

SENATE BILL 353

IN THE SENATE

February 3, 1979	Introduced and referred to Committee on Local Government.
February 14, 1979	Committee recommend bill, as amended.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Local Government.
April 20, 1979	Died in Committee.

1 *Senet* BILL NO. *353*
 2 INTRODUCED BY *Local Home Committee B. McCallum*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE LANDOWNER
 5 AND ELECTOR CONTROL OF ZONING BY REQUIRING APPROVAL OF THOSE
 6 PERSONS AFFECTED BEFORE ZONING MEASURES ARE ADOPTED BY THE
 7 BOARD OF COUNTY COMMISSIONERS; BY REQUIRING CITY-COUNTY
 8 PLANNING BOARD APPROVAL OF INTERIM ZONING; AND ALLOWING
 9 PROTEST OF VARIANCES; AMENDING SECTIONS 76-2-202, 76-2-205,
 10 76-2-206, AND 76-2-223, MCA."

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

12 Section 1. Section 76-2-202, MCA, is amended to read:

13 "76-2-202. Establishment of zoning districts --
 14 regulations. (1) ~~Within~~ Subject to [sections 5 through 9]
 15 ~~within~~ the unincorporated portions of a jurisdictional area
 16 which has been established under provisions of 76-1-501
 17 through 76-1-503 or 76-1-504 through 76-1-507, the board of
 18 county commissioners may by resolution establish zoning
 19 districts and zoning regulations for all or part of the
 20 jurisdictional area.

21 (2) Within some such zoning districts it shall be
 22 lawful and within others it shall be unlawful to erect,
 23 construct, alter, or maintain certain buildings or to carry
 24 on certain trades, industries, or callings.
 25

1 (3) Within each district the height and bulk of future
 2 buildings and the area of the yards, courts, and other open
 3 spaces and the future uses of the land or buildings shall be
 4 limited and future building setback lines shall be
 5 established.

6 (4) All such regulations shall be uniform for each
 7 class or kind of buildings throughout a district, but the
 8 regulations in one district may differ from those in other
 9 districts."

10 Section 2. Section 76-2-205, MCA, is amended to read:

11 "76-2-205. Procedure--for Hearing on adoption of
 12 regulations and boundaries. The board of county
 13 commissioners shall observe the following hearing procedures
 14 in the establishment or revision of boundaries for zoning
 15 districts and in the adoption or amendment of zoning
 16 regulations:

17 (1) Notice of a public hearing on the proposed zoning
 18 district boundaries and of regulations for the zoning
 19 district shall be published once a week for 2 weeks in a
 20 newspaper of general circulation within the county. The
 21 notice shall state:

- 22 (a) the boundaries of the proposed district;
- 23 (b) the general character of the proposed zoning
- 24 regulations;
- 25 (c) the time and place of the public hearing;

1 (d) that the proposed zoning regulations are on file
2 for public inspection at the office of the county clerk and
3 recorder.

4 (2) At the public hearing, the board of county
5 commissioners shall give the public an opportunity to be
6 heard regarding the proposed zoning district and
7 regulations.

8 (3) After the public hearing, the board of county
9 commissioners shall review the proposals of the planning
10 board and shall make such revisions or amendments as it may
11 deem proper.

12 (4) The board of county commissioners ~~may, before~~
13 proceeding further, must pass a resolution of intention to
14 submit to the electors under [section 5] the issue of
15 whether or not to create a zoning district and to adopt
16 zoning regulations for the district or to revise the
17 boundaries of an existing zoning district.

18 ~~(5) The board of county commissioners shall publish~~
19 ~~notice of passage of the resolution of intention once a week~~
20 ~~for 2 weeks in a newspaper of general circulation within the~~
21 ~~county. The notice shall state:~~

22 ~~(a) the boundaries of the proposed district;~~

23 ~~(b) the general character of the proposed zoning~~
24 ~~regulations;~~

25 ~~(c) that the proposed zoning regulations are on file~~

1 ~~for public inspection at the office of the county clerk and~~
2 ~~recorder;~~

3 ~~(d) that for 30 days after first publication of this~~
4 ~~notice the board of county commissioners will receive~~
5 ~~written protests to the creation of the zoning district or~~
6 ~~to the zoning regulations from persons owning real property~~
7 ~~within the district whose names appear on the last completed~~
8 ~~assessment roll of the county.~~

