

1 *House* BILL NO. *306*
 2 INTRODUCED BY *Curtis Genow Cobb Clark Fetter*
 3 *Jayla Wood DeLong, Sheri Ops Wagner Storall Brinson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR COMPENSATION FOR THE OWNER OF REAL
 5 PROPERTY THE FAIR MARKET VALUE OF WHICH IS SUBSTANTIALLY AND DISPROPORTIONATELY
 6 REDUCED BY THE APPLICATION OF AN EXISTING, NEW, OR AMENDED STATE GOVERNMENT RULE OR
 7 LOCAL GOVERNMENT ENTITY ORDINANCE; AND PROVIDING FOR AN EXEMPTION FROM APPLICATION
 8 OF THE RULE OR ORDINANCE."
 9

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

12 **NEW SECTION. Section 1. Short title.** [Sections 1 through 6] may be cited as the "Fairness to
 13 Property Owners Act".
 14

15 **NEW SECTION. Section 2. Legislative findings and declarations.** The legislature finds and declares
 16 that:

- 17 (1) State rules and local government ordinances sometimes have the effect of reducing the market
 18 value of private real property.
- 19 (2) If a state rule or local government ordinance that reduces the market value of private real
 20 property does not abate a public nuisance that affects the public health, safety, welfare, or morals, it is fair
 21 and appropriate that the state or local government compensate the property owner for the reduction in
 22 market value of the property, and compensation must be made.
- 23 (3) Compensation to the property owner is also fair and appropriate, and must be made, if the rule
 24 or ordinance abates a public nuisance and if the property owner is not contributing to the public nuisance
 25 and did not know about the public nuisance when the property was acquired, and it does not appear that,
 26 based upon prevailing community standards, the property owner should have known about the public
 27 nuisance when the property was acquired.
- 28 (4) [Sections 1 through 6] establish a fair and equitable compensation system to address the
 29 findings and declarations in this section.
 30

1 **NEW SECTION. Section 3. Taking of property -- reduction in fair market value -- compensation.**

2 (1) If the application of a new, amended, or existing state rule or local government ordinance, including
3 but not limited to one relating to land use planning or zoning, substantially and disproportionately reduces
4 the fair market value of a parcel of real property for the uses that were legal immediately before the
5 application of the rule or ordinance, the property is considered to have been taken for a public use.

6 (2) A substantial reduction in fair market value is one that reduces the fair market value by more
7 than 5%. A disproportionate reduction in fair market value is one that reduces the fair market value of the
8 parcel to a significantly greater extent than the reduction in fair market value of comparable parcels affected
9 by the application of the rule or ordinance.

10 (3) In determining fair market value immediately before the application of the rule or ordinance,
11 reduction in that value due to anticipation of the application of the rule or ordinance must be disregarded.

12 (4) The owner or possessor of the property may require just compensation by, or condemnation
13 and just compensation by, the government or governmental entity that adopted a new, amended, or
14 existing rule or ordinance the application of which substantially and disproportionately reduced the fair
15 market value of the property. Either party may request a jury trial. Just compensation must be determined
16 by the trier of fact. If more than one government or governmental entity adopted a rule or ordinance the
17 application of which substantially and disproportionately reduced the fair market value of the property, the
18 jury shall determine the amount of compensation to be paid by each. The amount of compensation due
19 is the dollar amount by which the fair market value of the property is reduced, including the value of any
20 property interest taken or reduced.

21 (5) Upon receipt of compensation under subsection (4), the affected property must be reassessed
22 for property tax purposes by reducing its assessed value by the amount of the compensation.

23

24 **NEW SECTION. Section 4. Time for bringing proceeding.** A proceeding under [section 3(4)] must
25 be brought within 2 years after the date of the application of the rule or ordinance at issue.

26

27 **NEW SECTION. Section 5. Compensation waivers prohibited.** A state or local government entity
28 may not make waiver of one or more provisions of [sections 1 through 6] a condition for approval of a use
29 of real property, the issuance of a permit, or any other entitlement.

30

1 **NEW SECTION. Section 6. Exemptions.** A government or governmental entity unwilling or unable
2 to pay compensation under [section 3] may instead exempt all owners of real property affected by the rule
3 or ordinance from application of the rule or ordinance. The exemption may be granted either before or after
4 one or more compensation orders have been granted under [section 3]. A public hearing is not necessary
5 on the grant of an exemption. A government or governmental entity granting an exemption must reimburse
6 a real property owner for the owner's costs and attorney fees for a proceeding under [section 3].

