

HOUSE BILL NO. 492

INTRODUCED BY D. HOWARD

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A BILL FOR AN ACT ENTITLED: "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:

NEW SECTION. 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.

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

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

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

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

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

15 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
16 exercising the following:

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

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

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

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

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

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

29 (7) any power that applies to or affects any determination by the department of environmental quality
30 with regard to a certificate of compliance;

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

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

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

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

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

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

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

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

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

27
 28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
 29 integral part of Title 7, chapter 5, part 1, and the provisions of Title 7, chapter 5, part 1, apply to [section 1].

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