

SENATE BILL NO. 379

INTRODUCED BY A. OLSON

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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; AND PROVIDING~~
12 A CONTINGENT EFFECTIVE DATE."

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

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

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

23 WHEREAS, THE GOVERNMENT SHOULD ESTABLISH THROUGH PUBLIC RECORD WHETHER THERE MAY BE A
24 DIMINUTION IN VALUE OF AFFECTED PROPERTY FROM PROPOSED ZONING REGULATIONS, DISTRICTS, AND AMENDMENTS
25 AND WHETHER THE EXPECTED BENEFITS ARE PROPORTIONAL TO THE PROBABLE IMPACTS; AND

26 WHEREAS, THE GOVERNMENT SHOULD CONSIDER ALTERNATIVES OR MODIFICATIONS WHEN ALTERNATIVES OR
27 MODIFICATIONS WOULD MITIGATE ADVERSE ECONOMIC IMPACTS AND UNREASONABLE LIMITATIONS ON AFFECTED
28 PROPERTY; AND

29 WHEREAS, THE GOVERNMENT SHOULD RELY ON CREDIBLE EVIDENCE ESTABLISHED THROUGH THE PUBLIC
30 RECORD TO SUPPORT THE PROPOSED ZONING REGULATIONS, DISTRICTS, AND AMENDMENTS AS A MEANS TO PROTECT THE

1 PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE.

2

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

4

5 NEW SECTION. Section 1. Purpose. The purpose of [sections 1, 2, AND 4 through 9, ~~11, and 12~~] is
6 to protect real property owners from unreasonable land use restrictions and reductions in land value due to county
7 zoning by:

8 (1) ensuring that owners of real property affected by a proposed zoning action have the right to protest;

9 (2) providing that a board of county commissioners may not proceed with a zoning action if there is a
10 successful protest except under certain circumstances;

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

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

15

16 NEW SECTION. Section 2. Definitions. For purposes of [sections 1, 2, AND 4 through 9, ~~11, and 12~~],
17 the following definitions apply:

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

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

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

24 (3) (A) "FAIR MARKET VALUE" MEANS THE PRICE THAT WOULD BE AGREED TO BY A WILLING AND INFORMED SELLER
25 AND BUYER, TAKING INTO CONSIDERATION THE HIGHEST AND BEST REASONABLY AVAILABLE USE OF THE PROPERTY, THE
26 VALUE OF THAT USE, AND ANY OTHER RELEVANT FACTORS FOR WHICH EVIDENCE IS OFFERED.

27 (B) CURRENT USE MAY NOT BE PRESUMED TO BE THE HIGHEST AND BEST USE.

28 ~~(3)~~(4) "Protest override procedure" means the procedures described in [sections 6 through 9].

29 ~~(4)~~(5) "Protesting landowner" means an affected REAL property owner who protests a zoning action.

30 ~~(5)~~(6) "Successful protest" means a protest by owners of ~~25%~~ 40% or more of the affected REAL property.

1 ~~(6)(7)~~ "Zoning action" means the establishment or revision of boundaries for a zoning district and any
2 adoption or amendment of zoning regulations.

3

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

5 **"76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of ~~subsection~~
6 ~~(5) [section 5]~~, whenever the public ~~interest or convenience~~ HEALTH, SAFETY, MORALS, OR GENERAL WELFARE may
7 require and upon petition of 60% of the affected real property owners in the proposed district, the board of county
8 commissioners may create a planning and zoning district and appoint a planning and zoning commission
9 consisting of seven members.

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

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

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

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

21

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

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

25 (a) state:

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

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

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

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

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

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

5 (c) be published ~~once a week for 2 weeks in a newspaper of general circulation within the county~~ IN
6 ACCORDANCE WITH 7-1-2121.

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

9 (3) After the public hearing, the board of county commissioners shall review the proposed zoning action
10 and make any revisions or amendments that it determines to be proper BASED UPON THE PUBLIC COMMENT AND THE
11 RECORD.

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

13 (5) The board of county commissioners shall publish notice of passage of a resolution of intention to take
14 a zoning action ~~once a week for 2 weeks in a newspaper of general circulation within the county~~ IN ACCORDANCE
15 WITH 7-1-2121. The notice must state:

16 (a) the boundaries of the proposed district;

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

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

20 (d) that for ~~60~~ 45 days after the date that notice of the resolution of intention to adopt a proposed zoning
21 action is first published, the board of county commissioners will receive written protests to the zoning action from
22 affected REAL property owners.

