

HOUSE BILL NO. 712

INTRODUCED BY SINRUD, BARKUS, FORRESTER, HAINES, LAIBLE, PATTISON

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A VESTED PROPERTY RIGHT FOR PROPERTY UPON WHICH A SITE-SPECIFIC DEVELOPMENT PLAN HAS BEEN SUBMITTED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Legislative findings and purpose. (1) The legislature finds that:

(a) it is necessary and desirable as a matter of public policy to:

(i) provide for the establishment of a vested property right in order to ensure reasonable certainty, stability, and fairness in the land use planning and regulatory process;

(ii) stimulate economic growth;

(iii) secure the reasonable investment-backed expectations of a landowner; and

(iv) foster cooperation between the public and private sectors in land use planning and regulation;

(b) the ability of a landowner to obtain a vested property right upon submitting an application for local government approval of a site-specific development plan will preserve the prerogatives and authority of a local government with respect to land use matters;

(c) the establishment of a vested property right will promote the goals specified in this section in a manner consistent with Article II, sections 3, 17, and 29, of the Montana constitution that guarantees to each person the inalienable right to acquire, possess, and protect property and is a matter of statewide concern.

(2) It is the purpose of [sections 1 through 5] to:

(a) provide fair standards to protect the vested rights of a person who submits a development application to a local government; and

(b) require a local government to comply with these standards.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an heir, a successor, or an assignee of the ownership interest.

(2) "Local government" means the governing body of a municipality or a consolidated city-county that exercises planning or zoning authority. The term includes a board, commission, or agency of the local government that has approval authority of a site-specific development plan.

(3) "Property" means real property subject to land use regulation by a local government.

(4) (a) "Site-specific development plan" means a plan that has been submitted to a local government by a landowner or the landowner's representative and that describes, with reasonable certainty, the type, density, and intensity of use for a specific property. The plan may be in the form of but is not limited to an application or plan for:

(i) a planned unit development;

(ii) a site plan;

(iii) a conditional or special use approval; or

(iv) any other land use approval designation used by a local government.

(b) The term does not include a request for a variance.

(5) "Vested property right" means the right to undertake and complete the development and use of property under the terms and conditions of a site-specific development plan.

NEW SECTION. Section 3. Establishment of vested property right. (1) With respect to any property, a vested property right is established upon the submission of a completed application for approval or conditional approval of a site-specific development plan to the local government in whose jurisdiction the property is located. The vested property right shall attach to and run with the property and shall confer upon the landowner the right to undertake and complete the development and use of the property at the density or intensity applied for under the terms and conditions of the local government regulations in existence on the date of the submission of the site-specific development plan to the local government.

(2) (a) The local government shall provide the applicant with a written receipt showing the date and time that the site-specific development plan was first submitted to the local government. If a site-specific development plan is incomplete, the local government shall notify the applicant in writing as to what information is missing and required by a local regulation in existence at the time of the application. The notice must be sent within 30 days of receipt of the site-specific development plan, and the applicant must be allowed to submit the missing information.

(b) The site-specific development plan is considered complete for the purpose of subsection (1) upon receipt by the local government of the missing information. If the applicant refuses to submit the missing

information, the site-specific development plan is considered submitted for the purpose of subsection (1) on the day after the local government first received the site-specific development plan.

(3) The review and approval, approval with conditions, or denial of the site-specific development plan must be based solely upon the growth policy, ordinances, and regulations in effect at the time the site-specific development plan was first submitted to the local government.

NEW SECTION. Section 4. Duration of the vested property right. (1) A property right that has been vested, as provided in [sections 1 through 5], remains vested for a minimum of 2 years. The local government may extend the vesting period based upon the size, complexity, or other factors affecting development of the property or the site-specific development plan. The vesting period may not be extended by any amendments to a site-specific development plan unless expressly authorized by the local government.

(2) Following approval or conditional approval of a site-specific development plan, this section may not exempt a plan from subsequent reviews and approvals by the local government to ensure compliance with the terms and conditions of the original approval, provided that the subsequent reviews and approvals are consistent with the original approval.

NEW SECTION. Section 5. Regulation prohibited -- exceptions. (1) A vested property right once established precludes any zoning or land use action by a local government that would alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the site-specific development plan except:

(A) FOR THE IMPOSITION OF CONDITIONS OR RESTRICTIONS UNDER THE LOCAL GOVERNMENT REGULATIONS IN EFFECT AT THE TIME OF THE ESTABLISHMENT OF THE VESTED PROPERTY RIGHT;

~~(a)~~(B) with the consent of the affected landowner;

~~(b)~~(C) upon the discovery of natural or human-caused hazards on or in the immediate vicinity of the property that could not have reasonably been discovered at the time the site-specific development plan was submitted and that, if uncorrected, would pose a serious threat to public health and safety; or

~~(e)~~(D) to the extent that the affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner, including but not limited to all fees paid in consideration of financing and all architectural, planning, marketing, legal, and other consultants' fees incurred after approval by the local government together with interest at the legal rate until paid.

(2) The establishment of a vested property right may not preclude the application of ordinances or

regulations that are general in nature and are applicable to all property subject to regulation by a local government, including but not limited to building, fire, plumbing, electrical, and mechanical codes.

(3) [Sections 1 through 5] may not preclude a judicial determination, based on common law principles, that a vested property right exists in a particular case or that a compensable taking has occurred.

NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 5].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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