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SB
BILL NO. 164

INTRODUCED BY Mike Spangue

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COUNTY AND MUNICIPAL BUILDING CODES AND COUNTY AND MUNICIPAL ZONING AUTHORITIES MAY NOT PROHIBIT THE USE OF LAND FOR A PROPOSED RESIDENTIAL STRUCTURE FOR THE SOLE REASON THAT THE STRUCTURE IS A MANUFACTURED HOME IF THE MANUFACTURED HOME IS BUILT TO CONFORM TO THE CODE ISSUED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO REQUIRE THAT A MANUFACTURED HOME BE LOCATED AND INSTALLED ACCORDING TO CERTAIN STANDARDS; AND AMENDING SECTIONS 50-60-302, 76-2-202, 76-2-203, 76-2-302, AND 76-2-304, MCA."

WHEREAS, federal law preempts state and local governments from denying a building permit or certificate of occupancy to a manufactured home when the denial is based solely on the fact that the home was built according to the United States Department of Housing and Urban Development code and not some other code; and

WHEREAS, clear distinctions between manufactured homes, mobile homes, and factory-built buildings have already been established in Montana law for regulatory purposes; and

WHEREAS, some local authorities in Montana are refusing to issue building permits and certificates of occupancy to manufactured homes that are built to comply with the United States Department of Housing and Urban Development code; and

WHEREAS, it is in Montana citizens' interest to prohibit arbitrary discrimination by local authorities against the owners of manufactured homes in defiance of federal preemption.

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

Section 1. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.



1 (2) The department shall set forth rules and standards governing the certification of municipal and
2 county building code programs as required in subsection (1).

3 (3) The department may not certify a municipal or county building program if the program prohibits
4 the use of land for a proposed residential structure for the sole reason that the proposed structure is a
5 manufactured home if the manufactured home bears an appropriate seal indicating that the home was
6 constructed in accordance with the standards of the United States department of housing and urban
7 development."

8
9 **Section 2.** Section 76-2-202, MCA, is amended to read:

10 **"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated
11 portions of a jurisdictional area ~~which~~ that has been established under provisions of 76-1-501 through
12 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish
13 zoning districts and zoning regulations for all or part of the jurisdictional area.

14 (b) An action challenging the creation of a zoning district must be commenced ~~by October 1, 1994,~~
15 ~~or~~ within 5 years after the date of the order by the board of county commissioners creating the district, ~~if~~
16 ~~the district was created after October 1, 1989.~~

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

19 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
20 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
21 affect property values of conventional housing.

22 (b) Notwithstanding subsection (3)(a), a board of county commissioners may not adopt a zoning
23 ordinance or regulation that prohibits the use of land for a proposed residential structure for the sole reason
24 that the proposed structure is a manufactured home if the manufactured home bears an appropriate seal
25 indicating that the home was constructed in accordance with the standards of the United States department
26 of housing and urban development.

27 (c) A board of county commissioners may require that a manufactured home be located and
28 installed according to the same standards for foundation system, permanent utility connections, setback,
29 and minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

30 (4) Within each district the height and bulk of future buildings and the area of the yards, courts,

1 and other open spaces and the future uses of the land or buildings must be limited and future building
2 setback lines must be established.

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

5 (6) As used in this section, "manufactured housing" or "manufactured home" means a single-family
6 dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation,
7 is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are
8 customarily, as defined by local regulations, used on site-built homes, and is in compliance with the
9 applicable prevailing standards of the United States department of housing and urban development at the
10 time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or
11 a house trailer, as defined in 61-1-501.

12 (7) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
13 historic districts, local design review standards, existing covenants, or the ability to enter into covenants
14 pursuant to Title 70, chapter 17, part 2."

15

16 **Section 3.** Section 76-2-203, MCA, is amended to read:

17 "**76-2-203. Criteria and guidelines for zoning regulations.** (1) The zoning regulations ~~shall~~ must
18 be made in accordance with a comprehensive development plan and ~~shall~~ must be designed to:

19 (a) lessen congestion in the streets;

20 (b) ~~to~~ secure safety from fire, panic, and other dangers;

21 (c) ~~to~~ promote health and general welfare;

22 (d) ~~to~~ provide adequate light and air;

23 (e) ~~to~~ prevent the overcrowding of land;

24 (f) ~~to~~ avoid undue concentration of population; and

25 (g) ~~to~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and
26 other public requirements.

27 (2) ~~Such~~ The zoning regulations ~~shall~~ must be made with reasonable consideration, among other
28 things, to the character of the district and its peculiar suitability for particular uses and with a view to
29 conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such~~ the
30 jurisdictional area.