7

8 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
10 applications, the part remains in effect in all valid applications that are severable from the invalid
11 applications.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0306, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for compensation for the owner of real property, the fair market value of which is substantially and disproportionately reduced by the application of an existing, new, or amended state government rule, or local government entity ordinance.

ASSUMPTIONS:


1. The bill does not apply to management of state trust lands administered by the Department of Natural Resources and Conservation (DNRC) through various types of agreements such as leases, licenses, permits, etc. The bill does apply to the following DNRC functions: dam safety rules; floodplain designations and management rules; basin closure rules; controlled groundwater area designations; "310" streambed preservation rules; streamside management zone act rules; and future rules implementing the Water Use Act which would prohibit waste by wells.
2. The bill does not apply to actions that implement state statute for which there is not a rule.
3. The bill applies to actions that are required by any rule, whether or not the rule and action are required by statute.
4. The bill applies to actions taken pursuant to rules adopted to implement federal requirements.
5. The bill applies to non-regulatory actions of state or local government.
6. The bill does not apply to diminutions in value of a parcel that adjoins a private parcel on which activities are conducted by a private person with permission of a regulatory agency of state or local government.
7. Given the variables involved in and the somewhat subjective nature of appraisals, a threshold of a 5% diminution in property value would not be difficult to allege and, once alleged, would be difficult to dispute.
8. The threshold in Section 3 of the bill governing the compensation that may be paid to a property owner when the agency's action reduces the fair market value of the affected portion of the property by 5% imposes new obligations on state regulations that are not presently recognized under either the United States or Montana Constitution. The bill provides compensation under a standard of "taking" for which no cause of action is available under current law.
9. The Montana Department of Transportation (MDT) believes that this bill provides a new cause of action which predictably will increase the number of lawsuits filed against the department. Accordingly, MDT will require 5.00 new FTE (2 attorneys-grade 17; 2 appraisers-grade 14; 1 secretary-grade 9), at an annual cost of \$166,800, plus operating expenses of \$1,000 per person or \$5,000/year. MDT also made an attempt at a compensation payout of \$50,000/year based upon 100 parcels at \$500/parcel. This amount is implied to be included in the general fiscal impact.

FISCAL IMPACT - GENERAL:

The consensus of all affected state agencies is that litigation will result from the passage of this bill and, because some ambiguities in HB 306 will have to be settled through litigation, increased legal time and expense are a certainty.

Although expenditures for compensation, appraisal and litigation could be substantial, it is impossible to quantify the cumulative fiscal impact of HB 306 on state agencies.

(Continued)

 1-31-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

AUBYN CURTISS, PRIMARY SPONSOR DATE
Fiscal Note for HB0306, as introduced

HB 306

FISCAL IMPACT:

Dept. Of Transportation:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	5.00	5.00
Personal services	\$166,800	\$166,800
Operating expense	<u>5,000</u>	<u>5,000</u>
Total	\$171,800	\$171,800
<u>Funding:</u>		
Highway state special (02)	\$171,800	\$171,800

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The impact on local governments, although potentially substantial, cannot be calculated with any degree of accuracy.

TECHNICAL NOTES:

This bill may require local governments to spend additional sums for which no specific means of financing are provided. Section 1-2-114, MCA, provides that bills which have such an impact may not be introduced.

Section 2 indicates that the bill is not intended to require compensation for some regulatory actions that abate a public nuisance. This limitation is not contained in Section 3, which is the operative section of the bill.

1 HOUSE BILL NO. 306

2 INTRODUCED BY CURTISS, GRINDE, COBB, ELLIS, CLARK, KEATING, TAYLOR, MOOD, DEBRUYCKER,
3 OHS, STOVALL, BRAINARD, WAGNER

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8 LOCAL GOVERNMENT ENTITY ORDINANCE; AND PROVIDING FOR AN EXEMPTION FROM APPLICATION
9 OF THE RULE OR ORDINANCE."

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

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13 NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Fairness to
14 Property Owners Act".

