

SENATE BILL NO. 195

INTRODUCED BY WHEAT

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING LAND USE; DEFINING THE TERMS "GROWTH JURISDICTION", "LAND USE MANAGEMENT TECHNIQUES", "MARKET INCENTIVES", "PUBLIC FACILITIES", "QUALITY GROWTH AREA", "RURAL CENTER", "~~SENSITIVE RESOURCE LANDS~~", AND "TRANSFER OF DEVELOPMENT RIGHTS"; CREATING GUIDELINES FOR GROWTH JURISDICTIONS; AUTHORIZING LOCAL FEES TO PAY FOR PLANNING; AND AMENDING SECTIONS 76-1-103; AND 76-1-601, ~~AND 76-3-509~~; MCA."

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 jurisdiction" means:
  - (a) a county with a population greater than 30,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce;
  - (b) a county with:
    - (i) a population greater than 15,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce; and
    - (ii) a population increase greater than 10% from the time of the census or estimate 10 years prior; or
  - (c) a city located within the boundaries of a county designated as a growth jurisdiction under this subsection (4)(a) and (4)(b).
- ~~(4)~~(5) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan

1 that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this  
2 chapter on or after October 1, 1999.

3 (6) "Land use management techniques" includes MAY INCLUDE but is not limited to zoning regulations,  
4 subdivision regulations, transfer of development rights, cluster development, as defined in 76-3-103, density  
5 bonuses, design standards, and market incentives.

6 ~~(5)(7)~~ "Mayor" means mayor of a city.

7 (8) "Market incentives" includes MAY INCLUDE but is not limited to an expedited subdivision review  
8 process authorized under 76-3-608 and 76-3-609, reductions in parking requirements, reductions in utility  
9 hookup fees, and a sliding scale of development review fees that would reduce costs for affordable housing  
10 within quality growth areas.

11 ~~(6)(9)~~ "Neighborhood plan" means a plan for a geographic area within the boundaries of the  
12 jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

13 ~~(7)(10)~~ "Person" means any individual, firm, or corporation.

14 ~~(8)(11)~~ "Planning board" means a city planning board, a county planning board, or a joint city-county  
15 planning board.

16 ~~(9)(12)~~ "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and  
17 includes replats or amended plats.

18 (13) "Public facilities" means public infrastructure and capital facilities, including but not limited to  
19 drinking water treatment and distribution, sewer systems, wastewater treatment facilities, solid waste disposal  
20 facilities, parks and open space, facilities for fire protection, law enforcement, and emergency services, schools,  
21 roads, highways, bridges, public transit facilities, pedestrian walkways, and bike paths.

22 ~~(10)(14)~~ "Public place" means any tract owned by the state or its subdivisions.

23 (15) "Quality growth area" means an area suitable for development or redevelopment sufficient to  
24 accommodate the projected 20-year residential and business growth of the growth jurisdiction at an average  
25 residential AND BUSINESS A NET density, EXPRESSED AS UNITS PER ACRE, of not less than the average NET density  
26 of the nearest ADJACENT city or rural center.

27 (16) "Rural center" means a land area LOCATED AT LEAST 3 MILES outside of the corporate limits of cities  
28 that has an existing average density of at least one residential unit an acre and a minimum geographic area of  
29 160 acres.

30 ~~(17) "Sensitive resource lands" includes but is not limited to prime farmland, as defined in 82-4-203,~~

1 ~~riparian areas, wetlands, high or limited ground water areas, and areas critical to the production, protection, or~~  
 2 ~~management of wildlife.~~

3 ~~(11)(18)(17)~~ "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

4 ~~(19)(18)~~ "Transfer of development rights" means conveyance of development rights by deed, easement,  
 5 or other legal instrument authorized by SUBDIVISION OR ZONING REGULATIONS ADOPTED BY a local governing body  
 6 from a parcel of land on which proposed land use or environmental impacts are considered undesirable to  
 7 another land parcel chosen on the basis of its ability to accommodate additional units of development beyond  
 8 that otherwise allowed by law.

