

OFFICE OF THE GOVERNOR
STATE OF MONTANA

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LT. GOVERNOR

May 11, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

Like you and members of the Legislature, I agree that local government land use regulations need to be predictably and consistently enforced, including regulations issued under the Lakeshore Protection Act. The interpretation of such regulations should not change with a personnel change and there should be a reasonable statute of limitations outside of which local governments may not challenge structures or other improvements built pursuant to a properly issued permit.

Senate Bill 301, however, does not effectively address these concerns. It creates one set of rules for "grandfathered" properties while creating an entirely different set of rules for lakeshore structures built after January 1, 2023. Government should not create different sets of rules for different classes of landowners.

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 301: "AN ACT REVISING LAWS RELATING TO REAL PROPERTY AND REGULATIONS; PROVIDING THAT CERTAIN CONSTRUCTION IS GRANDFATHERED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RESTROACTIVE APPLICABILITY DATE."

Senate Bill 301 generally prohibits local governments from initiating actions to ensure that docks, retaining walls, roads, and other lakeshore structures constructed prior to January 1, 2023 comply with lakeshore regulations and with any permits issued under the Lakeshore Protection Act. This is an arbitrary date that prohibits, for example, a local government from inspecting a structure built as recently as October 2022 – imposing an unreasonable time restriction on local governments. It is also arbitrary in that it protects structures built prior to January 1, 2023, but fails to provide any limitations on enforcement actions for new structures constructed after January 1, 2023.

Although Senate Bill 301 provides an exception allowing local governments to initiate enforcement actions relating to pre-January 1, 2023 structures “that were constructed illegally and cause material harm to lakeshore stability, water quality, or aquatic life,” the exception is too narrow in that it fails to incorporate all of the factors required to be considered under 75-7-208, MCA in issuing a permit, including interference with navigation or lawful recreation, diminishment of fish or wildlife habitat, creation of public nuisances, and creation of discordant visual impacts with natural scenic values.

Finally, Senate Bill 301 exempts entirely from permitting “minor modifications” (defined as “less than \$10,000”) to pre-January 1, 2023 structures. Again, this is arbitrary in that it provides exceptions to one class of landowners – those who built a lakeshore structure prior to January 1, 2023 – while denying the same exception to landowners who build a new lakeshore structure after January 1, 2023. It also creates a potential loophole through the construction of serial “minor modifications.” And while activities that involve “significant excavation, dredging, or in-fill of material or otherwise significantly impacts water quality” may not be undertaken under the “minor modification” exception, activities that cause other negative impacts – such as diminishment of fish or wildlife habitat or interference with navigation or recreation – are not restricted.

For these reasons, I veto Senate Bill 301.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State