

1 *Senate* BILL NO. *40*
2 INTRODUCED BY *Jimel Drake Romney Thiesen*
3 *Thyom*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 11-2707, R.C.M. 1947, TO PROVIDE THAT AN ORDINANCE CREATING
6 A BOARD OF ADJUSTMENT MAY RESERVE CERTAIN DECISIONS TO THE
7 CITY OR TOWN."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 11-2707, R.C.M. 1947, is amended to
11 read as follows:

12 "11-2707. Board of adjustment. Such city or town
13 council or other legislative body may provide for the
14 appointment of a board of adjustment, and in the regulations
15 and restrictions adopted pursuant to the authority of this
16 act may provide that the said board of adjustment may, in
17 appropriate cases, and subject to appropriate conditions and
18 safeguards, make special exceptions to the terms of the
19 ordinance in harmony with its general purposes and intent
20 and in accordance with the general or specific rules therein
21 contained.

22 An ordinance adopted pursuant to this section providing
23 for a board of adjustment may restrict the authority of the
24 board and provide that the city or town council, or other
25 legislative body, reserves to itself the power to make

1 certain exceptions to regulations, ordinances, or land use
2 plans adopted pursuant to this chapter.

3 (1) The board of adjustment shall consist of five (5)
4 members, each to be appointed for a term of three (3) years
5 and removable for cause by the appointing authority upon
6 written charges and after public hearing. Vacancies shall
7 be filled for the unexpired term of any member whose term
8 becomes vacant.

9 (2) The board shall adopt rules in accordance with the
10 provisions of any ordinance adopted pursuant to this act.
11 Meetings of the board shall be held at the call of the
12 chairman and at such other times as the board may determine.
13 Such chairman, or in his absence the acting chairman, may
14 administer oaths and compel the attendance of witnesses. All
15 meetings of the board shall be open to the public. The board
16 shall keep minutes of its proceedings, showing the vote of
17 each member upon each question, or if absent or failing to
18 vote, indicating such fact, and shall keep records of its
19 examinations and other official actions, all of which shall
20 be immediately filed in the office of the board and shall be
21 a public record.

22 (3) Appeals to the board of adjustment may be taken by
23 any person aggrieved or by any officer, department, board,
24 or bureau of the municipality affected by any decision of
25 the administrative officer. Such appeal shall be taken within

1 a reasonable time, as provided by the rules of the board, by
2 filing with the officer from whom the appeal is taken and
3 with the board of adjustment a notice of appeal specifying
4 the grounds thereof. The officer from whom the appeal is
5 taken shall forthwith transmit to the board all papers
6 constituting the record upon which the action appealed was
7 taken.

8 (4) An appeal stays all proceedings in furtherance of
9 the action appealed from, unless the officer from whom the
10 appeal is taken certifies to the board of adjustment after
11 the notice of appeal shall have been filed with him that by
12 reason of facts stated in the certificate a stay would, in
13 his opinion, cause imminent peril to life or property. In
14 such case proceedings shall not be stayed otherwise than by
15 a restraining order which may be granted by the board of
16 adjustment or by a court of record on application on notice
17 to the officer from whom the appeal is taken and on due
18 cause shown.

19 The board of adjustment shall fix a reasonable time for
20 the hearing of the appeal, give public notice thereof, as
21 well as due notice to the parties in interest, and decide
22 the same within a reasonable time. Upon the hearing any
23 party may appear in person or by attorney.

24 (5) The board of adjustment shall have the following
25 powers:

1 To hear and decide appeals where it is alleged there is
2 error in any order, requirement, decision, or determination
3 made by an administrative official in the enforcement of
4 this act or of any ordinance adopted pursuant thereto.

5 To hear and decide special exceptions to the terms of
6 the ordinance upon which such board is required to pass
7 under such ordinance.

8 To authorize upon appeal in specific cases such
9 variance from the terms of the ordinance as will not be
10 contrary to the public interest, where, owing to special
11 conditions, a literal enforcement of the provisions of the
12 ordinance will result in unnecessary hardship, and so that
13 the spirit of the ordinance shall be observed and
14 substantial justice done.

15 (6) In exercising the above-mentioned powers such
16 board may, in conformity with the provisions of this act,
17 reverse or affirm, wholly or partly, or modify the order,
18 requirement, decision, or determination appealed from and
19 may make such order, requirement, decision, or determination
20 as ought to be made, and to that end shall have all the
21 powers of the officer from whom the appeal is taken.

22 (7) The concurring vote of four (4) members of the
23 board shall be necessary to reverse any order, requirement,
24 decision, or determination of any such administrative
25 official, or to decide in favor of the applicant on any

1 matter upon which it is required to pass under any such
2 ordinance, or to effect any variation in such ordinance.

3 (8) Any person or persons, jointly or severally,
4 aggrieved by any decision of the board of adjustment, or any
5 taxpayer, or any officer, department, board, or bureau of
6 the municipality, may present to a court of record a
7 petition, duly verified, setting forth that such decision is
8 illegal, in whole or in part, specifying the grounds of the
9 illegality. Such petition shall be presented to the court
10 within thirty (30) days after the filing of the decision in
11 the office of the board.

12 (9) Upon the presentation of such petition the court
13 may allow a writ of certiorari directed to the board of
14 adjustment to review such decision of the board of
15 adjustment and shall prescribe therein the time within which
16 a return thereto must be made and served upon the relator's
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4 (11) If, upon the hearing, it shall appear to the court
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6 the matter, it may take evidence or appoint a referee to
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13 (12) Costs shall not be allowed against the board
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15 negligence, or in bad faith, or with malice in making the
16 decision appealed from."

-End-

5340

Approved by Comm.
on Local Government

1 *Senator* BILL NO. *46*
2 INTRODUCED BY *Shinnel Drake Romney Thierman*
3 *Thierman*

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Shinnel Drake Romney Theissen
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-End-

SB 40

SENATE BILL NO. 40

INTRODUCED BY HIMSL, DRAKE, ROMNEY, THIESSEN, FLYNN

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