9 ~~(6) Within 30 days after the expiration of the protest~~
10 ~~period, the board of county commissioners may in its~~
11 ~~discretion adopt the resolution creating the zoning district~~
12 ~~and/or establishing the zoning regulations for the district;~~
13 ~~but if 40% of the freeholders within such district whose~~
14 ~~names appear on the last completed assessment roll shall~~
15 ~~have protested the establishment of the district or adoption~~
16 ~~of the regulations, the board of county commissioners shall~~
17 ~~not adopt the resolution and no further zoning resoluti~~
18 ~~shall be proposed for the district for a period of 1 year.~~

19 Section 3. Section 76-2-206, MCA, is amended to read:

20 "76-2-206. Interim zoning map or regulation. (1) If a
21 county is conducting or in good faith intends to conduct
22 studies within a reasonable time or has held or is holding a
23 hearing for the purpose of considering a master plan or
24 zoning regulations or an amendment, extension, or addition
25 to either pursuant to this part, the board of county

1 commissioners with the approval of the majority of the
 2 city-county planning board in order to promote the public
 3 health, safety, morals, and general welfare may adopt as an
 4 emergency measure a temporary interim zoning map or
 5 temporary interim zoning regulation, the purpose of which
 6 shall be to classify and regulate uses and related matters
 7 as constitutes the emergency.

8 (2) Such interim resolution shall be limited to 1 year
 9 from the date it becomes effective. ~~The with the approval of~~
 10 ~~the majority of the city-county planning board, the~~ board of
 11 county commissioners may extend such interim resolution for
 12 1 year, but not more than one such extension may be made."

13 Section 4. Section 76-2-223, MCA, is amended to read:
 14 "76-2-223. Powers of board of adjustment. (1) The
 15 board of adjustment shall have the following powers:

16 (a) to hear and decide appeals where it is alleged
 17 there is error in any order, requirement, decision, or
 18 determination made by an administrative official in the
 19 enforcement of this part or of any resolution adopted
 20 pursuant thereto;

21 (b) to hear and decide special exceptions to the terms
 22 of the zoning resolution upon which said board is required
 23 to pass under such resolution;

24 (c) to authorize upon appeal in specific cases such
 25 variance from the terms of the resolution as will not be

1 contrary to the public interest and where, owing to special
 2 conditions, a literal enforcement of the provisions of the
 3 resolution will result in unnecessary hardship and so that
 4 the spirit of the resolution shall be observed and
 5 substantial justice done.

6 (2) In exercising the above-mentioned powers, the
 7 board of adjustment may, in conformity with the provisions
 8 of this part, reverse or affirm, wholly or partly, or modify
 9 the order, requirement, decision, or determination appealed
 10 from and may make such order, requirement, decision, or
 11 determination as ought to be made and to that end shall have
 12 all the powers of the officer from whom the appeal is taken.

13 ~~(3) Notwithstanding any language to the contrary, any~~
 14 ~~decision by the board of adjustment concerning exceptions,~~
 15 ~~variances, conditional uses, permitted uses, or planned~~
 16 ~~variations may be overruled by petition of not less than 40%~~
 17 ~~of the total of qualified electors in the zoning district~~
 18 ~~and qualified electors living outside of the zoning district~~
 19 ~~but owning land within the zoning district if the petition~~
 20 ~~is received within 60 days of the board of adjustment~~
 21 ~~decision. No such decision is final unless the 60-day~~
 22 ~~protest period has elapsed without filing the above properly~~
 23 ~~signed petition."~~

24 ~~NEW SECTION.~~ Section 5. Election required for
 25 establishment or revision of boundaries for zoning

1 districts. (1) Before the board of county commissioners may
 2 establish or revise boundaries for zoning districts proposed
 3 in a resolution of intention passed pursuant to 76-2-205,
 4 the board shall submit the resolution to a vote of the
 5 qualified electors residing within the area proposed to be
 6 zoned and qualified electors who are owners of land within
 7 that area but reside outside the area proposed to be zoned.

8 (2) The election in subsection (1) may be conducted at
 9 the regular annual election held in the county or at a
 10 special election called for that purpose by the board of
 11 county commissioners.

12 (3) If a majority of the persons voting are in favor
 13 of the zoning measure, the board of county commissioners
 14 shall implement it.