23
24 NEW SECTION. Section 5. Protest. (1) Within ~~60~~ 45 days of the date that notice of passage of the
25 resolution of intention to take a zoning action pursuant to [section 4] is first published, affected REAL property
26 owners may protest the proposed zoning action by delivering written notification to the board of county
27 commissioners.

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

30

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

4 (i) a unanimous AFFIRMATIVE vote of the county commissioners ~~whenever a county has~~ IN COUNTIES WITH
 5 three commissioners;

6 (ii) ~~a~~ AN AFFIRMATIVE vote of AT LEAST four ~~elected~~ COUNTY commissioners ~~whenever a county has~~ IN
 7 COUNTIES WITH five commissioners; or

8 (iii) AN AFFIRMATIVE VOTE OF AT LEAST two-thirds of the ~~elected~~ COUNTY commissioners ~~whenever a county~~
 9 ~~has~~ IN COUNTIES WITH more than five commissioners.

10 (b) A commissioner may not abstain from voting unless a proven conflict of interest exists AS DETERMINED
 11 BY THE COUNTY ATTORNEY.

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

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

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

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

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

23
 24 NEW SECTION. Section 7. Evidence of economic impact. (1) In accepting evidence of economic
 25 impact pursuant to [section 6], the board of county commissioners shall allow any interested person to submit
 26 RELEVANT evidence of the potential economic impact of the proposed zoning action on the ~~property~~ FAIR MARKET
 27 value of ~~a~~ THE PROPERTY OF protesting ~~landowner~~ LANDOWNERS. Interested persons may submit any relevant
 28 evidence, including but not limited to:

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

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

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

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

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

9 (3) (a) If a THE protesting landowner ~~submits~~ LANDOWNERS SUBMIT credible evidence showing that the
10 proposed zoning action will result in a 30% or more diminution in THE AGGREGATE value of ALL OF the protesting
11 landowner's LANDOWNERS' AFFECTED REAL property, a prima facie negative impact is established.

12 (b) Upon the establishment of a prima facie negative impact, the burden shifts to the board of county
13 commissioners to determine whether credible evidence has been submitted establishing that the expected
14 benefits of the proposed zoning action outweigh the diminution in THE AGGREGATE value of each ALL OF THE
15 PROTESTING LANDOWNERS' AFFECTED REAL property owned by the protesting landowner.

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

19
20 NEW SECTION. Section 8. Evidence of no less restrictive means. (1) In accepting evidence of
21 whether no less restrictive means exist to protect the public health, safety, morals, and general welfare pursuant
22 to [section 6], the board of county commissioners shall allow any interested person to submit any relevant
23 evidence, including but not limited to:

24 ~~— (a) alternatives to the proposed zoning action to further the public health, safety, morals, and general~~
25 ~~welfare; and~~

26 ~~— (b) modifications to the proposed zoning action that would mitigate adverse economic impacts or mitigate~~
27 ~~unreasonable limitations on land uses on the property owned by a protesting landowner REGARDING ALTERNATIVES~~
28 TO THE PROPOSED ZONING ACTION OR MITIGATING MODIFICATIONS TO THE PROPOSED ZONING ACTION.

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

1 (3) If the board of county commissioners finds that ~~less restrictive means exist~~ ALTERNATIVES OR
 2 MITIGATING MODIFICATIONS MAY BE IMPLEMENTED to protect the public health, safety, morals, and general welfare,
 3 the board ~~may not adopt~~ SHALL MODIFY the proposed zoning action TO INCORPORATE THE ALTERNATIVES OR
 4 MITIGATING MODIFICATIONS.

5
 6 **NEW SECTION. Section 9. Findings -- public notice and comment.** (1) The board of county
 7 commissioners shall hold a public hearing to accept public comment regarding the protest, the evidence
 8 submitted on the economic impact of the proposed zoning action, and the evidence submitted on whether no less
 9 restrictive means than the proposed zoning action exist.

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

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

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

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

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

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

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

22 (b) published ~~once a week for 2 weeks in a newspaper of general circulation within the county~~ IN
 23 ACCORDANCE WITH 7-1-2121; and

24 (c) ~~delivered via first class mail~~ MAILED PURSUANT TO 7-1-2122 to each OWNER OF affected REAL property
 25 owner.

