

HOUSE BILL NO. 587
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROPORTIONALITY STANDARDS AND REQUIREMENTS FOR CERTAIN EXACTIONS AND CONDITIONS IN CONJUNCTION WITH SUBDIVISION APPROVALS; REQUIRING LOCAL GOVERNMENTS TO COMPLY WITH THESE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 76-3-510 AND 76-3-608, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Statement of purpose.** It is the purpose of [sections 1 through 4] to:

- (1) establish standards based on nexus and proportionality that must be met prior to the imposition of exactions in conjunction with certain land use approvals; and
- (2) require local governments to comply with these standards.

NEW SECTION. **Section 2. Legislative findings.** The legislature finds and declares that:

- (1) it is necessary and desirable as a matter of public policy to provide for the establishment of proportionality standards that apply to exactions that are required in conjunction with land use approvals in order to:
 - (a) promote fairness in the land use approval process;
 - (b) stimulate economic growth; and
 - (c) foster cooperation between the public and private sectors in the areas of public infrastructure financing, land use planning, and land use regulation;
- (2) a single property owner should not be required, under the guise of exercise of police power through regulation of property, to bear burdens for the public good when those burdens should, in fairness, be properly borne by the public as a whole; and
- (3) the establishment of standards for the imposition of exactions in conjunction with land use approvals is of statewide concern because the establishment of these standards will promote the purposes identified in this section in a manner that is consistent with:
 - (a) Article II, section 3, of the Montana constitution, which provides that each person has the inalienable

right to acquire, possess, and protect property;

(b) Article II, section 17, of the Montana constitution, which provides that no person shall be deprived of property without due process of law; and

(c) Article II, section 29, of the Montana constitution, which provides that private property shall not be taken for public use without just compensation.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Exaction" means a fee, payment, condition, monetary requirement, easement, liability waiver, dedication, or conveyance of real property or any interest in real property required in conjunction with a subdivision approval.

(2) "Impact" means the burden or effect of a subdivision on:

(a) the ability of a local government to provide for those purposes identified in 76-3-501 for exactions required under 76-3-608; or

(b) the existing capacity of capital facilities related to public health and safety for exactions required under 76-3-510. Effects on the operation or maintenance of facilities may not be included.

(3) "Service area" means a defined geographic area identified by a local government or by intergovernmental agreement in which specific capital facilities related to public health and safety provide services to development within the area defined. This defined geographic area must be based on sound planning or engineering principles. There is a rebuttable presumption that a service area may not extend further than one-half mile from the subdivision. The governing body may overcome the presumption by demonstrating, in writing, that the impacts of the subdivision would significantly impair the ability of the governing body to provide adequate services related to public health and safety outside of the area that extends one-half mile from the subdivision.

NEW SECTION. Section 4. Exactions -- standards -- requirements. (1) An exaction may only be required pursuant to 76-3-510 or 76-3-608 if:

(a) there is a demonstrable connection between the exaction and the substantial advancement of the ability of the governing body to ensure:

(i) for exactions under 76-3-510, that adequate facilities related to public health and safety are provided;

or

(ii) for exactions under 76-3-608, that the purposes in 76-3-501 are served; and

(b) the exaction is proportional to the impact, as demonstrated by an individualized determination of the governing body, as provided in subsection (2), that the exaction is related both in nature and extent to the impact of the subdivision.

(2) The governing body must make a written determination that demonstrates, using quantitative information, that the subdivision creates a specific need, or an identifiable portion of a need, that is addressed by the exaction.

(3) Any regulation or resolution that requires an exaction pursuant to 76-3-510 or 76-3-608 must comply with this section.

(4) Monetary exactions must be expended within 3 years from the date of collection. Exactions must be expended in the order in which they are collected. Funds not expended within 3 years from the date of collection must be refunded, along with interest accrued, to the owner of record within 90 days after expiration of the prescribed time.

(5) An exaction required pursuant to 76-3-608 must be expended or used to address an impact within the boundaries of the subdivision. An exaction required pursuant to 76-3-510 must be expended or used to address an impact within the service area where the subdivision is located.

Section 5. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. A Subject to [section 4], a local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. ~~The costs must reasonably reflect the expected impacts directly attributable to the subdivision.~~ Any requirement for a payment under this section must comply with the provisions of [section 4]. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education."

Section 6. 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 disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may

not deny approval of a 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 (7) or except as provided in 76-3-505, the effect 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 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 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). Any mitigation required under this section may only be required as provided in [section 4].

(5) (a) In reviewing a 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 plat.

(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) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.

(7) The governing body may exempt 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 1 that:
 - (i) addresses the criteria in subsection (3)(a);
 - (ii) evaluates the effect of subdivision 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."

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [sections 1 through 4].

NEW SECTION. Section 8. Applicability. (1) [This act] applies to subdivision approvals that occur and to regulations or resolutions adopted after [the effective date of this act].

(2) Regulations or resolutions that require exactions pursuant to 76-3-510 or 76-3-608 and that were adopted before [the effective date of this act] must comply with the provisions of [section 4] [1 year after the effective date of this act].

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