

HOUSE BILL NO. 426

INTRODUCED BY MORGAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING LOCAL GOVERNMENTS FROM ESTABLISHING A FACILITY OR OFFERING A SERVICE IN DIRECT COMPETITION WITH A FOR-PROFIT ENTITY ALREADY OPERATING THE FACILITY OR OFFERING THE SERVICE; PROVIDING EXEMPTIONS; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. County prohibited from direct competition with for-profit facilities and services -- EXEMPTIONS. A (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), A county may not establish a facility for or offer a service to the general public if a for-profit entity has already established and is operating a similar facility or is offering a similar service in that county.

(2) (A) A COUNTY MAY ESTABLISH A FACILITY OR OFFER A SERVICE FOR THE COUNTY PROVIDED THAT THE COUNTY IS ABLE TO DO SO AT A LOWER COST THAN THE PRIVATE SECTOR. IN DETERMINING ITS COSTS, A COUNTY SHALL INCLUDE THE ACTUAL COSTS OF DOING BUSINESS, INCLUDING BUT NOT LIMITED TO EQUIPMENT COSTS, OPERATIONAL COSTS, AND EMPLOYEE WAGES AND BENEFITS. THE BOARD OF COUNTY COMMISSIONERS SHALL PRESENT ITS PLAN TO ESTABLISH A FACILITY OR OFFER A SERVICE AT A PUBLIC HEARING ADVERTISED AS PROVIDED IN 7-1-2121. THE PLAN MUST INCLUDE AN ITEMIZED LIST OF THE COSTS OF THE FACILITY OR SERVICE WITH SUPPORTING DOCUMENTATION FOR EACH COST AND INFORMATION ON ANY TAX REVENUE THAT WILL BE LOST BECAUSE A FACILITY IS OWNED BY THE COUNTY.

(B) A COUNTY MAY ADD BASIC RECREATIONAL FACILITIES AND SERVICES, SUCH AS OUTDOOR SWIMMING POOLS, WADING POOLS, AND PLAYGROUND EQUIPMENT, TO COUNTY PARKS IN ORDER TO BALANCE SIMILAR BASIC RECREATIONAL FACILITIES AND SERVICES AVAILABLE THROUGHOUT THE COUNTY. THE BOARD OF COUNTY COMMISSIONERS SHALL PRESENT ITS PLAN FOR ANY ADDITIONS AT A PUBLIC HEARING ADVERTISED AS PROVIDED IN 7-1-2121.

(3) THE PROHIBITION IN SUBSECTION (1) AND THE PROVISIONS IN SUBSECTION (2) DO NOT APPLY TO A PUBLIC HEALTH OR PUBLIC SAFETY FACILITY OR SERVICE OPERATED BY A COUNTY.

NEW SECTION. Section 2. Municipality prohibited from direct competition with for-profit facilities and services -- EXEMPTIONS. A (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), A municipality may

not establish a facility for or offer a service to the general public if a for-profit entity has already established and is operating a similar facility or is offering a similar service in that municipality.

(2) (A) A MUNICIPALITY MAY ESTABLISH A FACILITY OR OFFER A SERVICE FOR THE MUNICIPALITY PROVIDED THAT THE MUNICIPALITY IS ABLE TO DO SO AT A LOWER COST THAN THE PRIVATE SECTOR. IN DETERMINING ITS COSTS, A MUNICIPALITY SHALL INCLUDE THE ACTUAL COSTS OF DOING BUSINESS, INCLUDING BUT NOT LIMITED TO EQUIPMENT COSTS, OPERATIONAL COSTS, AND EMPLOYEE WAGES AND BENEFITS. THE GOVERNING BODY OF THE MUNICIPALITY SHALL PRESENT ITS PLAN TO ESTABLISH A FACILITY OR OFFER A SERVICE AT A PUBLIC HEARING ADVERTISED AS PROVIDED IN 7-1-4127. THE PLAN MUST INCLUDE AN ITEMIZED LIST OF THE COSTS OF THE FACILITY OR SERVICE WITH SUPPORTING DOCUMENTATION FOR EACH COST AND INFORMATION ON ANY TAX REVENUE THAT WILL BE LOST BECAUSE A FACILITY IS OWNED BY THE MUNICIPALITY.

(B) A MUNICIPALITY MAY ADD BASIC RECREATIONAL FACILITIES AND SERVICES, SUCH AS OUTDOOR SWIMMING POOLS, WADING POOLS, AND PLAYGROUND EQUIPMENT, TO CITY PARKS IN ORDER TO BALANCE SIMILAR BASIC RECREATIONAL FACILITIES AND SERVICES AVAILABLE THROUGHOUT THE MUNICIPALITY. THE GOVERNING BODY OF A MUNICIPALITY SHALL PRESENT ITS PLAN FOR ANY ADDITIONS TO A CITY PARK AT A PUBLIC HEARING ADVERTISED AS PROVIDED IN 7-1-4127.

(3) THE PROHIBITION IN SUBSECTION (1) AND THE PROVISIONS IN SUBSECTION (2) DO NOT APPLY TO A PUBLIC HEALTH OR PUBLIC SAFETY FACILITY OR SERVICE OPERATED BY A MUNICIPALITY.

NEW SECTION. Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 41, and the provisions of Title 7, chapter 5, part 41, apply to [section 2].

NEW SECTION. Section 4. 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].

NEW SECTION. Section 5. Applicability. [This act] applies to new facilities established or services offered by a county or municipality after [the effective date of this act].

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