1 (3) The zoning regulations ~~shall~~ must, as nearly as possible, be made compatible with the zoning
2 ordinances of the municipality within the jurisdictional area.

3 (4) Notwithstanding the provisions of subsections (1), (2), and (3), zoning regulations may not
4 prohibit the use of land for a proposed residential structure for the sole reason that the proposed structure
5 is a manufactured home if the manufactured home bears an appropriate seal indicating that it was
6 constructed in accordance with the standards of the United States department of housing and urban
7 development."

8
9 **Section 4.** Section 76-2-302, MCA, is amended to read:

10 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or
11 other legislative body may divide the municipality into districts of the number, shape, and area as are
12 considered best suited to carry out the purposes of this part. Within the districts, it may regulate and
13 restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

14 (2) All regulations must be uniform for each class or kind of buildings throughout each district, but
15 the regulations in one district may differ from those in other districts.

16 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
17 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
18 affect property values of conventional housing.

19 (b) Notwithstanding subsection (3)(a), a local town or city council may not adopt a zoning ordinance
20 or regulation that prohibits the use of land for a proposed residential structure for the sole reason that the
21 proposed structure is a manufactured home if the manufactured home bears an appropriate seal indicating
22 that the home was constructed in accordance with the standards of the United States department of
23 housing and urban development.

24 (c) A local town or city council may require that a manufactured home be located and installed
25 according to the same standards for foundation system, permanent utility connections, setback, and
26 minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

27 (4) As used in this section, "manufactured housing" or "manufactured home" means a single-family
28 dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation,
29 is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are
30 customarily, as defined by local regulations, used on site-built homes, and is in compliance with the

1 applicable prevailing standards of the United States department of housing and urban development at the
2 time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or
3 a house trailer, as defined in 61-1-501.

4 (5) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
5 historic districts, local design review standards, existing covenants, or the ability to enter into covenants
6 pursuant to Title 70, chapter 17, part 2."
7

8 **Section 5.** Section 76-2-304, MCA, is amended to read:

9 "76-2-304. **Purposes of zoning.** (1) ~~Such~~ Zoning regulations ~~shall~~ must be made in accordance
10 with a comprehensive plan and designed to:

11 (a) lessen congestion in the streets;

12 (b) ~~to~~ secure safety from fire, panic, and other dangers;

13 (c) ~~to~~ promote health and the general welfare;

14 (d) ~~to~~ provide adequate light and air;

15 (e) ~~to~~ prevent the overcrowding of land;

16 (f) ~~to~~ avoid undue concentration of population;

17 (g) ensure that a fair share of housing is within reach of persons with low or moderate incomes;

18 and

19 (h) ~~to~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and
20 other public requirements.

21 (2) ~~Such~~ Zoning regulations ~~shall~~ must be made with reasonable consideration, among other things,
22 to the character of the district and its peculiar suitability for particular uses, to the relative availability of
23 land area to manufactured home development, and with a view to conserving the value of buildings and
24 encouraging the most appropriate use of land throughout ~~such~~ the municipality."
25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0164, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that county and municipal building codes and county and municipal zoning authorities may not prohibit the use of land for a proposed residential structure for the sole reason that the structure is a manufactured home if the manufactured home is built to conform to the code issued by the federal Department of Housing and Urban Development; allowing the board of county commissioners to require that a manufactured home be located and installed according to certain standards.

ASSUMPTIONS:

Department of Commerce/Community Development Bureau:

1. Counties and municipalities could not adopt a zoning regulation or ordinance or administer a building code enforcement program if the local zoning regulations prohibit the use of land for a residential structure for the sole reason that the structure is a manufactured home if the manufactured home was constructed in accordance with the U.S. Department of Housing and Urban Development (HUD) regulations.
2. A county commission or city or town council could require that a manufactured home be located and installed according to the same standards for foundation systems, permanent utility connections, setback, and minimum square footage that would apply to a site-built, single-family dwelling on the same lot.
3. The municipal zoning enabling statute would be amended to require that city or town zoning regulations must be designed to "ensure that a fair share of housing is within reach of persons with low or moderate incomes" and that municipal zoning regulations must consider "the relative availability of land area to manufactured home development".

