



AN ACT PROHIBITING LOCAL GOVERNING BODIES FROM ENACTING, ADOPTING, IMPLEMENTING, ENFORCING, OR REFERRING TO THE ELECTORATE IMMIGRATION SANCTUARY POLICIES; PROVIDING DEFINITIONS; ALLOWING FOR THE WITHHOLDING OF FUNDS TO LOCAL GOVERNING BODIES THAT DO NOT COMPLY; AMENDING SECTION 7-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Immigration sanctuary policies prohibited -- penalties -- definitions. (1) (a) A local governing body may not enact, adopt, implement, or enforce a sanctuary policy and may not refer a sanctuary policy to the electors of the governing body's jurisdictional area.

(b) A local governing body that violates the provisions of subsection (1)(a) is subject to the provisions of subsection (1)(c).

(c) (i) Except as provided in subsection (1)(c)(ii), a state agency that provides state funds or state-administered federal funds to local governing bodies for any purpose may require certification of compliance with subsection (1)(a) as a condition of funding.

(ii) A state agency may not require certification of compliance with subsection (1)(a) as a condition of disbursing federal funds administered by the agency if the requirements of the federal law under which the funding is provided prohibit the funding from being conditioned upon compliance with state law.

(2) A person who is lawfully domiciled in Montana may seek a writ of mandamus under the provisions of Title 27, chapter 26, to compel compliance with this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Federal official or law enforcement officer" means a person employed by the United States government or a law enforcement officer whose scope of employment includes enforcing federal immigration laws or preserving homeland security.

(b) "Immigration status" means the legal status of a person's presence in the United States as determined by federal law.

(c) "Immigration status information" means information that is relevant to a person's immigration status or the identity or location of a person who is reasonably believed to be illegally residing in the United States, including but not limited to statements, documents, computer-generated data, recordings, or photographs. The term does not include information that is required by law to be kept confidential.

(d) "Local governing body" means a county, city, town, consolidated municipal-county government, school district, special district, or any other political subdivision or public corporation.

(e) "Local official or employee" means an elected or appointed official, supervisor or manager, employee, contractor, agent, or peace officer acting on behalf of or in conjunction with a local governing body.

(f) "Sanctuary policy" means a regulation, rule, policy, or practice adopted by a local governing body that prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while the local official or employee is acting within the scope of the official's or employee's official duties.

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality

with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities;

(16) pursuant to [section 1], any power to enact, adopt, implement, or enforce an immigration sanctuary policy or refer a sanctuary policy to the electors within the local government's jurisdiction."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title

7, chapter 5, part 1, and the provisions of Title 7, chapter 5, part 1, apply to [section 1].

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

- END -

I hereby certify that the within bill,
HB 0492, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 492

INTRODUCED BY D. HOWARD

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