

HOUSE BILL NO. 148

INTRODUCED BY P. CONNELL, D. KARY

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF LOCAL GOVERNING BODIES TO REGULATE AMATEUR RADIO OPERATIONS; AMENDING SECTIONS 7-1-111, 76-2-206, AND 76-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** 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



1 has the power to regulate the carrying of concealed weapons;

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

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

7 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title  
8 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

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

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

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

21 (16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,  
22 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired  
23 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
24 communications commission of the United States;

25 (17) subject to [sections 3 and 4], any power that prevents the erection of an amateur radio antenna  
26 structure at heights and dimensions sufficient to accommodate amateur radio service communications by a  
27 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,  
28 "technician" or higher class, issued by the federal communications commission of the United States."

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30 **NEW SECTION. Section 2. Amateur radio station operation from motor vehicle.** A local governing

1 body may not by ordinance, resolution, or rule prohibit the operation of a mobile amateur radio station from a  
 2 motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and  
 3 unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the  
 4 federal communications commission of the United States.

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 6 **NEW SECTION. Section 3. Effect on amateur radio antenna.** A resolution or rule adopted pursuant  
 7 to this part may not:

8 (1) prevent the erection of an amateur radio antenna ~~structure~~ at heights and dimensions sufficient to  
 9 accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official  
 10 amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
 11 communications commission of the United States; or

12 (2) establish a maximum height limit for an amateur radio antenna ~~and antenna support structure~~ of less  
 13 than 100 feet above the ground.

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 15 **NEW SECTION. Section 4. Effect on amateur radio antenna.** A resolution or rule adopted pursuant  
 16 to this part may not:

17 (1) prevent the erection of an amateur radio antenna ~~structure~~ at heights and dimensions sufficient to  
 18 accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official  
 19 amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
 20 communications commission of the United States; or

21 (2) establish a maximum height limit for an amateur radio antenna ~~and antenna support structure~~ of less  
 22 than 100 feet above the ground.

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 24 **Section 5.** Section 76-2-206, MCA, is amended to read:

25 **"76-2-206. Interim zoning district or regulation.** (1) ~~Subject~~ Except as provided in [section 3] and  
 26 subject to subsection (3) of this section, the board of county commissioners may establish an interim zoning  
 27 district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and  
 28 general welfare if:

29 (a) the purpose of the interim zoning district or interim regulation is to classify and regulate those uses  
 30 and related matters that constitute the emergency; and

1 (b) the county:

2 (i) is conducting or in good faith intends to conduct studies within a reasonable time; or

3 (ii) has held or is holding a hearing for the purpose of considering any of the following:

4 (A) a growth policy;

5 (B) zoning regulations; or

6 (C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or  
7 to zoning regulations pursuant to this part.

8 (2) A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date  
9 it becomes effective. Subject to subsection (3), the board of county commissioners may extend the resolution for  
10 1 year, but not more than one extension may be made.

11 (3) The board of county commissioners shall observe the following procedures in the establishment of  
12 an interim zoning district or interim regulation:

13 (a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim  
14 regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county.  
15 The notice must state:

16 (i) the boundaries of the proposed district;

17 (ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim  
18 zoning district or interim regulation;

19 (iii) the general character of the proposed interim zoning district or interim regulation;

20 (iv) the time and place of the public hearing; and

21 (v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office  
22 of the county clerk and recorder.

23 (b) At the public hearing, the board of county commissioners shall give the public an opportunity to be  
24 heard regarding the proposed establishment of an interim zoning district or interim regulation.

25 (c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim  
26 zoning district or interim regulation."  
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28 **Section 6.** Section 76-2-306, MCA, is amended to read:

29 **"76-2-306. Interim zoning ordinances.** (1) ~~The~~ Except as provided in [section 4], the city or town  
30 council or other legislative body of ~~such~~ the municipality, to protect the public safety, health, and welfare and

1 without following the procedures otherwise required ~~preliminary~~ prior to the adoption of a zoning ordinance, may  
 2 adopt as an urgency measure an interim zoning ordinance prohibiting any uses ~~which that~~ which may be in conflict with  
 3 a contemplated zoning proposal ~~which that~~ that the legislative body is considering or studying or intends to study  
 4 within a reasonable time.

5 (2) ~~Such~~ An interim zoning ordinance ~~shall only~~ may be applicable only within the city limits and up to  
 6 1 mile beyond the corporate boundaries of the city or town and ~~shall take~~ takes effect upon passage; ~~provided,~~  
 7 ~~however, if~~ a hearing is first held upon notice reasonably designed to inform all affected parties, ~~and in no event~~  
 8 ~~shall~~ A notice must be published ~~less than publication~~ in a newspaper of general circulation at least 7 days before  
 9 the hearing.

10 (3) ~~Such~~ An interim zoning ordinance ~~shall be of no further force and is no longer in~~ effect 6 months from  
 11 the date of its adoption ~~thereof~~. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the  
 12 legislative body may extend ~~such the~~ the interim zoning ordinance for 1 year. Any ~~such~~ extension ~~shall require~~  
 13 requires a two-thirds vote for passage and ~~shall become~~ becomes effective upon passage. ~~Not~~ No more than two  
 14 ~~such~~ extensions may be adopted."

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 16 NEW SECTION. Section 7. Codification instruction. (1) [Section 2] is intended to be codified as an  
 17 integral part of Title 7, chapter 31, and the provisions of Title 7, chapter 31, apply to [section 2].

18 (2) [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the  
 19 provisions of Title 76, chapter 2, part 2, apply to [section 3].

20 (3) [Section 4] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the  
 21 provisions of Title 76, chapter 2, part 3, apply to [section 4].

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 23 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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