Department of Commerce/Building Codes Bureau:

4. The proposed legislation requires the Building Codes Bureau to ensure that counties, cities and towns certified by the bureau to enforce building codes do not have zoning or other ordinances that discriminate against manufactured home location. This will require the bureau to review wording in all existing and proposed ordinances since local governments may adopt ordinances at will.
5. The proposed legislation requires the bureau to involuntarily decertify any certified local government codes enforcement program that refuses to eliminate zoning or other ordinances that discriminate against manufactured home location. It is estimated that the bureau will have decertification proceedings against 5 to 15 local government programs at any given time. The bureau must also assume building code enforcement in any local government program area that is decertified.
6. The proposed legislation will require the bureau to amend its administrative rules pertaining to local government program decertification to create a new reason for decertification, i.e., zoning or other ordinances that discriminate against manufactured home location.
7. An additional 1.00 FTE, administrative assistant, grade 8 will be required to enforce the provisions of this proposed legislation as defined in Building Codes Bureau assumptions 1, 2 and 3.
8. In order to complete the required decertification actions, an additional 1.00 FTE, agency counsel, grade 17 will be required. An additional 1.00 FTE, building inspector, grade 14, will be required to accomplish the required inspections in the decertified local government programs. The estimated personal services cost is \$92,906 in fiscal year 1998 and fiscal year 1999.

(Continued)

Dave Lewis 1-20-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MIKE SPRAGUE, PRIMARY SPONSOR DATE
Fiscal Note for SB0164, as introduced

SB 164

9. Approximately \$14,552 in additional operating expenses would be incurred in fiscal year 1998 and fiscal year 1999. One additional vehicle will be needed in fiscal year 1998 for the additional inspector at an estimated cost of \$13,000.

FISCAL IMPACT:

Department of Commerce
Building Codes Bureau:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	3.00	3.00
Personal Services	92,906	92,906
Operating Expenses	14,552	14,552
Equipment	<u>13,000</u>	<u>0</u>
Total	120,458	107,458
 <u>Revenues:</u>		
Building Permit Fees	40,955	40,955
 <u>Net Impact on Fund Balance:</u> (Revenue minus expense)		
Building Codes SSR (02)	(79,503)	(66,503)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Community Development Bureau: 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.

Approximately five counties have adopted zoning regulations pursuant to 76-2-202, MCA. These counties would have to review and determine whether their current zoning regulations prohibit the use of land for a residential structure for the sole reason that the structure is a manufactured home. If the local zoning regulations were found to be in violation of the prohibition contained in the bill, the county would have to amend them pursuant to the procedures set forth in section 76-2-205, MCA.

The principal fiscal impact of this bill falls on municipal governments. Most cities and towns have adopted zoning regulations and would therefore be subject to the provisions of this bill. The proposed legislation imposes additional requirements upon municipalities that are not imposed on counties. SB 164 states that municipal zoning regulations must be designed to "ensure that a fair share of housing is within reach of persons with low or moderate incomes" and must consider "the relative availability of land area to manufactured home development". This provision requires the careful analysis of the local zoning ordinance by the city or town attorney and where available, the local zoning administrator or planning director. To the extent that the proposed legislation does not provide for the expenses involved in this process, the bill would impose an unfunded mandate on city and town governments.

If a local government is found to be in violation of the provisions of SB 164, it would no longer be able to enforce a local building code program and the state Building Codes Bureau would be required to assume jurisdiction. By statute, the state Building Codes Bureau has no authority to enforce building codes for residential units involving four-plexes or fewer units. For most communities, this constitutes the majority of local construction activity. This would result in a substantial loss of revenue to support the local building code enforcement program and staff.

It is not possible to quantify the cumulative impact of SB 164 on county and municipal governments statewide.

Building Codes Bureau: If a county, city or town building codes enforcement program is decertified because of this proposed legislation, the local government will experience a significant loss of revenue and will obviously need to reduce or eliminate its building codes enforcement staff.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Community Development Bureau: If a local government is found to be in violation of the provisions of the proposed legislation, it would no longer be able to enforce a local building code program and the state Building Codes Bureau would be required to assume jurisdiction. By statute, the state Building Codes Bureau has no authority to enforce building codes for residential units involving four-plexes or fewer units. For most communities, this constitutes the majority of local construction activity. As a result, the a decertified community would lose the ability to assure safe construction for most of its residential buildings. Builders of commercial or public buildings that would be covered by state enforcement would not likely receive as good as service from a distant state agency as that of a local building code enforcement program.

TECHNICAL NOTES:

Community Development Bureau: Section 76-2-203, MCA, of the current county zoning law requires that zoning regulations "be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area". Many real estate appraisers and real estate professionals would argue that, because they tend to depreciate, allowing manufactured housing in certain residential zones would reduce, rather than conserve, the value of buildings.

