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INTRODUCED BY Beck Judy Inman Lobb <sup>SENATE BILL NO. 323</sup>

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL GOVERNMENTS TO HOLD A PUBLIC MEETING BEFORE ADOPTING INTERIM ZONING REGULATIONS; INCREASING THE PUBLIC NOTICE REQUIREMENTS FOR CREATING INTERIM ZONING DISTRICTS; PROVIDING A DEFINITION OF EMERGENCY FOR PURPOSES OF INTERIM ZONING; AMENDING SECTIONS 76-2-206 AND 76-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, in cases in which zoning is appropriate, the Legislature has a definite preference for standard, conventional zoning procedures, expecting that zoning should be preceded by the adoption or amendment of a master plan following a public hearing process; and

WHEREAS, interim or emergency zoning ordinances and regulations should be used on an infrequent basis and be limited in scope to address true emergency situations that directly and substantially affect the public health, safety, and welfare; and

WHEREAS, the Legislature determines that there is a need to clarify the nature and scope of the emergency zoning authority of local governments and to ensure the adequate participation of the public in emergency zoning.

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

**Section 1.** Section 76-2-206, MCA, is amended to read:

**"76-2-206. Interim zoning map or regulation -- emergency zoning.** (1) ~~If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the~~ A board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which ~~shall be~~ is to classify and regulate uses and related matters as constitutes the emergency if the county:

(a) (i) is conducting, in good faith, studies regarding a master plan or zoning regulations or an

1 amendment, extension, or addition to either pursuant to this part; or

2 (ii) has held a hearing for the purpose of considering a master plan or zoning regulations or an  
3 amendment, extension, or addition to either pursuant to this part; and

4 (b) determines that there is an emergency that threatens the public health, safety, or general  
5 welfare.

6 (2) For the purposes of this section, "emergency" means the actual development or proposed  
7 development of land that is causing or will cause imminent direct and significant harm to the public health,  
8 safety, or general welfare. To cause direct and significant harm, the development must:

9 (a) adversely affect the majority of persons residing in or owning land in the area impacted;

10 (b) be permanent and irreparable; and

11 (c) constitute such an immediate threat to the public health, safety, and general welfare that the  
12 harm cannot be prevented through the regular planning and zoning process provided for in Title 76, chapter  
13 1, and this chapter.

14 (3) Emergency zoning may not be adopted under this section:

15 (a) for aesthetic reasons;

16 (b) to impose general standards, criteria, or procedures that are not exclusively designed to alleviate  
17 the specific emergency impacts;

18 (c) to preclude existing nonconforming uses of property; or

19 (d) to preclude any use of property that is subject to state review and permitting.

20 ~~(2)(4) Such~~ The interim resolution shall be is limited to 1 year from the date it becomes effective.  
21 The board of county commissioners may extend such the interim resolution for 1 year, but not more than  
22 one such extension may be made.

23 (5) Notice of a public hearing on the proposed interim zoning district boundaries and of the interim  
24 regulations for the district must be published as both a public notice and a legal notice once a week for 2  
25 weeks in a newspaper of general circulation within the county. The notice must include:

26 (a) the boundaries of the proposed interim zoning district;

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28 (c) the time and place of the public hearing;

29 (d) notice that the proposed interim zoning regulations are on file for public inspection at the office  
30 of the county clerk and recorder; and

1 (e) a description of the conditions and the resulting harm to the public health, safety, or general  
 2 welfare that justifies the determination of an emergency.

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

5 (7) The boundary of the proposed interim zoning district may not extend beyond the area that is  
 6 subject to the conditions creating the emergency."

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 8 **Section 2.** Section 76-2-306, MCA, is amended to read:

9 **"76-2-306. Interim zoning ordinances -- emergency zoning.** (1) The city or town council or other  
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 11 following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt  
 12 as an ~~urgency~~ emergency measure an interim zoning ordinance prohibiting any uses ~~which that~~ that may be in  
 13 conflict with a contemplated zoning proposal ~~which that~~ that the legislative body is considering or studying ~~or~~  
 14 ~~intends to study within a reasonable time.~~

15 (2) ~~(a) Such~~ An interim zoning ordinance ~~shall adopted under this section is only be applicable only~~  
 16 ~~within the city limits and up to 1 mile beyond the corporate boundaries of the city or town area that is~~  
 17 subject to the conditions creating the emergency and shall take effect is effective after a public hearing and  
 18 ~~upon passage ; provided, however, a hearing is first held upon notice reasonably designed to inform all~~  
 19 ~~affected parties and in no event shall notice be less than publication.~~

20 (b) Notice of the public hearing required under subsection (2)(a) must be published as both a public  
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 15 and effect 6 months from the date of its adoption ~~thereof~~. However, after notice pursuant to 76-2-303 and  
 16 ~~pursuant to~~ after a public hearing, the legislative body may extend ~~such the~~ interim ordinance for 1 year.  
 17 ~~Any such An~~ extension ~~shall require~~ requires a two-thirds vote for passage and ~~shall become is~~ effective  
 18 upon passage. Not more than two ~~such~~ extensions may be adopted."

