

Legislative Committee
2013 Legislative Session

Summary comments regarding: SB 105 "AN ACT PROHIBITING THE ESTABLISHMENT OF AN INTERIM ZONING DISTRICT OR INTERIM REGULATION TO PREVENT A PROPOSED USE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING ESTABLISHMENT OF AN INTERIM ZONING DISTRICT OR INTERIM REGULATION TO PREVENT AGRICULTURAL ACTIVITIES; AND AMENDING SECTION 76-2-206, MCA."

Senate Local Government Committee; January 30, 2013

Section 76-2-201, MCA gives counties the ability to adopt zoning for "...the purpose of promoting the public health, safety, morals, and general welfare..."

SB 105 is requesting to amend 76-2-206, MCA which deals with interim zoning that a county is allowed to put in place if it finds that there is an emergency, as well as meeting other criteria.

SB 105 would exclude a wide range of uses from any regulation adopted under interim zoning. These excluded would include:

- Any use subject to state regulation and approval under Title 75 Environmental Protection. This includes: air quality, water quality, waste and litter control, underground storage tanks, major facilities and public water supplies, among others after the state agency RECEIVES an application, which does not even need to be complete. This bill would exclude from interim zoning uses such as: power generation facilities, refineries, high voltage transmission power lines, pipelines, gas stations (underground tanks), motor vehicle recycling, tire disposal sites, hazardous waste facilities, infectious waste transport, treatment or storage facility, billboards (outdoor advertising), junkyards, and many more uses that are too numerous to enumerate.
- Any use subject to Title 76, Chapter 4 which deals with Sanitation in Subdivisions after the state agency RECEIVES an application. The state review pertains to well and septic location, etc. This section would seem to be an end-around zoning, because if the use, whatever it is, were a part of a sanitation application received by DEQ, it would be exempt from interim zoning.
- Any use subject to state regulation under Title 82 Minerals, Oil and Gas after the state agency RECEIVES an application. This would include such uses as oil and gas exploration and gravel mining.
- New Section 76-2-206(4)(b) requires that the uses listed above that are exempt from interim zoning must be "consistent" with zoning regulations adopted under MCA 76-2-101, et seq or 76-2-205. Being "consistent" is an ambiguous term in zoning, where uses are allowed outright, with conditional use or special review approval by the County Commission or not allowed at all. It is also not entirely clear why 76-2-101, MCA is referenced in this bill that is not otherwise changing any provision in that Part.

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- Uses under 76-2-901, MCA, et seq which is essentially a Right to Farm section. 76-2-901(b) already states: *"It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances."* Additionally 76-2-903, MCA states *"A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation."* Therefore, the language in proposed in new Section 5 seems unwarranted as these uses already enjoy special protection under statute.

MAP is opposed to this legislation because:

- The legislation is overly broad in the uses that are excluded from interim zoning. Other than a case involving a gravel mine, MAP is not aware of any of the other uses being subject to unnecessary delay through the implementation of interim zoning. If you were going to have a refinery, landfill or junkyard sited next door to your property, would you not want the County to have the opportunity to adopt interim zoning or at least study the adequacy of the current zoning regulations? Many counties have small planning staffs and it can be difficult to keep the regulations current with the ever-changing land uses that can be proposed. Interim zoning gives a County Commission the opportunity to call a "time out" if they feel it is necessary to protect the public health, safety and welfare.
- The "consistent" terminology in new Section 76-2-206(4)(b) is too ambiguous, as noted above.
- Section 76-2-901, MCA, et seq already provides protection for agricultural activities from zoning and nuisance regulation. There does not appear to be a need for this addition to statute.