Section 5 of SB 164 states that municipal zoning regulations must be designed to "ensure that a fair share of housing is within reach of persons with low or moderate incomes". Ensuring that a fair share of housing is within reach of persons with low or moderate incomes is a financial issue related to whether housing is affordable to low and moderate income families. It is not an issue that can be effectively addressed through zoning regulations.

Building Codes Bureau: Enforcement of zoning and other ordinances is not a building codes enforcement function and building permit fees should not be used to support zoning enforcement activities. Local governments are currently prohibited from using building permit fees to fund such activities by administrative rule.

If local government building codes programs are decertified as a result of the passage of SB 164, a potential public health impact exists because the state is not allowed, by statute, to inspect single family dwellings in 4-plexes and less for building code compliance.

Use of the bureau's certified local governments building codes enforcement programs to enforce zoning laws that prohibit discrimination against manufactured homes would be ineffective because only 3 of 56 counties are certified and only 52 of 128 cities and towns are certified.

No revenue source exists to fully fund the requirements of SB 164, leaving homebuilders and other building permit purchasers to pay the costs of protecting a specific portion of housing without any benefit to them.

APPROVED BY COM ON
LOCAL GOVERNMENT

1 SENATE BILL NO. 164

2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "~~AN ACT PROVIDING THAT COUNTY AND MUNICIPAL BUILDING CODES~~
5 ~~AND~~ COUNTY AND MUNICIPAL ZONING AUTHORITIES MAY NOT PROHIBIT THE USE OF LAND FOR A
6 PROPOSED RESIDENTIAL STRUCTURE FOR THE SOLE REASON THAT THE STRUCTURE IS A
7 MANUFACTURED HOME IF THE MANUFACTURED HOME IS BUILT TO CONFORM TO THE CODE ISSUED
8 BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ALLOWING THE BOARD OF
9 COUNTY COMMISSIONERS TO REQUIRE THAT A MANUFACTURED HOME BE LOCATED AND INSTALLED
10 ACCORDING TO CERTAIN STANDARDS; AND AMENDING SECTIONS ~~50-60-302~~, 76-2-202, 76-2-203,
11 76-2-302, AND 76-2-304, MCA."

12
13 WHEREAS, federal law preempts state and local governments from denying a building permit or
14 certificate of occupancy to a manufactured home when the denial is based solely on the fact that the home
15 was built according to the United States Department of Housing and Urban Development code and not
16 some other code; and

17 WHEREAS, clear distinctions between manufactured homes, mobile homes, and factory-built
18 buildings have already been established in Montana law for regulatory purposes; and

19 WHEREAS, some local authorities in Montana are refusing to issue building permits and certificates
20 of occupancy to manufactured homes that are built to comply with the United States Department of
21 Housing and Urban Development code; and

22 WHEREAS, it is in Montana citizens' interest to prohibit arbitrary discrimination by local authorities
23 against the owners of manufactured homes in defiance of federal preemption.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 ~~Section 1. Section 50-60-302, MCA, is amended to read:~~

28 ~~"50-60-302. Certification of municipal and county building codes. (1) A county or municipality~~
29 ~~may not enforce a building code unless the code adopted and a plan for enforcement of the code have been~~
30 ~~filed with the department.~~

1 ~~(2) The department shall set forth rules and standards governing the certification of municipal and~~
 2 ~~county building code programs as required in subsection (1).~~

3 ~~(3) The department may not certify a municipal or county building program if the program prohibits~~
 4 ~~the use of land for a proposed residential structure for the sole reason that the proposed structure is a~~
 5 ~~manufactured home if the manufactured home bears an appropriate seal indicating that the home was~~
 6 ~~constructed in accordance with the standards of the United States department of housing and urban~~
 7 ~~development."~~

8
 9 **Section 1.** Section 76-2-202, MCA, is amended to read:

10 **"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated
 11 portions of a jurisdictional area ~~which~~ that has been established under provisions of 76-1-501 through
 12 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish
 13 zoning districts and zoning regulations for all or part of the jurisdictional area.

14 (b) An action challenging the creation of a zoning district ~~must be commenced by October 1, 1994,~~
 15 ~~or~~ within 5 years after the date of the order by the board of county commissioners creating the district, ~~if~~
 16 ~~the district was created after October 1, 1989.~~

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

19 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
 20 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
 21 affect property values of conventional housing.

22 (b) Notwithstanding subsection (3)(a), a board of county commissioners may not adopt a zoning
 23 ordinance or regulation that prohibits the use of land for a proposed residential structure for the sole reason
 24 that the proposed structure is a manufactured home if the manufactured home bears an appropriate seal
 25 indicating that the home was constructed in accordance with the standards of the United States department
 26 of housing and urban development.

