

Senate Bill 133

In The Senate

January 15, 1981	Introduced and referred to Committee on Local Government.
	Fiscal note requested.
January 21, 1981	Fiscal note returned.
February 16, 1981	Committee recommend bill do pass.
February 17, 1981	Bill printed and placed on members' desks.
February 18, 1981	Second reading do pass.
February 19, 1981	Correctly engrossed.
February 20, 1981	Third reading passed.

In The House

February 21, 1981	Introduced and referred to Committee on Local Government.
March 24, 1981	Committee recommend bill not concurred.

In The Senate

March 25, 1981	Returned from House not concurred.
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1 *Andy* BILL NO. *133*  
 2 INTRODUCED BY *Mandy* *Curtis*  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE LANDOWNER  
 5 CONTROL OF ZONING BY REQUIRING LANDOWNER APPROVAL BEFORE  
 6 ZONING MEASURES ARE ADOPTED BY THE BOARD OF COUNTY  
 7 COMMISSIONERS, BY REQUIRING CITY-COUNTY PLANNING BOARD  
 8 APPROVAL OF INTERIM ZONING, AND BY ALLOWING PROTEST OF  
 9 VARIANCES; AMENDING SECTIONS 76-2-202, 76-2-205, 76-2-206,  
 10 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 2]~~  
 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 certain qualified electors under [section 5], the  
15 issue of whether or not to create a zoning district and to  
16 adopt 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 districts;~~
- 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 resolution~~  
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 provision 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 number of qualified electors owning land within~~  
 18 ~~the zoning district, if the petition is received within 60~~  
 19 ~~days of the board of adjustment decision. No such decision~~  
 20 ~~is final unless the 60-day protest period has elapsed~~  
 21 ~~without filing the above properly signed petition."~~

22 ~~NEW SECTION.~~ Section 5. Election required for  
 23 establishment or revision of boundaries for zoning  
 24 districts. (1) Before the board of county commissioners may  
 25 establish or revise boundaries for zoning districts proposed

1 in a resolution of intention passed pursuant to 76-2-205,  
 2 the board shall submit the resolution to a vote of the  
 3 qualified electors who are owners of land within the area  
 4 proposed to be zoned.

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

9 (3) If a majority of the persons voting are in favor  
 10 of the zoning measure, the board of county commissioners  
 11 shall implement it.

12 NEW SECTION. Section 6. Registration of electors. The  
 13 board of county commissioners shall provide for the  
 14 registration of qualified electors owning land within the  
 15 area to be zoned.

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

24 (a) the boundaries of the proposed district or the  
 25 boundaries of the existing district and proposed revision;

1 (b) the general character of the proposed zoning  
 2 regulations;

3 (c) that the proposed zoning regulations are on file  
 4 for public inspection at the office of the county clerk and  
 5 recorder; and

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

7 (2) The board of county commissioners shall cause the  
 8 notice provided in subsection (1) to be mailed first class  
 9 to the address of each person shown on the county property  
 10 tax assessment rolls to be an owner of real property in the  
 11 proposed district. The notice must be mailed at least 30  
 12 days prior to the election.

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

15 (1) the boundaries of the proposed district or  
 16 boundaries of the existing district and proposed revision;

17 (2) the general character of the proposed zoning  
 18 regulations; and

19 (3) a question, depending upon whether the creation or  
 20 revision of a district is sought, substantially in the  
 21 following form:

22 (a) Shall the board of county commissioners be  
 23 authorized to create the zoning district and adopt the  
 24 zoning regulations described on this ballot?

25  FOR zoning district and zoning regulations

1         AGAINST zoning district and zoning regulations  
2        (b) Shall the board of county commissioners be  
3 authorized to revise the zoning district as described on  
4 this ballot?

5         FOR zoning district revision

6         AGAINST zoning district revision

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

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

12       Section 10. Codification instruction. Sections 5  
13 through 9 are intended to be codified as an integral part of  
14 Title 76, chapter 2, part 2, and the provisions of Title 76,  
15 chapter 2, part 2, apply to sections 5 through 9.

-End-

STATE OF MONTANA

REQUEST NO. 106-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 133 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

Senate Bill 133 would increase landowner control of zoning by requiring landowner approval before zoning measures are adopted by the Board of County Commissioners, by requiring city-county planning board approval of interim zoning, and by allowing protest of variances.

Fiscal Impact

None.

Local Impact

There would possibly be increased special election expense in the 10 counties which have adopted zoning measures. Also, new Section 6 appears to require a special registration of electors owning land within the area to be zoned.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-21-81

Approved by Comm. on Local Government

1 INTRODUCED BY Sen. Andy Mandley BILL NO. 133  
2 Sen. Curtis

3  
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5 CONTROL OF ZONING BY REQUIRING LANDOWNER APPROVAL BEFORE  
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18 county commissioners may by resolution establish zoning  
19 districts and zoning regulations for all or part of the  
20 jurisdictional area.

