affected property owner has 30 days from the date the
15 affected property owner receives notice of the written findings to appeal.

16

17 ~~NEW SECTION. Section 13. Unfunded mandate laws superseded.~~ The provisions of [this act]
18 ~~expressly supersede and modify the requirements of 1-2-112 through 1-2-116.~~

19

20 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1, 2, and 4 through 9] are
21 intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2,
22 part 1, apply to [sections 1, 2, and 4 through 9].

23 (2) [Sections 11 and 12] are intended to be codified as an integral part of Title 76, chapter 2, part 2, and
24 the provisions of Title 76, chapter 2, part 2, apply to [sections 11 and 12].

25

- END -