15 NEW SECTION. Section 6. Registration of electors. The
 16 board of county commissioners shall provide for the
 17 registration of qualified electors residing or owning land
 18 within the area to be zoned.

19 NEW SECTION. Section 7. Notice of election on zoning
 20 measure. (1) When the issue of whether or not to create a
 21 zoning district and to adopt zoning regulations for the
 22 district or to revise the boundaries of an existing zoning
 23 district is submitted to the electors, notice thereof shall
 24 be given by publication for 4 consecutive weeks prior to the
 25 voting date in every newspaper published in or of general

1 circulation in the county. The notice must state:

2 (a) the boundaries of the proposed district or the
 3 boundaries of the existing district and proposed revision;

4 (b) the general character of the proposed zoning
 5 regulations;

6 (c) that the proposed zoning regulations are on file
 7 for public inspection at the office of the county clerk and
 8 recorder; and

9 (d) the date, place, and times for voting.

10 (2) The board of county commissioners shall cause the
 11 notice provided in subsection (1) to be mailed first class
 12 to the address of each person shown on the county property
 13 tax assessment rolls as being an owner of real property in
 14 the proposed district but whose residential address is
 15 without the county. The notice must be mailed at least 30
 16 days prior to the election.

17 NEW SECTION. Section 8. Form of ballot. The ballot
 18 be used in the zoning measure election must contain:

19 (1) the boundaries of the proposed district or
 20 boundaries of the existing district and proposed revision;

21 (2) the general character of the proposed zoning
 22 regulations; and

23 (3) a question, depending upon whether the creation or
 24 revision of a district is sought, substantially in the
 25 following form:

1 (a) Shall the board of county commissioners be
2 authorized to create the zoning district and adopt the
3 zoning regulations described on this ballot?

4 FOR zoning district and zoning regulations

5 AGAINST zoning district and zoning regulations

6 (b) Shall the board of county commissioners be
7 authorized to revise the zoning district as described on
8 this ballot?

9 FOR zoning district revision

10 AGAINST zoning district revision

11 NEW SECTION. Section 9. Conduct of election. (1) The
12 voters shall mark the ballot in the same manner as other
13 ballots are marked under the election laws of this state.

14 (2) The election shall be held and the votes canvassed
15 and returned as in other county elections.

16 Section 10. Codification. It is the intent of the
17 legislature that sections 5 through 9 of this act be
18 codified as an integral part of Title 76, chapter 2, part 2,
19 and that the provisions of Title 76, chapter 2, part 2,
20 fully apply to sections 5 through 9 of this act.

-End-

Approved by Comm.
on Local Government

SENATE BILL NO. 353

INTRODUCED BY LOCAL GOVERNMENT COMMITTEE, McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE LANDOWNER AND-EEEFOR CONTROL OF ZONING BY REQUIRING THEIR APPROVAL OF THOSE-PERSONS-AFFECTED BEFORE ZONING MEASURES ARE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS; BY REQUIRING CITY-COUNTY PLANNING BOARD APPROVAL OF INTERIM ZONING; AND ALLOWING PROTEST OF VARIANCES; AMENDING SECTIONS 76-2-202, 76-2-205, 76-2-206, AND 76-2-223, MCA."

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

Section 1. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) ~~Within~~ Subject to [sections 5 through 9], within the unincorporated portions of a jurisdictional area which has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts."

Section 2. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure---for Hearing on adoption of regulations and boundaries. The board of county commissioners shall observe the following hearing 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 shall be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall 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;

1 (d) that the proposed zoning regulations are on file
2 for public inspection at the office of the county clerk and
3 recorder.

4 (2) At the public hearing, the board of county
5 commissioners shall give the public an opportunity to be
6 heard regarding the proposed zoning district and
7 regulations.

8 (3) After the public hearing, the board of county
9 commissioners shall review the proposals of the planning
10 board and shall make such revisions or amendments as it may
11 deem proper.