9 ~~(12)(20)(19)~~ "Utility" means any facility used in rendering service that the public has a right to demand."  
 10

10

11 **Section 2.** Section 76-1-601, MCA, is amended to read:

12 **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional  
 13 area.

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

17 (3) A growth policy must include:

18 (a) community goals and objectives;

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

21 (i) land uses;

22 (ii) population;

23 (iii) housing needs;

24 (iv) economic conditions;

25 (v) local services;

26 (vi) public facilities;

27 (vii) natural resources; and

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

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

- 1 (i) land use;
- 2 (ii) population;
- 3 (iii) housing needs;
- 4 (iv) economic conditions;
- 5 (v) local services;
- 6 (vi) natural resources; and
- 7 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 8 (d) a description of policies, regulations, land use management techniques, and other measures to be
- 9 implemented in order to achieve the goals and objectives established pursuant to ~~subsection (3)(a)~~ this chapter;
- 10 (e) a strategy for development, maintenance, and replacement of public ~~infrastructure, including drinking~~
- 11 ~~water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities,~~
- 12 ~~roads, and bridges~~ facilities;
- 13 (f) an implementation strategy that includes:
- 14 (i) a timetable for implementing the growth policy;
- 15 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 16 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
- 17 necessary;
- 18 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
- 19 explains:
- 20 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
- 21 county in which the city or town is located, ~~as well as with counties within 15 miles of its jurisdictional limits~~, on
- 22 matters ~~related~~ relating to the growth policy;
- 23 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and
- 24 towns located within the county's boundaries and with neighboring counties on matters related to the growth
- 25 policy;
- 26 (h) a statement explaining how the governing bodies will:
- 27 (i) define the criteria in 76-3-608(3)(a); and
- 28 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in
- 29 76-3-608(3)(a); and
- 30 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

- 1 (4) A growth policy may:
- 2 (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth
- 3 policy.
- 4 (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
- 5 (c) address the criteria in 76-3-608(3)(a);
- 6 (d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);
- 7 (e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and
- 8 (f) identify geographic areas where the governing body intends to authorize an exemption from review
- 9 of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.
- 10 (5) The planning board may propose and the governing bodies may adopt additional elements of a
- 11 growth policy in order to fulfill the purpose of this chapter."
- 12

13 NEW SECTION. Section 3. Growth jurisdictions. (1) A growth jurisdiction shall adopt a growth policy

14 in accordance with 76-1-601. ~~The growth policy of a growth jurisdiction must include the following requirements~~

15 ~~by October 1, 2007: IF A GROWTH JURISDICTION HAS ADOPTED A GROWTH POLICY PRIOR TO OCTOBER 1, 2006, THE~~

16 ~~REQUIREMENTS OF THIS SECTION MUST BE MET BY THE TIME OF THE NEXT REVIEW PURSUANT TO 76-1-601(3). GROWTH~~

17 ~~JURISDICTIONS WITHOUT A GROWTH POLICY IN PLACE BY OCTOBER 1, 2006, SHALL ADOPT GROWTH POLICIES THAT~~

18 ~~INCLUDE THE FOLLOWING REQUIREMENTS BY OCTOBER 1, 2007:~~

- 19 (a) At least one quality growth area sufficient to accommodate ~~all of~~ the growth jurisdiction's growth
- 20 projected for the succeeding 20 years must be designated in the following manner:
- 21 (i) each city shall designate at least one quality growth area, which may include unincorporated areas
- 22 adjacent to the city, ~~an inventory of vacant properties within the city limits,~~ and redevelopment areas within the
- 23 city limits;
- 24 (ii) ~~each county shall designate at least one quality growth area adjacent to cities and may designate~~
- 25 ~~one or more quality growth areas within or adjacent to existing rural centers after subtracting the amount of the~~
- 26 ~~county's projected growth that can be accommodated by the quality growth areas designated by and within the~~
- 27 ~~cities located within the county;~~
- 28 ~~\_\_\_\_\_ (iii) counties shall coordinate with each of the cities within their growth jurisdiction to jointly designate~~
- 29 ~~identical quality growth areas adjacent to that city's municipal boundaries and infrastructure plans for those~~
- 30 ~~quality growth areas, pursuant to subsection (1)(b)(i);~~