27 (c) A board of county commissioners may require that a manufactured home be located and
 28 installed according to the same standards for foundation system, permanent utility connections, setback,
 29 and minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

30 (4) Within each district the height and bulk of future buildings and the area of the yards, courts,

1 and other open spaces and the future uses of the land or buildings must be limited and future building
2 setback lines must be established.

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

5 (6) As used in this section, "manufactured housing" or "manufactured home" means a single family
6 dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation,
7 is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are
8 customarily, as defined by local regulations, used on site-built homes, and is in compliance with the
9 applicable prevailing standards of the United States department of housing and urban development at the
10 time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or
11 a housetrailer, as defined in 61-1-501.

12 (7) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
13 historic districts, local design review standards, existing covenants, or the ability to enter into covenants
14 pursuant to Title 70, chapter 17, part 2."
15

16 **Section 2.** Section 76-2-203, MCA, is amended to read:

17 "**76-2-203. Criteria and guidelines for zoning regulations.** (1) The zoning regulations ~~shall~~ must
18 be made in accordance with a comprehensive development plan and ~~shall~~ must be designed to:

19 (a) lessen congestion in the streets;

20 (b) ~~to~~ secure safety from fire, panic, and other dangers;

21 (c) ~~to~~ promote health and general welfare;

22 (d) ~~to~~ provide adequate light and air;

23 (e) ~~to~~ prevent the overcrowding of land;

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25 (g) ~~to~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and
26 other public requirements.

27 (2) ~~Such~~ The zoning regulations ~~shall~~ must be made with reasonable consideration, among other
28 things, to the character of the district and its peculiar suitability for particular uses and with a view to
29 conserving the value of buildings and encouraging the most appropriate use of land throughout ~~see~~ the
30 jurisdictional area.

1 (3) The zoning regulations ~~shall~~ must, as nearly as possible, be made compatible with the zoning
2 ordinances of the municipality within the jurisdictional area.

3 (4) Notwithstanding the provisions of subsections (1), (2), and (3), zoning regulations may not
4 prohibit the use of land for a proposed residential structure for the sole reason that the proposed structure
5 is a manufactured home if the manufactured home bears an appropriate seal indicating that it was
6 constructed in accordance with the standards of the United States department of housing and urban
7 development."

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9 **Section 3.** Section 76-2-302, MCA, is amended to read:

10 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or
11 other legislative body may divide the municipality into districts of the number, shape, and area as are
12 considered best suited to carry out the purposes of this part. Within the districts, it may regulate and
13 restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

14 (2) All regulations must be uniform for each class or kind of buildings throughout each district, but
15 the regulations in one district may differ from those in other districts.

16 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
17 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
18 affect property values of conventional housing.

19 (b) Notwithstanding subsection (3)(a), a local town or city council may not adopt a zoning ordinance
20 or regulation that prohibits the use of land for a proposed residential structure for the sole reason that the
21 proposed structure is a manufactured home if the manufactured home bears an appropriate seal indicating
22 that the home was constructed in accordance with the standards of the United States department of
23 housing and urban development.

24 (c) A local town or city council may require that a manufactured home be located and installed
25 according to the same standards for ~~foundation system,~~ permanent utility connections, setback, and
26 minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

27 (4) As used in this section, "manufactured housing" or "manufactured home" means a single-family
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1 applicable prevailing standards of the United States department of housing and urban development at the
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8 **Section 4.** Section 76-2-304, MCA, is amended to read:

9 **"76-2-304. Purposes of zoning.** (1) ~~Such~~ Zoning regulations ~~shall~~ must be made in accordance
 10 with a comprehensive plan and designed to:

11 (a) lessen congestion in the streets;

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17 (g) ensure that a fair share of housing is within reach of persons with low or moderate incomes;

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19 (h) ~~to~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and
 20 other public requirements.

21 (2) ~~Such~~ Zoning regulations ~~shall~~ must be made with reasonable consideration, among other things,
 22 to the character of the district and its peculiar suitability for particular uses, to the relative availability of
 23 land area to manufactured home development, and with a view to conserving the value of buildings and
 24 encouraging the most appropriate use of land throughout ~~such~~ the municipality."

25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0164, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that county and municipal zoning authorities may not prohibit the use of land for a proposed residential structure for the sole reason that the structure is a manufactured home if the manufactured home is built to conform to the code issued by the federal Department of Housing and Urban Development; allowing the board of county commissioners to require that a manufactured home be located and installed according to certain standards.