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

28 ~~—— (a) the estimated percentage, if any, of diminution in value of the property owned by a protesting~~
 29 ~~landowner;~~

30 ~~—— (b) any reduction in types of allowable land use on the property owned by a protesting landowner;~~

1 ~~_____ (c) whether the proposed zoning action deprives a protesting landowner of economically viable uses of~~
 2 ~~the affected property;~~

3 ~~_____ (d) whether the expected benefits of the proposed zoning action are proportional to the probable impacts~~
 4 ~~of the proposed zoning action;~~

5 ~~_____ (e) whether alternatives to the proposed zoning action exist to protect the public health, safety, morals,~~
 6 ~~and general welfare;~~

7 ~~_____ (f) whether modifications to the proposed zoning action exist that would mitigate adverse economic~~
 8 ~~impacts or mitigate unreasonable limitations on land uses on property owned by protesting landowners; and~~

9 ~~_____ (g) whether credible evidence exists to dispute the rationale used to support the proposed zoning action~~
 10 ~~as a means to protect the public health, safety, morals, and general welfare.~~

11 (5) The written findings of fact provided by the board of county commissioners pursuant to this section
 12 may be appealed as provided in 76-2-110 OR IN 76-2-227. An affected real property owner has 30 days from the
 13 date the ~~real property~~ owner receives notice of the written findings MAILED PURSUANT TO 7-1-2122 to appeal.

14
 15 **Section 10.** Section 76-2-205, MCA, is amended to read:

16 **"76-2-205. Procedure for adoption of regulations and boundaries.** The board of county
 17 commissioners shall observe the ~~following~~ procedures for taking a zoning action provided in [section 4] in the
 18 establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning
 19 regulations:

20 (1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning
 21 district must:

22 ~~_____ (a) state:~~

23 ~~_____ (i) the boundaries of the proposed district;~~

24 ~~_____ (ii) the general character of the proposed zoning regulations;~~

25 ~~_____ (iii) the time and place of the public hearing;~~

26 ~~_____ (iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk~~
 27 ~~and recorder;~~

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

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

1 ~~————(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be~~
 2 ~~heard regarding the proposed zoning district and regulations.~~

3 ~~————(3) After the public hearing, the board of county commissioners shall review the proposals of the planning~~
 4 ~~board and shall make any revisions or amendments that it determines to be proper.~~

5 ~~————(4) The board of county commissioners may pass a resolution of intention to create a zoning district and~~
 6 ~~to adopt zoning regulations for the district.~~

7 ~~————(5) The board of county commissioners shall publish notice of passage of the resolution of intention once~~
 8 ~~a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:~~

9 ~~————(a) the boundaries of the proposed district;~~

10 ~~————(b) the general character of the proposed zoning regulations;~~

11 ~~————(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk~~
 12 ~~and recorder;~~

13 ~~————(d) that for 30 days after first publication of this notice, the board of county commissioners will receive~~
 14 ~~written protests to the creation of the zoning district or to the zoning regulations from persons owning real property~~
 15 ~~within the district whose names appear on the last completed assessment roll of the county.~~

16 ~~————(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in~~
 17 ~~its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district.~~
 18 ~~However, if 40% of the real property owners within the district whose names appear on the last completed~~
 19 ~~assessment roll or if real property owners representing 50% of the titled property ownership whose property is~~
 20 ~~taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter~~
 21 ~~44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county~~
 22 ~~commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district~~
 23 ~~for a period of 1 year."~~

24
 25 ~~————NEW SECTION. Section 11. Protest. (1) Within 60 days of the date notice of the resolution of intention~~
 26 ~~to adopt a proposed zoning action is first published, affected property owners may protest the proposed zoning~~
 27 ~~action by delivering written notification to the board of county commissioners.~~

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

30

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

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

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

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

14
 15 ~~NEW SECTION. Section 13. Unfunded mandate laws superseded.~~ The provisions of [this act]
 16 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

17
 18 ~~NEW SECTION. Section 13. Codification instruction.~~ (1) [Sections 1, 2, and 4 through 9] are
 19 intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2,
 20 part 1, apply to [sections 1, 2, and 4 through 9].

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

23
 24 NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION. [SECTIONS 1, 2, AND 4 THROUGH 9] ARE INTENDED
 25 TO BE CODIFIED AS AN INTEGRAL PART OF:

26 (1) TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTIONS
 27 1, 2, AND 4 THROUGH 9]; AND

28 (2) TITLE 76, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 2, APPLY TO [SECTIONS
 29 1, 2, AND 4 THROUGH 9].

30

