

SENATE BILL NO. 326
INTRODUCED BY MCGEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO GROWTH POLICIES AND PLANNING BOARDS; REVISING THE DEFINITION OF "GROWTH POLICY"; ELIMINATING THE DEFINITION OF A TERM THAT IS NOT USED IN THE GROWTH POLICY LAWS; REQUIRING THE GOVERNING BODY TO ASSIGN STAFF TO THE PLANNING BOARD AND ELIMINATING THE AUTHORITY OF THE PLANNING BOARD TO APPOINT STAFF; CLARIFYING THAT PREPARATION AND ADOPTION OF A GROWTH POLICY IS OPTIONAL; CHANGING THE LAW GOVERNING THE CONTENTS OF A GROWTH POLICY TO AUTHORIZE RATHER THAN REQUIRE ELEMENTS OF A GROWTH POLICY; PROVIDING THAT A GROWTH POLICY MAY COVER PART OF A JURISDICTIONAL AREA; REVISING THE PROCEDURES FOR ADOPTION, REVISION, AND REPEAL OF A GROWTH POLICY; ~~REQUIRING THAT THE QUESTION OF WHETHER OR NOT TO ADOPT OR REVISE A GROWTH POLICY BE SUBMITTED TO A VOTE~~; CLARIFYING THAT A GROWTH POLICY IS NOT A REGULATION; CONFORMING PROVISIONS IN THE ZONING AND SUBDIVISION LAWS TO THESE REVISIONS IN THE GROWTH POLICY LAWS; AMENDING SECTIONS 76-1-103, 76-1-106, 76-1-306, 76-1-601, 76-1-603, 76-1-604, 76-1-605, 76-2-201, 76-2-310, 76-3-210, 76-3-505, 76-3-509, 76-4-122, AND 76-4-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "City" includes incorporated cities and towns.
- (2) "City council" means the chief legislative body of a city or incorporated town.
- (3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.
- (4) "Growth policy" means ~~and is synonymous with,~~ a comprehensive development plan, master plan, or comprehensive plan that meets the requirements of 76-1-601 that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.
- (5) "Mayor" means mayor of a city.
- (6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional

area that addresses one or more of the elements of the growth policy in more detail.

(7) "Person" means any individual, firm, or corporation.

(8) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

(9) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(10) "Public place" means any tract owned by the state or its subdivisions.

(11) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(12) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.~~

~~(13)~~(12) "Utility" means any facility used in rendering service that the public has a right to demand."

Section 2. Section 76-1-106, MCA, is amended to read:

"76-1-106. Role of the planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, if requested by the governing body, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may ~~also~~ propose policies for:

- (a) subdivision plats;
- (b) the development of public ways, public places, public structures, and public and private utilities;
- (c) the issuance of improvement location permits on platted and unplatted lands; or
- (d) the laying out and development of public ways and services to platted and unplatted lands."

Section 3. Section 76-1-306, MCA, is amended to read:

"76-1-306. ~~Board secretary and employees~~ Staff -- service contracts. ~~(1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.~~

~~———~~(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and The governing body shall assign staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to employees assigned staff the authority to perform ministerial acts in all cases

except ~~where~~ when final action of the planning board is necessary.

(3) The ~~board~~ governing body may make contracts for special or temporary services and any professional services."

Section 4. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy -- contents. (1) ~~The planning board shall prepare and propose a growth policy for the entire~~ may cover all or part of the jurisdictional area. ~~The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.~~

(2) A growth policy ~~must~~ may include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (2)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

(3) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(4) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 5. Section 76-1-603, MCA, is amended to read:

"76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

- (1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;
- (2) recommend that a growth policy not be adopted; or
- (3) recommend that the governing body take some other action related to preparation of a growth policy."

Section 6. Section 76-1-604, MCA, is amended to read:

"76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing ~~bodies shall~~ body shall adopt a resolution of intention to adopt, ~~revise~~ adopt with revisions, or reject the proposed growth policy ~~or any of its parts~~.