ASSUMPTIONS:

Department of Commerce/Community Development Bureau:

1. Counties and municipalities could not adopt a zoning regulation or ordinance that prohibits the use of land for a residential structure for the sole reason that the structure is a manufactured home if the manufactured home was constructed in accordance with the U.S. Department of Housing and Urban Development (HUD) regulations.
2. A county commission, city or town council could require that a manufactured home be located and installed according to the same standards for permanent utility connections, setback, and minimum square footage that would apply to a site-built, single-family dwelling on the same lot.
3. According to Section 3 of SB 164, zoning regulations could not prohibit the use of land for a residential structure for the sole reason that the structure is a manufactured home even if the local government considered the placement of the manufactured home to be incompatible with "the character of the district and its peculiar suitability for particular uses" and contrary to "conserving the value of buildings and encouraging the most appropriate uses of land" (76-2-203, MCA). For example, under the language of the bill, a local government would not be allowed to prohibit the placement of a manufactured home in a district zoned for historic preservation.

FISCAL IMPACT:

No discernible fiscal impact.

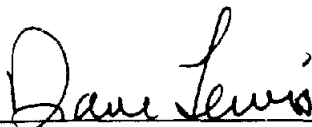
EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

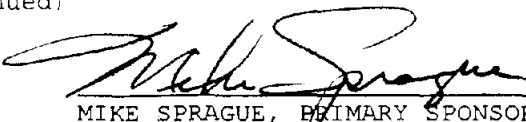
Approximately five counties have adopted county zoning regulations pursuant to 76-2-202, MCA. These counties would have to review and determine whether their current zoning regulations prohibit the use of land for a residential structure for the sole reason that the structure is a manufactured home. If the local regulations were found to be in violation of the prohibition contained in the bill, the county would have to amend them pursuant to the procedures set out in the law (76-2-205, MCA). These procedures require public notice of the proposed amendment published once a week for two weeks, conducting a public hearing, and a public notice of the intent to adopt the amendment published once a week for two weeks.

The principal fiscal impact would fall on municipal governments. Most cities and towns have adopted zoning regulations and would be subject to the provisions of this bill. SB 164 would require analysis of the local zoning ordinance by the city or town attorney or where professional staff is available, the local zoning administrator or planning director. The municipal zoning statute also requires published public notice of the amendment of a zoning regulation and a public hearing.

It is not possible to quantify the cumulative impact of the bill on county and municipal governments statewide.

(Continued)

 2.12.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/12/97
MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0164, second reading

Am SB 164 *2

TECHNICAL NOTES:

Community Development Bureau:

1. Factory-built housing is generally divided into two categories:
 - a. "Modular housing" is the term used to describe housing units fabricated in a factory which is constructed to meet the Uniform Building Code as well as the standard electrical, mechanical, and plumbing codes that apply to site-built housing. Modular homes are usually constructed without a chassis and transported to a site for final assembly on a permanent foundation.
 - b. "Manufactured housing" is the term used to describe housing units fabricated in a factory which is constructed to meet the Federal Manufactured Home Construction and Safety Standards adopted for units built after July 1, 1976. "Manufactured home" is the official HUD term for housing units more commonly referred to a "mobile home." Manufactured homes are not built to comply with the Uniform Building Code; instead the HUD standards establish generally less stringent electrical, mechanical, plumbing and structural standards. Footings and foundations are not addressed in the HUD standards. The typical method of supporting manufactured homes is with a concrete block foundation and ground anchors, although manufactured homes may be installed on a permanent foundation.
2. Montana's current zoning enabling statutes for both counties and municipalities further define "manufactured housing" as "a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States Department of Housing and Urban Development at the time of its production."
3. Most municipal zoning ordinances allow "modular housing" units within residential zones by right. In contrast, some municipal zoning ordinances allow "manufactured housing" units within residential zones only as "conditional uses" which must first comply with specified conditions. These conditions would typically require that the manufactured housing unit be compatible with the architectural style of the residences in the neighborhood and set requirements for the length of the unit relative to its width, the pitch of the roof, the materials to be used for exterior siding, for securing the unit to a permanent masonry foundation, and for removal of the unit's towing tongue, axles, and transporting lights. In other municipalities, manufactured housing may be allowed by right or as a conditional use in some residential zones but excluded in other residential zones.
4. Under a 1990 Montana Supreme Court case (*Mack T. Anderson Ins. Agency, Inc, v. City of Belgrade*, 246 Mont. 112,803 P.2d 648), the court reached several conclusions which are relevant to SB 164:

A zoning ordinance which is shown to unduly exclude manufactured housing is unconstitutional.