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 20 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the  
 21 meaning of 1-2-109, to action taken pursuant to 76-2-206 and 76-2-306 after January 1, 1995.

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 23 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

24 -END-

## 1 SENATE BILL NO. 323

2 INTRODUCED BY BECK, GRADY, MESAROS, COBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL GOVERNMENTS TO HOLD A PUBLIC  
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4 (b) determines that there is an emergency that threatens the public health, safety, or general  
5 welfare.

6 (2) For the purposes of this section, "emergency" means the actual OR POTENTIAL IMPACTS  
7 RESULTING FROM development or proposed development of land that is causing or will MAY cause  
8 imminent direct and significant harm to the public health, safety, or general welfare. To cause direct and  
9 significant harm, the development EMERGENCY must:

10 (a) adversely affect the majority of persons residing in or owning land in the area impacted; AND

11 (b) be permanent and irreparable; and

12 (c) constitute such an immediate A POTENTIAL threat to the public health, safety, and general  
13 welfare that the harm cannot MAY NOT be prevented through the regular planning and zoning process  
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16 (a) for aesthetic reasons;

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19 (c)(B) to preclude existing nonconforming uses of property; or

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21 (2)(4) Such The interim resolution shall be is limited to 1 year from the date it becomes effective.

22 The board of county commissioners may extend such the interim resolution for 1 year, but not more than  
23 one such extension may be made.

24 (5) Notice of a public hearing on the proposed interim zoning district boundaries and of the interim  
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29 (c) the time and place of the public hearing;

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1 of the county clerk and recorder; and

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5 to be heard regarding the proposed interim zoning district and proposed regulations.

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7 subject to the conditions creating the emergency."

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14 conflict with a contemplated zoning proposal ~~which that~~ that the legislative body is considering or studying ~~or~~  
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16 (2) ~~(a) Such An~~ An interim zoning ordinance ~~shall adopted under this section is only be~~ is applicable only  
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1       (3) For the purposes of this section, "emergency" means the actual development or proposed  
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6       (c) constitute such an immediate threat to the public health, safety, and welfare that the harm  
7 cannot be prevented through the regular planning and zoning process provided for in Title 76, chapter 1,  
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15       ~~(3)~~(5) Such An interim zoning ordinance adopted under this section ~~shall be~~ is of no further force  
16 and effect 6 months from the date of its adoption ~~thereof~~. However, after notice pursuant to 76-2-303 and  
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21       NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the  
22 meaning of 1-2-109, to action taken pursuant to 76-2-206 and 76-2-306 after January 1, 1995.

24       NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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19 alleviate the specific emergency impacts; AND

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-END-



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 323  
Representative Anderson

April 5, 1995 10:55 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 323 (third reading copy -- blue).

Signed: *Keith W. Anderson*  
Representative Anderson

And, that such amendments to Senate Bill 323 read as follows:

- 1. Title, lines 7 and 8.  
Following: "ZONING;"  
Insert: "AND"  
Following: "MCA" on line 7  
Strike: remainder of line 7 through the second "DATE" on line 8
- 2. Page 2, line 10.  
Following: "~~AND~~"  
Insert: "and"
- 3. Page 2, line 12 and 13.  
Strike: "BE" on line 12 through "(C)" on line 13
- 4. Page 4, lines 24 through 27.  
Strike: sections 3 and 4 in their entirety  
Insert: "NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

-END-

SB 323

HOUSE  
AC \_\_

ADOPT

92-41

REJECT

781055CW.Hbk

## 1 SENATE BILL NO. 323

2 INTRODUCED BY BECK, GRADY, MESAROS, COBB

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11 AND

12 (b) ~~be permanent and irreparable; and~~

13 ~~(c) BE PERMANENT AND IRREPARABLE; AND~~

14 ~~(C) constitute such an immediate A-POTENTIAL SUCH AN IMMEDIATE~~ threat to the public health,  
15 safety, and general welfare that ~~the harm cannot~~ MAY NOT THE HARM CANNOT be prevented through  
16 the regular planning and zoning process provided for in Title 76, chapter 1, and this chapter.

