

SENATE BILL NO. 320

INTRODUCED BY J. SESSO

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN LOCAL GOVERNMENTS TO REQUIRE OWNERS OF BUILDINGS TO REGISTER WITH THE LOCAL GOVERNMENT AND PROVIDE INFORMATION REGARDING THE BUILDING'S USE; PROVIDING THAT THE INFORMATION IS TO BE USED FOR THE PURPOSE OF ENSURING MAINTENANCE OF BUILDINGS IN A MANNER THAT PROTECTS PUBLIC HEALTH AND SAFETY; AMENDING SECTIONS 7-1-111, 50-60-106, AND 50-60-301, 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

1 as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'  
2 imprisonment, or both, except as specifically authorized by statute;

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

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

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

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

12 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended  
13 to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70,  
14 chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords  
15 to comply with ordinances or provisions that are applicable to all other businesses or residences within the local  
16 government's jurisdiction, including ordinances or resolutions adopted as provided in 50-60-106.

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

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

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

28 (17) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna  
29 at heights and dimensions sufficient to accommodate amateur radio service communications by a person who  
30 holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or

1 higher class, issued by the federal communications commission of the United States."

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3 **Section 2.** Section 50-60-106, MCA, is amended to read:

4 **"50-60-106. Powers and duties of counties, cities, and towns.** (1) As allowed by Title 50, chapter  
5 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of  
6 building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration  
7 and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town.  
8 The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building  
9 permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and  
10 enforcement of building regulations within the portion of a county that is covered by a county building code  
11 enforcement program are the responsibility of the county.

12 (2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

13 (a) examine, approve, or disapprove plans and specifications for the construction of any building, the  
14 construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code  
15 or county, city, or town building code, and direct the inspection of the buildings during and in the course of  
16 construction;

17 (b) require that construction of buildings be in accordance with the applicable provisions of the state  
18 building code or county, city, or town building code, subject to the powers of variance or modification granted to  
19 the department;

20 (c) make available to building contractors at a price that is commensurate with reproduction costs a  
21 checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors  
22 who attach a completed checklist to the plans submitted for examination the relevant building permit or notice  
23 of plan disapproval within 10 working days of the contractor's submission;

24 (d) during and in the course of construction, order in writing the remedying of any condition found to exist  
25 in, on, or about any building that is being constructed in violation of the state building code or county, city, or town  
26 building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending  
27 by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the  
28 application for permission for the construction of the building. A county, city, or town certified pursuant to  
29 50-60-302, by action of its building official, may grant in writing time as may be reasonably necessary for  
30 achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection (2)(d), the phrase

1 "during and in the course of construction" refers to the construction of a building until all necessary building  
2 permits have been obtained and all work authorized by those permits has been fully approved by the building  
3 official having jurisdiction.

4 (e) issue certificates of occupancy as provided in 50-60-107;

5 (f) issue permits, licenses, and other required documents in connection with the construction of a  
6 building;

7 (g) ensure that all construction-related fees or charges imposed and collected by the county, city, or town  
8 are necessary, reasonable, and uniform and are:

9 (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists  
10 of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building  
11 codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying  
12 administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund,  
13 they must also be waived for the program established in this section. Indirect charges are limited to the charges  
14 that are allowed under federal cost accounting principles that are applicable to a local government.

15 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
16 building codes for 12 months. The excess must be placed in a reserve account and may be used only for building  
17 code enforcement. Collection and expenditure of fees and charges must be fully documented.

18 (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or  
19 charges collected, for the building codes education program established in 50-60-116.

20 (3) Each county, city, or town with a building code enforcement program that has been certified under  
21 50-60-302 may, within the area of its jurisdiction:

22 (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this  
23 section and for the collection of fees and charges related to construction; and

24 (b) prohibit the commencement of construction until a permit has been issued by the building code  
25 enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable  
26 provisions of the state building code or county, city, or town building code or other county, city, or town ordinance  
27 or resolution that pertains to the proposed construction. A county, city, or town subject to this subsection (3) may,  
28 as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards  
29 for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The  
30 incentive-based energy conservation standards adopted may exceed any applicable energy conservation

1 standards contained in the state building code. New construction is not required to meet local standards that  
 2 exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

3 (c) require by ordinance or resolution that building owners register with the county, city, or town and  
 4 provide information regarding use of buildings for the purposes of creating an inventory of buildings and building  
 5 owners and ensuring that buildings within the county's, city's, or town's jurisdictional limits are maintained in a  
 6 manner that protects public health and safety.

7 (4) Each county, city, or town with a building code enforcement program that has been certified under  
 8 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following  
 9 conditions:

10 (a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.

11 (b) The inspections are not done in lieu of inspections by another county, city, or town that has  
 12 jurisdiction over the buildings to be inspected.

13 (c) (i) The county, city, or town powers of enforcement possessed as a result of building code  
 14 enforcement certification by the department may not be exercised in conjunction with the requested inspections.

15 (ii) Similar powers of building code enforcement may not be contractually created or required by the  
 16 requester and the inspecting jurisdiction.

17 (5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction  
 18 subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative  
 19 inspections of those buildings prior to annexation as a condition precedent to receiving any public services or  
 20 utilities."

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22 **Section 3.** Section 50-60-301, MCA, is amended to read:

23 **"50-60-301. County, city, and town building codes authorized -- health care facility and public**  
 24 **health center doors -- fee adjustment for model plans.** (1) The local legislative body of a county, city, or town  
 25 may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:

26 (a) adopting a building code; or

27 (b) authorizing the adoption of a building code by administrative action.

28 (2) (a) Except as provided in ~~subsection (2)(b)~~ subsections (2)(b) and (2)(c), a county, city, or town  
 29 building code may include only codes adopted by the department.

30 (b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt

1 voluntary energy conservation standards for new construction for the purpose of providing incentives to  
2 encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may  
3 exceed any applicable energy conservation standards contained in the state building code. New construction is  
4 not required to meet local standards that exceed state energy conservation standards unless the building  
5 contractor elects to receive a local incentive.

6 (c) A county, city, or town may adopt an ordinance or resolution as provided in 50-60-106(3)(c) that  
7 requires building owners to register and provide information regarding use of buildings for the purposes of  
8 creating an inventory and ensuring maintenance in a manner that protects public health and safety.

9 (3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic  
10 closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a  
11 public health center, as defined in 7-34-2102.

12 (4) (a) When the same single-family dwelling plan is constructed at more than one site, the county, city,  
13 or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of  
14 reviewing requirements pertaining to the review of:

- 15 (i) zoning;
- 16 (ii) footings, foundations, and basements;
- 17 (iii) curbs;
- 18 (iv) gutters;
- 19 (v) landscaping;
- 20 (vi) utility connections;
- 21 (vii) street requirements;
- 22 (viii) sidewalks; and
- 23 (ix) other requirements related specifically to the exterior of the building.

24 (b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a  
25 fashion that substantially affects the building code requirements, the county, city, or town may impose the full  
26 examination fee permitted under 50-60-106."

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

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