In making zoning decisions regarding the location of manufactured housing within its jurisdictional area, a local government not only may, but must, consider long-term planning, the unique qualities of manufactured housing, and the property values of surrounding residents, in addition to public safety.

Manufactured homes are residential uses possessing special characteristics which warrant their separate regulation. Thus, they may be confined to mobile home parks, or may be excluded from residential districts. Absent exceptional circumstances, the exclusion of manufactured homes from a residential district is not regarded as unreasonable.

If a governing body provides an adequate area for development, manufactured homes may be excluded from conventional residential districts.

1 SENATE BILL NO. 164

2 INTRODUCED BY SPRAGUE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COUNTY AND MUNICIPAL BUILDING CODES
 5 ~~AND~~ COUNTY AND MUNICIPAL ZONING AUTHORITIES MAY NOT PROHIBIT THE USE OF LAND FOR A
 6 PROPOSED RESIDENTIAL STRUCTURE FOR THE SOLE REASON THAT THE STRUCTURE IS A
 7 MANUFACTURED HOME IF THE MANUFACTURED HOME IS BUILT TO CONFORM TO THE CODE ISSUED
 8 BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ALLOWING THE BOARD OF
 9 COUNTY COMMISSIONERS TO REQUIRE THAT A MANUFACTURED HOME BE LOCATED AND INSTALLED
 10 ACCORDING TO CERTAIN STANDARDS; AND AMENDING SECTIONS ~~50-60-302~~, 76-2-202, 76-2-203,
 11 AND 76-2-302, ~~AND 76-2-304~~, MCA."

12

13 WHEREAS, federal law preempts state and local governments from denying a building permit or
 14 certificate of occupancy to a manufactured home when the denial is based solely on the fact that the home
 15 was built according to the United States Department of Housing and Urban Development code and not
 16 some other code; and

17 WHEREAS, clear distinctions between manufactured homes, mobile homes, and factory-built
 18 buildings have already been established in Montana law for regulatory purposes; and

19 WHEREAS, some local authorities in Montana are refusing to issue building permits and certificates
 20 of occupancy to manufactured homes that are built to comply with the United States Department of
 21 Housing and Urban Development code; and

22 WHEREAS, it is in Montana citizens' interest to prohibit arbitrary discrimination by local authorities
 23 against the owners of manufactured homes in defiance of federal preemption.

24

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

26

27 ~~Section 1. Section 50-60-302, MCA, is amended to read:~~

28 ~~"50-60-302. Certification of municipal and county building codes. (1) A county or municipality~~
 29 ~~may not enforce a building code unless the code adopted and a plan for enforcement of the code have been~~
 30 ~~filed with the department.~~

1 ~~(2) The department shall set forth rules and standards governing the certification of municipal and~~
2 ~~county building code programs as required in subsection (1).~~

3 ~~(3) The department may not certify a municipal or county building program if the program prohibits~~
4 ~~the use of land for a proposed residential structure for the sole reason that the proposed structure is a~~
5 ~~manufactured home if the manufactured home bears an appropriate seal indicating that the home was~~
6 ~~constructed in accordance with the standards of the United States department of housing and urban~~
7 ~~development."~~

8
9 **Section 1.** Section 76-2-202, MCA, is amended to read:

10 **"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated
11 portions of a jurisdictional area ~~which~~ that has been established under provisions of 76-1-501 through
12 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish
13 zoning districts and zoning regulations for all or part of the jurisdictional area.

14 (b) An action challenging the creation of a zoning district must be commenced ~~by October 1, 1994,~~
15 ~~or~~ within 5 years after the date of the order by the board of county commissioners creating the district, ~~if~~
16 ~~the district was created after October 1, 1989.~~

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

19 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
20 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
21 affect property values of conventional housing.

22 (b) Notwithstanding subsection (3)(a), a board of county commissioners may not adopt a zoning
23 ordinance or regulation that prohibits the use of land for a proposed residential structure for the sole reason
24 that the proposed structure is a manufactured home if the manufactured home bears an appropriate seal
25 indicating that the home was constructed in accordance with the standards of the United States department
26 of housing and urban development.

27 (c) A board of county commissioners may require that a manufactured home be located and
28 installed according to the same standards for foundation system, permanent utility connections, setback,
29 and minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

30 (4) Within each district the height and bulk of future buildings and the area of the yards, courts,

1 and other open spaces and the future uses of the land or buildings must be limited and future building
2 setback lines must be established.

