

MONTANA ASSOCIATION OF PLANNERS
Legislative Committee
2013 Legislative Session

Summary comments regarding: SB 284, A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROPERTY FAIRNESS ACT; DEFINING TERMS; REQUIRING A GOVERNMENTAL ENTITY TO COMPENSATE A PROPERTY OWNER IF THE GOVERNMENTAL ENTITY'S ACTION RESULTS IN TAKING OR DAMAGING THE PROPERTY BY DIMINISHING THE PROPERTY'S FAIR MARKET VALUE; PROVIDING EXEMPTIONS; WAIVING GOVERNMENTAL IMMUNITY FROM SUIT FOR TAKING OR DAMAGING PROPERTY; PROVIDING A STATUTE OF LIMITATIONS; PROVIDING NOTICE, PUBLIC HEARING, AND FINAL DETERMINATION PROCEDURES; PROVIDING FOR JUDICIAL REVIEW, JUDGMENT PROCEDURES, ATTORNEY FEES, AND FEE AND COST PROCEDURES AND REQUIREMENTS; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

Senate Local Government Committee; February 20, 2013

SB 284 creates a process where a property owner may file a claim with the State of Montana or any of its political subdivisions when a property owner alleges that the action of the government entity resulted in a taking or diminution of at least 10% of the fair market value of the property. **MAP is opposed to this legislation.**

MAP's arguments *against* this legislation:

- In an era of lean government, this bill will drastically increase the administrative and legal workload of any government entity that administers land-use regulations. The endless lawsuits that arise from SB 284 will also strain an already taxed judicial system. Is the legislature going to provide additional funding to government entities commensurate with this workload, or provide any funding necessary to pay any claims that result from legitimate government actions? Probably not. **The cost to government entities (i.e. ultimately the taxpayers) of implementing this bill will be astounding!**
- As written, even if a court of competent jurisdiction determines that the action of a government entity did not result in a compensable claim, the government entity (i.e. ultimately the taxpayers) is prohibited by SB 284 from recouping any of the costs associated with defending itself – on the other hand, landowners who prevail in court against a government entity may be awarded costs, expenses, and reasonable attorney fees. This requirement is inequitable and will result in numerous frivolous claims filed under SB 284. **Montana taxpayers can't afford SB 284!**
- This legislation is a copycat of Oregon's Measure 37, which was passed by Oregon voters in 2004. SB 284, like Measure 37, requires a government entity (i.e. ultimately the taxpayers) to either compensate landowners for complying with lawfully adopted regulations or waive those regulations in instances where the action of government the government entity diminishes the value of the landowner's property. Oregon voters approved Measure 37, but implementation was found to be so problematic and unworkable that just a few year later in 2007, 61% of Oregon voters passed Measure 49, significantly lessening the reach of Measure 37.

In 2006 voters in six western states considered ballot measures that copied Oregon's Measure 37. Five of those six measures failed. That same year the petitions that placed Montana's I-154 on the ballot were rejected by a district court judge. On appeal, the Montana Supreme Court unanimously found that the district court judge "did not err when [he] invalidated the signatures of proponents' out-of-state signature-gatherers that were obtained in a manner that did not comply with Montana

statutes and were tainted by or associated with deceptive practices and misrepresentation.” **MAP urges legislators to do some research and learn from Oregon’s mistakes before subjecting Montana taxpayers to the same financial burden.**

- Government entities adopt land use regulations through an open process that allows for ample public participation. If a party is aggrieved by a government entity’s decision to adopt a regulation, that party may challenge the regulation or process used to adopt it in court. Similarly, if a party believes that a government entity acted inappropriately in reaching a decision on their application, that party may challenge that decision in court. Under existing Montana law, property owners can already challenge land use regulations and decisions made when implementing those regulations. Similarly, Montana law (Title 70, Chapter 30) adequately provides for compensation of landowners when a government entity “takes” property. **SB 284 is unnecessary!**
- Many land use regulations provide opportunities for landowners to seek administrative relief (e.g. non-conforming use determinations, variances, appeals, etc.) from regulatory requirements, but require a certain process be followed in order for that relief to be granted. This provides due process and protects the public’s right of participation guaranteed under Article II of the Montana Constitution. SB 284 jeopardizes due process and the public’s right of participation by allowing local governments to grant administrative relief (or completely waive regulatory requirements) without following the procedural requirements of the subject land-use regulation. **SB 284 is unconstitutional and removes the public from important land-use decisions.**
- Article IX of the Montana Constitution requires the State to maintain a clean and healthful environment for present and future generations. To implement this requirement the Constitution says the legislature is to provide for enforcement and remedies (i.e. regulations). SB 284 requires government entities to choose between paying landowners to comply with lawfully adopted land use regulations or waiving those regulations entirely. **SB 284 forces the State and its political subdivisions to choose between upholding their constitutional obligation and remaining financially solvent.**
- **Example of SB 284 Claim:** Virtually any action taken by a government entity to uphold a lawfully adopted “Part 2” or “Part 3” zoning regulation could result in a claim filed pursuant to SB 284. For example, take a government entity that established a 2-story height limitation on new structures in a certain area of town via adoption of a zoning regulation 20 years ago. An individual acquired a vacant piece of property last year in this same part of town intending to build a 5-story apartment building. He applies for a building permit and is denied by the government entity due to the conflict between his proposed structure and the height-limitations of the adopted zoning regulation. The property owner purchased the property 19-years after the height limitations were codified, and yet according to SB 284 he can file a claim against the government entity. The government entity can either pay him to comply with the regulation that was already in effect when he bought the property, or can waive the regulation. Equally as troubling is that the claimant doesn’t need to exhaust all administrative remedies (i.e. seek a variance, appeal the decision, etc.) prior to filing a SB 284 claim. **Approval of SB 284 would result in the stagnation of regulations and a paralyzing of the governing bodies for fear of fiscal ruin.**
- **SB 284 will mean endless lawsuits, higher taxes, reduced services, lack of predictability in land use matters, and erosion of the democratic process. SB 284 will have a profound impact on the character of our communities and the quality of life of Montanans. MAP respectfully urges you to vote in opposition to SB 284!**