1 ~~———(iv) if cities and counties are unable to reach an agreement for joint designation of those quality growth~~  
 2 ~~areas and infrastructure plans adjacent to the city, the city and county may jointly choose to engage in mediation~~  
 3 ~~before entering into binding arbitration to establish the joint quality growth area. The mediator or arbitrator may~~  
 4 ~~be jointly selected by the city and county or must be assigned by the district court for the growth jurisdictions.~~  
 5 ~~The cost of mediation and arbitration must be paid in equal parts by the city and county.~~ AFTER SUBTRACTING THE  
 6 AMOUNT OF THE COUNTY'S PROJECTED GROWTH THAT CAN BE ACCOMMODATED BY THE QUALITY GROWTH AREAS  
 7 DESIGNATED BY AND WITHIN THE CITIES LOCATED WITHIN THE COUNTY, EACH COUNTY:

8 (A) SHALL COORDINATE WITH EACH OF THE CITIES, WITHIN THEIR JURISDICTIONAL BOUNDARIES THAT HAVE  
 9 DESIGNATED QUALITY GROWTH AREAS THAT INCLUDE UNINCORPORATED AREAS ADJACENT TO THE CITY, TO DESIGNATE  
 10 AND ADOPT IDENTICAL QUALITY GROWTH AREAS ADJACENT TO EACH CITY'S MUNICIPAL BOUNDARIES AND INFRASTRUCTURE  
 11 PLANS FOR THOSE QUALITY GROWTH AREAS, PURSUANT TO SUBSECTION (1)(B)(I);

12 (B) MAY DESIGNATE ONE OR MORE QUALITY GROWTH AREAS WITHIN OR ADJACENT TO EXISTING RURAL CENTERS  
 13 OR ADJACENT TO CITIES THAT HAVE NOT DESIGNATED QUALITY GROWTH AREAS THAT INCLUDE UNINCORPORATED AREAS  
 14 ADJACENT TO THE CITY;

15 ~~(v)(III)~~ any combination of cities, or cities and a county, or neighboring counties may designate by  
 16 interlocal agreement one or more quality growth areas in accordance with this section; and

17 ~~(vi)(IV)~~ cities and counties shall send a copy of proposed and adopted growth policies, including  
 18 designated quality growth areas and any amendments to those growth policies, to all local governments within  
 19 15 miles of their jurisdictional limits.

20 (b) A plan for quality growth areas must be completed that, at a minimum:

21 (i) describes existing and future public facilities, using maps and text, necessary to efficiently serve  
 22 projected development in each quality growth area, including, at a minimum, sewer, water, law enforcement,  
 23 fire, and emergency services, parks, and transportation facilities. For a quality growth area adjacent to a city,  
 24 public facilities planning must include extending an interconnected municipal street ~~grid~~ NETWORK, sidewalks and  
 25 trail systems, transit facilities, and other municipal facilities whenever feasible.

26 (ii) proposes land use management techniques to ~~guide~~ PROMOTE residential, commercial, and industrial  
 27 development ~~into the~~ IN quality growth areas;

28 (iii) proposes land use management techniques that promote a mix of housing prices, including ~~meeting~~  
 29 MARKET INCENTIVES TO HELP MEET the growth jurisdiction's projected demand for residential units priced for  
 30 families earning less than 80% of the median income, adjusted for family size, as determined by the United

1 States department of housing and urban development, for the area in which the property is located and for  
 2 families earning between 80% and 105% of the median income, adjusted for family size, as determined by the  
 3 United States department of housing and urban development, for the area in which the property is located;

