

SENATE BILL NO. 201
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; REQUIRING CERTAIN TRANSPORTATION PROJECTS TO COMPLY WITH GROWTH POLICIES; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; REQUIRING THAT CERTAIN WATER AND INFRASTRUCTURE PROJECTS RECEIVE A PRIORITY FOR FUNDING; PROVIDING FOR A TRANSITION PERIOD; AND AMENDING SECTIONS 60-2-110, 76-1-103, 76-1-601, 76-2-101, 76-2-205, 76-3-207, 76-3-301, 76-3-608, 85-1-612, AND 90-6-710, MCA."

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

Section 1. Section 60-2-110, MCA, is amended to read:

"60-2-110. Setting priorities and selecting projects. (1) Except as provided in 60-2-133, the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located when establishing priorities and when selecting and designating segments on the secondary highway system for construction and reconstruction.

(3) The commission shall consult with the appropriate local government authorities when establishing priorities and selecting and designating segments on the urban highway system for construction and reconstruction.

(4) The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

(5) The commission shall establish and determine priorities and projects for rail and transit programs and, to the extent possible, coordinate intermodal transportation within the state.

(6) The commission shall ensure that projects comply with growth policies when the projects are located within an area that has adopted a growth policy that includes the provisions of 76-1-601(4)(c).

(7) In carrying out the requirements of this section, the department shall:

- (a) make recommendations to the commission;
- (b) establish the requirements and procedures for administering this section; and
- (c) take all reasonable steps to ensure the integrity and viability of agricultural and rural transportation and related needs."

Section 2. 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 a comprehensive development plan, master plan, or comprehensive plan 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) "Land use management techniques and incentives" include but are not limited to zoning regulations, subdivision regulations, and market incentives.
- (6) "Mayor" means mayor of a city.
- (7) "Market incentives" include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, reductions in utility hookup fees, and a sliding scale of development review fees.
- ~~(6)~~(8) "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)~~(9) "Person" means any individual, firm, or corporation.
- ~~(8)~~(10) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.
- ~~(9)~~(11) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.
- ~~(10)~~(12) "Public place" means any tract owned by the state or its subdivisions.
- ~~(11)~~(13) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.
- ~~(12)~~(14) "Utility" means any facility used in rendering service that the public has a right to demand."

Section 3. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) A growth policy must include the elements listed in subsection (3) ~~by October 1, 2006~~. The extent to which a growth policy addresses the elements ~~of a growth policy that are~~ listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must 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, including the capacity of emergency, fire, and law enforcement services;

(vi) public facilities;

(vii) threats to public safety, including but not limited to flooding, fire, and unsafe public facilities.

(viii) natural resources; and

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

(c) projected trends, in maps and text, 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, including the capacity of emergency, fire, and law enforcement services;

(vi) public facilities;

(vii) threats to public safety, including but not limited to flooding, fire, and unsafe public facilities.

(viii) natural resources; and

~~(viii)~~(ix) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, land use management techniques, market incentives, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection

(3)(a) and to achieve the purposes of this chapter;

(e) a strategy, in maps and text, 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 and with neighboring counties 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.

(4) 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.~~

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection, schooling, and school busing;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards; and

(F) natural resources, including but not limited to forest lands, mineral resources, streams, rivers, lakes,

wetlands, and ground water; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) 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."

NEW SECTION. Section 4. Planning fees -- limit. (1) Governing bodies that are represented on a planning board created pursuant to 76-1-112 or that have committed in a resolution to adopting a growth policy that includes the provisions of 76-1-601(4)(c) may assess fees to pay for services that fulfill the purposes of Title 76, chapter 1. The fees are in addition to any other fees authorized by law.

(2) Planning fees may not exceed \$50 for each residential lot or unit or \$250 for each commercial, industrial, or other type of lot or unit.

Section 5. 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), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners or of more than 50% of the affected real property owners when the zoning district is to be established in accordance with a growth policy that includes the provisions of 76-1-601(4)(c), 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), an action challenging the creation of a planning and zoning district must begin within 5 years after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ 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 6. 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 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 be published 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) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(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 ~~freeholders within the district~~ affected real property owners within the district or more than 50% of the affected real property owners when the zoning district is to be established in accordance with a growth

policy that includes the provisions of 76-1-601(4)(c) whose names appear on the last-completed assessment roll or if ~~freeholders~~ 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 7. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) A subdivision is exempt from review under this chapter, but it is subject to Title 76, part 4, and applicable zoning regulations adopted under Title 76, chapter 2, if it meets all of the following requirements:

(a) the proposed subdivision is entirely within an area where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304 that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and

(c) the subdivision complies with requirements for easements and access as provided for in 76-3-608(3)(c) and (3)(d).

(2) Except as provided in subsection ~~(2)~~ (3), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the

aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

~~(2)~~(3) Notwithstanding the provisions of subsection ~~(1)~~ (2):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection ~~(1)(c)~~ (2)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

~~(3)~~(4) (a) Subject to subsection ~~(3)(b)~~ (4)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection ~~(3)(b)~~ (4)(b) as a partial payment of the total tax that is due.

~~(4)~~(5) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."

Section 8. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in ~~76-3-207(1)~~ 76-3-207(2).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing."

Section 9. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) ~~except when the governing body has established an exemption pursuant to subsection (6) of this section or~~ except as provided in 76-3-509 or in 76-3-609(2) or (4), ~~the impact~~ adverse impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially ~~significant~~ adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and

will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

~~—— (a) the governing body has adopted a growth policy pursuant to chapter 4 that:~~

~~—— (i) addresses the criteria in subsection (3)(a);~~

~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~—— (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~—— (i) apply to the entire area subject to the exemption; and~~

~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 10. Section 85-1-612, MCA, is amended to read:

"85-1-612. Rulemaking authority -- priorities. (1) The department shall adopt rules:

~~(1)(a)~~ prescribing a reasonable application fee and the form and content of applications for grants and loans;

~~(2)(b)~~ governing the application of the criteria for awarding loans and grants to private persons;

~~(3)(c)~~ providing for the servicing of loans including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made;

~~(4)(d)~~ describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary;

~~(5)(e)~~ subject to subsection (2), describing the ranking criteria used to evaluate and prioritize grants to governmental entities; and

~~(6)(f)~~ specifying any other procedures necessary to accomplish the objectives of the renewable resource grant and loan program.

(2) For grants that would benefit drinking water systems, wastewater treatment facilities, or sewer systems, a higher priority must be given to applications for new facilities that are within an area that has adopted a growth policy that includes the provisions of 76-1-601(4)(c)."

Section 11. Section 90-6-710, MCA, is amended to read:

"90-6-710. Priorities for projects -- procedure -- rulemaking. (1) The department of commerce must receive proposals for infrastructure projects from local governments. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit a list containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2). The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; ~~and~~

(g) projects from local governments that have adopted a growth policy that includes the provisions of 76-1-601(4)(c); and

(h) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

(5) The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to review each project's status and determine whether the authorized grant should be withdrawn."

NEW SECTION. **Section 12. Transition.** A governing body that has adopted a growth policy prior to [the effective date of this act] shall implement the provisions of 76-1-601(3) by October 1, 2009.

NEW SECTION. **Section 13. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 76, chapter 1, part 4, and the provisions of Title 76, chapter 1, part 4, apply to [section 4].

- END -