12 (4) The board of county commissioners may, before
13 proceeding further, must pass a resolution of intention to
14 submit to the CERTAIN QUALIFIED electors under [section 5]
15 the issue of whether or not to create a zoning district and
16 to adopt zoning regulations for the district or to revise
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4 ~~notice, the board of county commissioners will receive~~
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6 ~~to the zoning regulations from persons owning real property~~
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 9 the regular annual election held in the county or at a
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 16 board of county commissioners shall provide for the
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 20 measure. (1) When the issue of whether or not to create a
 21 zoning district and to adopt zoning regulations for the
 22 district or to revise the boundaries of an existing zoning
 23 district is submitted to the electors, notice thereof shall
 24 be given by publication for 4 consecutive weeks prior to the
 25 voting date in every newspaper published in or of general

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 3 boundaries of the existing district and proposed revision;

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 7 for public inspection at the office of the county clerk and
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 11 notice provided in subsection (1) to be mailed first class
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7 authorized to revise the zoning district as described on
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17 legislature that sections 5 through 9 of this act be
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(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

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 3 health, safety, morals, and general welfare may adopt as an
 4 emergency measure a temporary interim zoning map or
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 9 from the date it becomes effective. ~~The With the approval of~~
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 21 ~~decision. No such decision is final unless the 60-day~~
 22 ~~protest period has elapsed without filing the above properly~~
 23 ~~signed petition."~~

24 NEW SECTION. Section 5. Election required for
 25 establishment or revision of boundaries for zoning

1 districts. (1) Before the board of county commissioners may
 2 establish or revise boundaries for zoning districts proposed
 3 in a resolution of intention passed pursuant to 76-2-205,
 4 the board shall submit the resolution to a vote of the
 5 ~~qualified electors residing within the area proposed to be~~
 6 ~~zoned--and~~ qualified electors who are owners of land within
 7 ~~that area but reside outside~~ the area proposed to be zoned.

8 (2) The election in subsection (1) may be conducted at
 9 the regular annual election held in the county or at a
 10 special election called for that purpose by the board of
 11 county commissioners.

12 (3) If a majority of the persons voting are in favor
 13 of the zoning measure, the board of county commissioners
 14 shall implement it.

15 NEW SECTION. Section 6. Registration of electors. The
 16 board of county commissioners shall provide for the
 17 registration of qualified electors ~~residing or~~ owning land
 18 within the area to be zoned.

19 NEW SECTION. Section 7. Notice of election on zoning
 20 measure. (1) When the issue of whether or not to create a
 21 zoning district and to adopt zoning regulations for the
 22 district or to revise the boundaries of an existing zoning
 23 district is submitted to the electors, notice thereof shall
 24 be given by publication for 4 consecutive weeks prior to the
 25 voting date in every newspaper published in or of general

1 circulation in the county. The notice must state:

2 (a) the boundaries of the proposed district or the
 3 boundaries of the existing district and proposed revision;

4 (b) the general character of the proposed zoning
 5 regulations;

6 (c) that the proposed zoning regulations are on file
 7 for public inspection at the office of the county clerk and
 8 recorder; and

9 (d) the date, place, and times for voting.

10 (2) The board of county commissioners shall cause the
 11 notice provided in subsection (1) to be mailed first class
 12 to the address of each person shown on the county property
 13 tax assessment rolls as being an owner of real property in
 14 the proposed district ~~but whose residential address is~~
 15 ~~within the county~~. The notice must be mailed at least 30
 16 days prior to the election.

17 NEW SECTION. Section 8. Form of ballot. The ballot to
 18 be used in the zoning measure election must contain:

19 (1) the boundaries of the proposed district or
 20 boundaries of the existing district and proposed revision;

21 (2) the general character of the proposed zoning
 22 regulations; and

23 (3) a question, depending upon whether the creation or
 24 revision of a district is sought, substantially in the
 25 following form:

1 (a) Shall the board of county commissioners be
2 authorized to create the zoning district and adopt the
3 zoning regulations described on this ballot?

4 FOR zoning district and zoning regulations

5 AGAINST zoning district and zoning regulations

6 (b) Shall the board of county commissioners be
7 authorized to revise the zoning district as described on
8 this ballot?

9 FOR zoning district revision

10 AGAINST zoning district revision

11 NEW SECTION. Section 9. Conduct of election. (1) The
12 voters shall mark the ballot in the same manner as other
13 ballots are marked under the election laws of this state.

14 (2) The election shall be held and the votes canvassed
15 and returned as in other county elections.

16 Section 10. Codification. It is the intent of the
17 legislature that sections 5 through 9 of this act be
18 codified as an integral part of Title 76, chapter 2, part 2,
19 and that the provisions of Title 76, chapter 2, part 2,
20 fully apply to sections 5 through 9 of this act.

-End-