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

5 (6) As used in this section, "manufactured housing" or "manufactured home" means a single-family
6 dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation,
7 is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are
8 customarily, as defined by local regulations, used on site-built homes, and is in compliance with the
9 applicable prevailing standards of the United States department of housing and urban development at the
10 time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or
11 a housetrailer, as defined in 61-1-501.

12 (7) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
13 historic districts, local design review standards, existing RESTRICTIVE covenants, or the ability to enter into
14 RESTRICTIVE covenants pursuant to Title 70, chapter 17, part 2."
15

16 **Section 2.** Section 76-2-203, MCA, is amended to read:

17 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) The zoning regulations ~~shall~~ must
18 be made in accordance with a comprehensive development plan and ~~shall~~ must be designed to:

19 (a) lessen congestion in the streets;

20 (b) ~~to~~ secure safety from fire, panic, and other dangers;

21 (c) ~~to~~ promote health and general welfare;

22 (d) ~~to~~ provide adequate light and air;

23 (e) ~~to~~ prevent the overcrowding of land;

24 (f) ~~to~~ avoid undue concentration of population; and

25 (g) ~~to~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and
26 other public requirements.

27 (2) ~~Such~~ The zoning regulations ~~shall~~ must be made with reasonable consideration, among other
28 things, to the character of the district and its peculiar suitability for particular uses and with a view to
29 conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such~~ the
30 jurisdictional area.

1 (3) The zoning regulations ~~shall~~ must, as nearly as possible, be made compatible with the zoning
2 ordinances of the municipality within the jurisdictional area.

3 (4) Notwithstanding the provisions of subsections (1), (2), and (3), zoning regulations may not
4 prohibit the use of land for a proposed residential structure for the sole reason that the proposed structure
5 is a manufactured home if the manufactured home bears an appropriate seal indicating that it was
6 constructed in accordance with the standards of the United States department of housing and urban
7 development."

8
9 **Section 3.** Section 76-2-302, MCA, is amended to read:

10 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or
11 other legislative body may divide the municipality into districts of the number, shape, and area as are
12 considered best suited to carry out the purposes of this part. Within the districts, it may regulate and
13 restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

14 (2) All regulations must be uniform for each class or kind of buildings throughout each district, but
15 the regulations in one district may differ from those in other districts.

16 (3) (a) In a proceeding for a permit or variance to place manufactured housing within a residential
17 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
18 affect property values of conventional housing.

19 (b) Notwithstanding subsection (3)(a), a local town or city council may not adopt a zoning ordinance
20 or regulation that prohibits the use of land for a proposed residential structure for the sole reason that the
21 proposed structure is a manufactured home if the manufactured home bears an appropriate seal indicating
22 that the home was constructed in accordance with the standards of the United States department of
23 housing and urban development.

24 (c) A local town or city council may require that a manufactured home be located and installed
25 according to the same standards for ~~foundation system~~, permanent utility connections, setback, and
26 minimum square footage that would apply to a site-built, single-family dwelling on the same lot.

27 (4) As used in this section, "manufactured housing" or "manufactured home" means a single-family
28 dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation,
29 is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are
30 customarily, as defined by local regulations, used on site-built homes, and is in compliance with the

1 applicable prevailing standards of the United States department of housing and urban development at the
 2 time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or
 3 a housetrailer, as defined in 61-1-501.

4 (5) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
 5 historic districts, local design review standards, existing RESTRICTIVE covenants, or the ability to enter into
 6 RESTRICTIVE covenants pursuant to Title 70, chapter 17, part 2."

7

8 ~~Section 4. Section 76-2-304, MCA, is amended to read:~~

9 ~~"76-2-304. Purposes of zoning. (1) Such Zoning regulations shall must be made in accordance~~
 10 ~~with a comprehensive plan and designed to:~~

11 ~~(a) lessen congestion in the streets;~~

12 ~~(b) to secure safety from fire, panic, and other dangers;~~

13 ~~(c) to promote health and the general welfare;~~

14 ~~(d) to provide adequate light and air;~~

15 ~~(e) to prevent the overcrowding of land;~~

16 ~~(f) to avoid undue concentration of population;~~

17 ~~(g) ensure that a fair share of housing is within reach of persons with low or moderate incomes;~~

18 and

19 ~~(h) to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and~~
 20 ~~other public requirements.~~

21 ~~(2) Such Zoning regulations shall must be made with reasonable consideration, among other things,~~
 22 ~~to the character of the district and its peculiar suitability for particular uses, to the relative availability of~~
 23 ~~land area to manufactured home development, and with a view to conserving the value of buildings and~~
 24 ~~encouraging the most appropriate use of land throughout such the municipality."~~

25

-END-