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16 NEW SECTION. **Section 2. Legislative findings and declarations.** The legislature finds and declares
17 that:

18 (1) PRIOR TO THE ADOPTION OF A STATE RULE OR LOCAL GOVERNMENT ORDINANCE OR RULE
19 THE APPLICATION OF WHICH MIGHT SUBSTANTIALLY AND DISPROPORTIONATELY REDUCE THE FAIR
20 MARKET VALUE OF ONE OR MORE PARCELS OF REAL ESTATE FOR EXISTING LEGAL USES, THE
21 JURISDICTION PROPOSING THE RULE OR ORDINANCE SHALL CONSIDER THE GUIDELINES AND
22 CHECKLIST DEVELOPED BY THE ATTORNEY GENERAL UNDER 2-10-104.

23 ~~(1)(2)~~ State rules and local government ordinances sometimes have the effect of reducing the
24 market value of private real property.

25 ~~(2)(3)~~ If a state rule or local government ordinance OR RULE that reduces the market value of
26 private real property does not ~~abate a public nuisance that affects~~ FURTHER the public health, safety,
27 welfare, or morals, it is fair and appropriate that the state or local government compensate the property
28 owner for the reduction in market value of the property, and compensation must be made.

29 ~~(3)(4)~~ Compensation to the property owner is also fair and appropriate, and must be made, if the
30 rule or ordinance abates a public nuisance and if the property owner is not contributing to the public

1 nuisance and did not know about the public nuisance when the property was acquired, and it does not
 2 appear that, based upon prevailing community standards, the property owner should have known about
 3 the public nuisance when the property was acquired.

4 ~~(4)(5)~~ [Sections 1 through 6] establish a fair and equitable compensation system to address the
 5 findings and declarations in this section.

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 7 **NEW SECTION. Section 3. Taking of property -- reduction in fair market value -- compensation.**

8 (1) ~~If~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (1)(B), IF the application of a new, ~~OR~~ OR an ~~existing~~ OR ~~existing~~
 9 ~~existing~~ state rule or local government ordinance OR RULE, including but not limited to one relating to land
 10 use planning or zoning, substantially and disproportionately reduces the fair market value of a parcel of real
 11 property for the uses that were legal immediately before the application of the rule or ordinance, the
 12 property is considered to have been taken for a public use.

13 (B) THE FOLLOWING APPLICATIONS OF NEW OR AMENDED STATE RULES OR LOCAL
 14 GOVERNMENT ORDINANCES OR RULES ARE EXEMPT FROM THE PROVISIONS OF [SECTIONS 1
 15 THROUGH 6]:

16 (I) AN APPLICATION THAT ABATES A PUBLIC NUISANCE THAT IMPAIRS THE PUBLIC HEALTH,
 17 SAFETY, WELFARE, OR MORALS;

18 (II) AN APPLICATION THAT PREVENTS A PROSPECTIVE PUBLIC NUISANCE THAT WOULD IMPAIR
 19 THE PUBLIC HEALTH, SAFETY, WELFARE, OR MORALS;

20 (III) AN APPLICATION OF A ZONING OR LAND USE PLANNING ORDINANCE OR RULE;

21 (IV) AN APPLICATION THAT RESULTS IN THE ISSUANCE OF A USE PERMIT;

22 (V) AN APPLICATION NEEDED TO IMPLEMENT A FEDERAL STATUTE OR REGULATION OR A
 23 FEDERAL OR STATE COURT OPINION; OR

24 (VI) AN APPLICATION OF AN ORDINANCE OR RULE INVALIDATED OR FOUND
 25 UNCONSTITUTIONAL BY A COURT.

26 (2) A substantial reduction in fair market value is one that reduces the fair market value by more
 27 than 5%. A disproportionate reduction in fair market value is one that reduces the fair market value of the
 28 parcel to a significantly greater extent than the reduction in fair market value of comparable parcels affected
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11 (5) Upon receipt of compensation under subsection (4), the affected property must be reassessed
12 for property tax purposes by reducing its assessed value by the amount of the compensation.

13 (6) THE COURT MAY AWARD THE PREVAILING PARTY COSTS AND REASONABLE ATTORNEY
14 FEES IN A PROCEEDING UNDER [SECTIONS 1 THROUGH 6].

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HOUSE BILL NO. 306

INTRODUCED BY CURTISS, GRINDE, COBB, ELLIS, CLARK, KEATING, TAYLOR, MOOD, DEBRUYCKER,
OHS, STOVALL, BRAINARD, WAGNER

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3 applications.