17 (3) Emergency zoning may not be adopted under this section:

18 (a) ~~for aesthetic reasons; FOR AESTHETIC REASONS;~~

19 ~~(b)(B) to impose general standards, criteria, or procedures that are not exclusively designed to~~  
20 alleviate the specific emergency impacts; AND

21 ~~(c)(B)(C) to preclude existing nonconforming uses of property; or~~

22 ~~(d) to preclude any use of property that is subject to state review and permitting; OR~~

23 (D) TO PRECLUDE ANY USE OF PROPERTY THAT IS SUBJECT TO STATE REVIEW AND  
24 PERMITTING.

25 ~~(2)(4) Such~~ The interim resolution shall be is limited to 1 year from the date it becomes effective.  
26 The board of county commissioners may extend ~~such~~ the interim resolution for 1 year, but not more than  
27 one ~~such~~ extension may be made.

28 (5) Notice of a public hearing on the proposed interim zoning district boundaries and of the interim  
29 regulations for the district must be published as both a public notice and a legal notice once a week for 2  
30 weeks in a newspaper of general circulation within the county. The notice must include:

1 (a) the boundaries of the proposed interim zoning district;

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

3 (c) the time and place of the public hearing;

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

6 (e) a description of the conditions and the resulting harm to the public health, safety, or general  
7 welfare that justifies the determination of an emergency.

8 (6) At the public hearing, the board of county commissioners shall give the public an opportunity  
9 to be heard regarding the proposed interim zoning district and proposed regulations.

10 (7) The boundary of the proposed interim zoning district may not extend beyond the area that is  
11 subject to the conditions creating the emergency."

12  
13 **Section 2.** Section 76-2-306, MCA, is amended to read:

14 **"76-2-306. Interim zoning ordinances -- emergency zoning.** (1) The city or town council or other  
15 legislative body of ~~such a~~ municipality, to protect the public safety, health, and welfare and without  
16 following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt  
17 as an ~~urgency~~ emergency measure an interim zoning ordinance prohibiting any uses ~~which that~~ may be in  
18 conflict with a contemplated zoning proposal ~~which that~~ the legislative body is considering or studying ~~or~~  
19 ~~intends to study within a reasonable time.~~

20 (2) ~~(a) Such An~~ An interim zoning ordinance shall adopted under this section is only be applicable only  
21 within the city limits and up to 1 mile beyond the corporate boundaries of the city or town area that is  
22 subject to the conditions creating the emergency and shall take effect is effective after a public hearing and  
23 upon passage ; provided, however, a hearing is first held upon notice reasonably designed to inform all  
24 affected parties and in no event shall notice be less than publication.

25 (b) Notice of the public hearing required under subsection (2)(a) must be published as both a public  
26 notice and a legal notice in a newspaper of general circulation at least 7 days before the hearing. The  
27 notice must include:

28 (i) the boundaries of the proposed interim zoning district;

29 (ii) the general character of the proposed interim zoning regulations;

30 (iii) the time and place of the public hearing;



1 (iv) notice that the proposed interim zoning regulations are on file for public inspection at a  
 2 specified location; and

3 (v) a description of the conditions and the resulting harm to the public health, safety, and welfare  
 4 that justifies the determination of an emergency.

5 (3) For the purposes of this section, "emergency" means the actual development or proposed  
 6 development of land that is causing or will cause imminent direct and significant harm to the public health,  
 7 safety, or welfare. To cause direct and significant harm, the development must:

8 (a) adversely affect the majority of persons residing in or owning land in the area impacted;

9 (b) be permanent and irreparable; and

10 (c) constitute such an immediate threat to the public health, safety, and welfare that the harm  
 11 cannot be prevented through the regular planning and zoning process provided for in Title 76, chapter 1,  
 12 and this chapter.

13 (4) Emergency zoning may not be adopted under this section:

14 (a) for aesthetic reasons;

15 (b) to impose general standards, criteria, or procedures that are not exclusively designed to alleviate  
 16 the specific emergency impacts;

17 (c) to preclude existing nonconforming uses of property; or

18 (d) to preclude any use of property that is subject to state review and permitting.

19 ~~(3)(5) Such An~~ interim zoning ordinance adopted under this section shall be is of no further force  
 20 and effect 6 months from the date of its adoption ~~thereof~~. However, after notice pursuant to 76-2-303 and  
 21 ~~pursuant to~~ after a public hearing, the legislative body may extend ~~such~~ the interim ordinance for 1 year.  
 22 ~~Any such An~~ extension shall require requires a two-thirds vote for passage and ~~shall become~~ is effective  
 23 upon passage. Not more than two ~~such~~ extensions may be adopted."  
 24

25 ~~NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the~~  
 26 ~~meaning of 1-2-109, to action taken pursuant to 76-2-206 and 76-2-306 after January 1, 1995.~~

28 ~~NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.~~

30 NEW SECTION. SECTION 3. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND

1 DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN  
2 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

3 -END-