



AN ACT GENERALLY REVISING COUNTY ZONING LAWS; REVISING PROCEDURES FOR THE ESTABLISHMENT OR REVISION OF BOUNDARIES FOR A ZONING DISTRICT AND THE ADOPTION OR AMENDMENT OF ZONING REGULATIONS; CLARIFYING ZONING PROTEST REQUIREMENTS; PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY VOTE TO OVERRIDE A SUCCESSFUL PROTEST UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO DEVELOP FINDINGS OF FACT TO OVERRIDE A ZONING PROTEST; CLARIFYING PROCEDURES FOR THE ADOPTION OF ZONING REGULATIONS AND BOUNDARIES; AMENDING SECTIONS 76-2-101 AND 76-2-205, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

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

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

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

WHEREAS, the government should establish through public record whether there may be a diminution in value of affected property from proposed zoning regulations, districts, and amendments and whether the expected benefits are proportional to the probable impacts; and

WHEREAS, the government should consider alternatives or modifications when alternatives or modifications would mitigate adverse economic impacts and unreasonable limitations on affected property; and

WHEREAS, the government should rely on credible evidence established through the public record to support the proposed zoning regulations, districts, and amendments as a means to protect the public health, safety, morals, and general welfare.

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

Section 1. Purpose. The purpose of [sections 1, 2, and 4 through 9] is to protect real property owners from unreasonable land use restrictions and reductions in land value due to county zoning by:

- (1) ensuring that owners of real property affected by a proposed zoning action have the right to protest;
- (2) providing that a board of county commissioners may not proceed with a zoning action if there is a successful protest except under certain circumstances;
- (3) providing additional procedures for factfinding and public involvement if a board of county commissioners seeks to override a successful protest; and
- (4) clarifying that owners of real property affected by a zoning action may challenge the zoning action in a court of competent jurisdiction.

Section 2. Definitions. For purposes of [sections 1, 2, and 4 through 9], the following definitions apply:

- (1) (a) "Affected real property" means property taxed on an ad valorem basis on the county tax rolls and directly subject to a proposed zoning action.
 - (b) The term does not include adjoining or neighboring property.
- (2) "Affected real property owner" means the owner of affected real property, including natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity owning land in fee simple, as joint tenants, or as tenants in common.
 - (3) (a) "Fair market value" means the price that would be agreed to by a willing and informed seller and buyer, taking into consideration the highest and best reasonably available use of the property, the value of that use, and any other relevant factors for which evidence is offered.
 - (b) Current use may not be presumed to be the highest and best use.
 - (4) "Protest override procedure" means the procedures described in [sections 6 through 9].
 - (5) "Protesting landowner" means an affected real property owner who protests a zoning action.
 - (6) "Successful protest" means a protest by owners of 40% or more of the affected real property.
 - (7) "Zoning action" means the establishment or revision of boundaries for a zoning district and any adoption or amendment of zoning regulations.

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

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

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

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

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

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

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

- (1) Notice of a public hearing on the proposed zoning action must:
 - (a) state:
 - (i) the boundaries of the proposed district that would be affected by the zoning action;
 - (ii) the general character of the proposed zoning action;
 - (iii) the time and place of the public hearing;
 - (iv) that the proposed zoning action is on file for public inspection at the office of the county clerk and recorder;
 - (v) a description of the public health, safety, morals, and general welfare that the board of county

commissioners is seeking to protect through the proposed zoning action;

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

(c) be published in accordance with 7-1-2121.

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

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

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

(5) The board of county commissioners shall publish notice of passage of a resolution of intention to take a zoning action in accordance with 7-1-2121. The notice must state:

(a) the boundaries of the proposed district;

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

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

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

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

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

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

(i) a unanimous affirmative vote of the county commissioners in counties with three commissioners;
(ii) an affirmative vote of at least four county commissioners in counties with five commissioners; or
(iii) an affirmative vote of at least two-thirds of the county commissioners in counties with more than five commissioners.

(b) A commissioner may not abstain from voting unless a proven conflict of interest exists as determined by the county attorney.

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

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

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

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

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

Section 7. Evidence of economic impact. (1) In accepting evidence of economic impact pursuant to [section 6], the board of county commissioners shall allow any interested person to submit relevant evidence of the potential economic impact of the proposed zoning action on the fair market value of the property of protesting landowners. Interested persons may submit any relevant evidence, including but not limited to:

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

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

(c) evidence regarding whether the proposed zoning action deprives protesting landowners of economically viable uses of the protesting landowners' property; and

(d) evidence regarding whether the expected benefits of the proposed zoning action are proportional to

the probable impacts of the proposed zoning action on the property of protesting landowners.

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

(3) (a) If the protesting landowners submit credible evidence showing that the proposed zoning action will result in a 30% or more diminution in the aggregate value of all of the protesting landowners' affected real property, a prima facie negative impact is established.

(b) Upon the establishment of a prima facie negative impact, the burden shifts to the board of county commissioners to determine whether credible evidence has been submitted establishing that the expected benefits of the proposed zoning action outweigh the diminution in the aggregate value of all of the protesting landowners' affected real property.

Section 8. Evidence of no less restrictive means. (1) In accepting evidence of whether no less restrictive means exist to protect the public health, safety, morals, and general welfare pursuant to [section 6], the board of county commissioners shall allow any interested person to submit any relevant evidence regarding alternatives to the proposed zoning action or mitigating modifications to the proposed zoning action.

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

(3) If the board of county commissioners finds that alternatives or mitigating modifications may be implemented to protect the public health, safety, morals, and general welfare, the board shall modify the proposed zoning action to incorporate the alternatives or mitigating modifications.

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

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

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

(b) the potential impact of the evidence submitted to the board of county commissioners on the property

of protesting landowners;

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

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

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

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

(b) published in accordance with 7-1-2121; and

(c) mailed pursuant to 7-1-2122 to each owner of affected real property.

(4) The board of county commissioners shall issue written findings of fact upon conclusion of the public hearing pursuant to subsection (1).

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

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

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

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

~~_____ (a) state:~~

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

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

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

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

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

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

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

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

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

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

~~_____ (a) the boundaries of the proposed district;~~

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

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

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

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

Section 11. Codification instruction. [Sections 1, 2, and 4 through 9] are intended to be codified as an integral part of:

(1) Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [sections 1, 2, and 4 through 9]; and

(2) Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [sections 1, 2, and 4 through 9].

Section 12. Contingent effective date. [This act] becomes effective on the date that the clerk of the Montana supreme court notifies the code commissioner that the Montana supreme court has declared the protest provisions of 76-2-101 or 76-2-205 to be unconstitutional.

- END -

I hereby certify that the within bill,
SB 0379, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 379

INTRODUCED BY A. OLSON

AN ACT GENERALLY REVISING COUNTY ZONING LAWS; REVISING PROCEDURES FOR THE ESTABLISHMENT OR REVISION OF BOUNDARIES FOR A ZONING DISTRICT AND THE ADOPTION OR AMENDMENT OF ZONING REGULATIONS; CLARIFYING ZONING PROTEST REQUIREMENTS; PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY VOTE TO OVERRIDE A SUCCESSFUL PROTEST UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO DEVELOP FINDINGS OF FACT TO OVERRIDE A ZONING PROTEST; CLARIFYING PROCEDURES FOR THE ADOPTION OF ZONING REGULATIONS AND BOUNDARIES; AMENDING SECTIONS 76-2-101 AND 76-2-205, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.