(2) If the governing ~~bodies adopt~~ body adopts a resolution of intention to adopt ~~the proposed~~ a growth policy ~~or any of its parts, they may, in their discretion, the governing body shall~~ MAY submit to the qualified electors of the ~~jurisdictional~~ area covered by the ~~proposed~~ growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. ~~Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election:~~

(3) ~~The governing bodies may adopt, revise, or repeal a growth policy under this section. A governing body may:~~

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) ~~The qualified electors of the jurisdictional area included within the growth policy~~ area covered by the growth policy may by initiative or referendum, ~~as provided in 7-5-131 through 7-5-137,~~ adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section."

Section 7. Section 76-1-605, MCA, is amended to read:

"76-1-605. Use of adopted growth policy. ~~(1) After~~ Subject to subsection (2), after adoption of the ~~a~~ growth policy, the ~~city council, board of county commissioners, or other~~ governing body within the ~~territorial jurisdiction of the board~~ area covered by the growth policy must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

~~(1)(a)~~ (a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

~~(2)(b)~~ (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

~~(3)(c)~~ (c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy does not:

(i) require any action by a governing body that is not otherwise required by law; or

(ii) confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter."

Section 8. Section 76-2-201, MCA, is amended to read:

"76-2-201. County zoning authorized. For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy ~~for the entire jurisdictional area~~ pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part."

Section 9. Section 76-2-310, MCA, is amended to read:

"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

(a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

(b) up to 2 miles beyond the limits of a city of the second class; and

(c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities."

Section 10. Section 76-3-210, MCA, is amended to read:

"76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within ~~a jurisdictional~~ an area that ~~has adopted~~ is covered by all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:

- (a) a growth policy adopted pursuant to chapter 1;
- (b) zoning regulations pursuant to 76-2-201 or chapter 2, part 3; and
- (c) a strategy for development, maintenance, and replacement of public infrastructure pursuant to 76-1-601.

(2) (a) A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:

- (i) the subdivision is proposed in an area for which a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the growth policy; or
- (ii) the subdivision will contain fewer than 10 parcels and less than 20 acres.

(b) When an exemption is granted under this subsection (2), the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where a properly established planning board having jurisdiction does not exist, the governing body may grant exemptions as specified in this subsection (2)."

Section 11. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of minor subdivisions. (1) Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the ~~jurisdictional~~ area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:

- (i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and
- (ii) review by the governing body of the criteria in 76-3-608(3)(a).

(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."

Section 12. Section 76-3-509, MCA, is amended to read:

"76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that ~~meets the requirements of~~ includes all of the elements listed in 76-1-601(2), the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

- (a) establish a maximum size for each parcel in a cluster development;
- (b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and
- (c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.

(3) Regulations adopted under this section may:

- (a) establish a shorter timeframe for review of proposed cluster developments;
- (b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;
- (c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;
- (d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and
- (e) establish exemptions from the following:
 - (i) the requirements of an environmental assessment pursuant to 76-3-603;
 - (ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions."

Section 13. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying plat or certificate of survey prohibited. (1) The county clerk and recorder may not file or record any plat or certificate of survey subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat or certificate of survey subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat or certificate of survey has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat or certificate of survey has obtained a certificate from the governing body pursuant to 76-4-127 that the subdivision is within ~~a jurisdictional area that has adopted~~ an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or

(c) the person wishing to file the plat or certificate of survey has placed on the plat or certificate of survey an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption."

Section 14. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, within 20 days after preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

- (a) the name and address of the applicant;
- (b) a copy of the preliminary plat or a final plat when a preliminary plat is not necessary;
- (c) the number of proposed parcels in the subdivision;
- (d) a copy of any applicable zoning ordinances in effect;
- (e) how construction of the sewage disposal and water supply systems or extensions will be financed;
- (f) certification that the subdivision is within ~~a jurisdictional area that has adopted~~ an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;
- (g) the relative location of the subdivision to the city or town;
- (h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;
- (i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- (j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage."

NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

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