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

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.

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7 class or kind of buildings throughout a district, but the  
8 regulations in one district may differ from those in other  
9 districts."

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11 "76-2-205. ~~Procedure---~~ for Hearing on adoption of  
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- 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  
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5 commissioners shall give the public an opportunity to be  
6 heard regarding the proposed zoning district and  
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10 ~~period, the board of county commissioners may in its~~  
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21 county is conducting or in good faith intends to conduct  
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23 hearing for the purpose of considering a master plan or  
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 22 of the zoning resolution upon which said board is required  
 23 to pass under such resolution;

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 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  
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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 provision to the contrary, any~~  
 14 ~~decision by the board of adjustment concerning exceptions,~~  
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 17 ~~of the total number of qualified electors owning land within~~  
 18 ~~the zoning district, if the petition is received within 60~~  
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 25 establish or revise boundaries for zoning districts proposed

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2 the board shall submit the resolution to a vote of the  
3 qualified electors who are owners of land within the area  
4 proposed to be zoned.

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

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10 of the zoning measure, the board of county commissioners  
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17 measure. (1) When the issue of whether or not to create a  
18 zoning district and to adopt zoning regulations for the  
19 district or to revise the boundaries of an existing zoning  
20 district is submitted to the electors, notice thereof shall  
21 be given by publication for 4 consecutive weeks prior to the  
22 voting date in every newspaper published or of general  
23 circulation in the county. The notice must state:

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25 boundaries of the existing district and proposed revision;

1 (b) the general character of the proposed zoning  
2 regulations;

3 (c) that the proposed zoning regulations are on file  
4 for public inspection at the office of the county clerk and  
5 recorder; and

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7 (2) The board of county commissioners shall cause the  
8 notice provided in subsection (1) to be mailed first class  
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21 following form:

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23 authorized to create the zoning district and adopt the  
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2        (b) Shall the board of county commissioners be  
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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 provision 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 number of qualified electors owning land within~~  
 18 ~~the zoning district, if the petition is received within 60~~  
 19 ~~days of the board of adjustment decision. No such decision~~  
 20 ~~is final unless the 60-day protest period has elapsed~~  
 21 ~~without filing the above properly signed petition."~~

22 ~~NEW SECTION.~~ Section 5. Election required for  
 23 establishment or revision of boundaries for zoning  
 24 districts. (1) Before the board of county commissioners may  
 25 establish or revise boundaries for zoning districts proposed

1 in a resolution of intention passed pursuant to 76-2-205,  
2 the board shall submit the resolution to a vote of the  
3 qualified electors who are owners of land within the area  
4 proposed to be zoned.

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

9 (3) If a majority of the persons voting are in favor  
10 of the zoning measure, the board of county commissioners  
11 shall implement it.

12 NEW SECTION. Section 6. Registration of electors. The  
13 board of county commissioners shall provide for the  
14 registration of qualified electors owning land within the  
15 area to be zoned.

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

24 (a) the boundaries of the proposed district or the  
25 boundaries of the existing district and proposed revision;

1 (b) the general character of the proposed zoning  
2 regulations;

3 (c) that the proposed zoning regulations are on file  
4 for public inspection at the office of the county clerk and  
5 recorder; and

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

7 (2) The board of county commissioners shall cause the  
8 notice provided in subsection (1) to be mailed first class  
9 to the address of each person shown on the county property  
10 tax assessment rolls to be an owner of real property in the  
11 proposed district. The notice must be mailed at least 30  
12 days prior to the election.

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

15 (1) the boundaries of the proposed district or  
16 boundaries of the existing district and proposed revision;

17 (2) the general character of the proposed zoning  
18 regulations; and

19 (3) a question, depending upon whether the creation or  
20 revision of a district is sought, substantially in the  
21 following form:

22 (a) Shall the board of county commissioners be  
23 authorized to create the zoning district and adopt the  
24 zoning regulations described on this ballot?

25  FOR zoning district and zoning regulations



1         AGAINST zoning district and zoning regulations  
2        (b) Shall the board of county commissioners be  
3 authorized to revise the zoning district as described on  
4 this ballot?

5         FOR zoning district revision

6         AGAINST zoning district revision

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

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

12       Section 10. Codification instruction. Sections 5  
13 through 9 are intended to be codified as an integral part of  
14 Title 76, chapter 2, part 2, and the provisions of Title 76,  
15 chapter 2, part 2, apply to sections 5 through 9.

-End-