4 (iv) for cities with quality growth areas that exceed their municipal boundaries, proposes interlocal  
 5 agreements ~~or~~, joint resolutions, OR SIMILAR, MUTUALLY ACCEPTED, METHODS with the county for the logical and  
 6 efficient extension of city streets, sewer and water facilities, and other public facilities into those quality growth  
 7 areas;

8 (v) proposes land use management techniques to protect people and property from hazards within the  
 9 growth jurisdiction, including but not limited to areas that are prone to fire or flood;

10 ~~(vi) proposes land use management techniques to protect sensitive resource lands within the growth~~  
 11 ~~jurisdiction from degradation;~~

12 ~~(vii)(VI)~~ requires the growth jurisdiction's public facilities planning and expenditures to be in accordance  
 13 with the provisions of the growth policy except when expenditures are necessary to address threats to public  
 14 health and safety; and

15 ~~(viii)(VII)~~ allows adoption of fees to pay for long-range planning, including growth policy development and  
 16 quality growth area planning under this section. ~~Fees~~ THESE LONG-RANGE PLANNING FEES ARE IN ADDITION TO ANY  
 17 FEES ADOPTED TO COVER THE COST OF APPLICATION PROCESSING AND may be collected for either subdivision  
 18 applications, ~~building codes permits,~~ or zoning permits. ~~Fees~~ THESE LONG-RANGE PLANNING FEES may not exceed  
 19 \$50 for a residential lot or unit or \$250 for a commercial, industrial, or other type of lot or unit.

20 (2) A city or county that is not a growth jurisdiction may adopt a growth policy that includes provisions  
 21 of 76-1-601 and this section.

22  
 23 ~~Section 4. Section 76-3-509, MCA, is amended to read:~~

24 ~~"76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the~~  
 25 ~~governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may~~  
 26 ~~shall adopt regulations to promote cluster development and preserve that preserves open space under this~~  
 27 ~~section.~~

28 ~~(2) Regulations adopted under this section must:~~

29 ~~(a) establish a maximum size for each parcel in a cluster development;~~

30 ~~(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and~~

1 ~~\_\_\_\_\_ (c) establish requirements, including a minimum size for the area to be preserved, for preservation of~~  
 2 ~~open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant~~  
 3 ~~to this section. At least 50% of the property must be preserved as contiguous open space that clusters homes~~  
 4 ~~together and, wherever feasible, abuts neighboring open space. The regulations must require that open space~~  
 5 ~~be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76,~~  
 6 ~~chapter 6, prohibiting further division of the parcel.~~

7 ~~\_\_\_\_\_ (3) Regulations adopted under this section may:~~

8 ~~\_\_\_\_\_ (a) establish a shorter timeframe for review of proposed cluster developments;~~

9 ~~\_\_\_\_\_ (b) establish procedures and requirements that provide an incentive for cluster development~~  
 10 ~~subdivisions that are consistent with the provisions of this chapter;~~

11 ~~\_\_\_\_\_ (c) authorize the review of a division of land that involves more than one existing parcel as one~~  
 12 ~~subdivision proposal for the purposes of creating a cluster development;~~

13 ~~\_\_\_\_\_ (d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided~~  
 14 ~~in subsection (3)(c); and~~

15 ~~\_\_\_\_\_ (e) establish exemptions from the following:~~

16 ~~\_\_\_\_\_ (i) the requirements of an environmental assessment pursuant to 76-3-603;~~

17 ~~\_\_\_\_\_ (ii) review of the criteria in 76-3-608(3)(a); and~~

18 ~~\_\_\_\_\_ (iii) park dedication requirements pursuant to 76-3-621.~~

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

21

22 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an  
 23 integral part of Title 76, chapter 1, part 6, and the provisions of Title 76, chapter 1, part 6, apply to [section 3].

24

25 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE

26 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS

27 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID

28 APPLICATIONS.

29

- END -