4

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0306, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for compensation for the owner of real property, the fair market value of which is substantially and disproportionately reduced by the application of an existing, new, or amended state government rule, or local government entity ordinance.

ASSUMPTIONS:

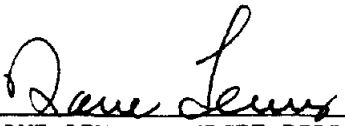
1. The bill does not apply to management of state trust lands administered by the Department of Natural Resources and Conservation (DNRC) through various types of agreements such as leases, licenses, permits, etc. The bill does apply to the following DNRC functions: dam safety rules; floodplain designations and management rules; basin closure rules; controlled groundwater area designations; "310" streambed preservation rules; streamside management zone act rules; and future rules implementing the Water Use Act which would prohibit waste by wells.
2. The bill does not apply to actions that implement state statute for which there is not a rule.
3. The bill does not exclude actions that are taken pursuant to rules, that are required by state statute.
4. The bill, **as amended**, does not apply to actions taken pursuant to rules adopted to implement federal requirements.
5. The bill applies to non-regulatory actions of state or local government.
6. The bill does not apply to diminutions in value of a parcel that adjoins a private parcel on which activities are conducted by a private person with permission of a regulatory agency of state or local government.
7. Given the variables involved in and the somewhat subjective nature of appraisals, a threshold of a 5% diminution in property value would not be difficult to allege and, once alleged, would be difficult to dispute.
8. Compensation is not required for application of the unamended portion of an amended rule.
9. The threshold in Section 3 of the bill governing the compensation that may be paid to a property owner when the agency's action reduces the fair market value of the affected portion of the property by 5% imposes new obligations on state regulations that are not presently recognized under either the United States or Montana Constitution. The bill provides compensation under a standard of "taking" for which no cause of action is available under current law.
10. The Montana Department of Transportation (MDT) believes that this bill provides a new cause of action which predictably will increase the number of lawsuits filed against the department. Accordingly, MDT will require a 0.50 FTE attorney (grade 17, \$21,639/year) and a 0.50 FTE support staff (grade 9, \$12,332/year). Operating expenses would be \$1,000 per/year. MDT also made an attempt at a compensation payout of \$50,000/year based upon 100 parcels at \$500/parcel. This amount is implied to be included in the general fiscal impact.

FISCAL IMPACT - GENERAL:

The consensus of all affected state agencies is that litigation will result from the passage of this bill and, because some ambiguities in HB 306 will have to be settled through litigation, increased legal time and expense are a certainty.

Although expenditures for compensation, appraisal and litigation could be substantial, it is impossible to quantify the cumulative fiscal impact of HB 306 on state agencies. **The third reading amendments should significantly reduce the amount of costs incurred.**

(Continued)

 3-12-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

AUBYN CURTISS, PRIMARY SPONSOR DATE

Fiscal Note for HB0306, third reading
Am HB 306 #2

FISCAL IMPACT:

Dept. Of Transportation:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	33,971	33,971
<u>Operating Expenditures</u>	<u>1,000</u>	<u>1,000</u>
Total	34,971	34,971

Funding:

Highway state special (02)	34,971	34,971
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The impact on local governments, although potentially substantial, cannot be calculated with any degree of accuracy. The requirement for a legal review of all local government actions that may be subject to this legislation would add substantially to the legal costs to local governments.

TECHNICAL NOTES:

This bill may require local governments to spend additional sums for which no specific means of financing are provided. Section 1-2-114, MCA, provides that bills which have such an impact may not be introduced.

The body of the bill has been amended in Section 3, to delete existing rules and certain categories of rules, such as rules required by federal law. However, the title of the bill has not been changed to reflect that amendment.

The bill as amended, exempts the application of zoning and land use planning ordinances or rules (page 2, line 20). However, it is not clear whether this exemption would apply to related local government actions relating to subdivision regulation, building codes enforcement, annexation, flood plain regulation, and lake shore protection. Technically, none of these activities would be regarded as zoning or land use planning functions.

The proposal as amended, appears to contain a conflict in that page 2, lines 9 and 10 provides that the act apply to local government ordinances as including those relating to land use planning or zoning. However, on page 2, line 20, the bill exempts these activities.