

1 HOUSE BILL NO. 407

2 INTRODUCED BY M. NOLAND

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ESTABLISHING
5 STATEWIDE UNIFORMITY FOR AUXILIARY CONTAINER REGULATIONS; PREEMPTING LOCAL
6 ORDINANCES, RESOLUTIONS, INITIATIVES, OR REFERENDUMS REGULATING AUXILIARY
7 CONTAINERS; PROHIBITING LOCAL GOVERNMENTS FROM ADOPTING OR ENFORCING ORDINANCES,
8 RESOLUTIONS, INITIATIVES, OR REFERENDUMS REGULATING THE USE, DISPOSITION, SALE,
9 PROHIBITIONS, FEES, CHARGES, OR TAXES ON AUXILIARY CONTAINERS; PROVIDING CERTAIN
10 EXCEPTIONS; AND AMENDING SECTIONS 7-1-111 AND 7-5-131, MCA."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 NEW SECTION. **Section 1. Statewide uniformity for auxiliary container regulations -- local**
15 **prohibitions -- definitions.** (1) The purpose of this section is to preempt any local ordinance, resolution,
16 initiative, or referendum regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on certain
17 containers.

18 (2) Except as provided in subsection (3), a local unit of government may not adopt or enforce any
19 local ordinance, resolution, initiative, or referendum that:

- 20 (a) regulates the use, disposition, or sale of auxiliary containers;
21 (b) prohibits or restricts auxiliary containers; or
22 (c) imposes a fee, charge, or tax on auxiliary containers.

23 (3) The prohibitions in subsection (2) may not be construed to prohibit, restrict, or apply to any of the
24 following:

- 25 (a) a curbside recycling program;
26 (b) a designated residential or commercial recycling location;
27 (c) a commercial recycling program;
28 (d) an ordinance that prohibits littering; or

- 1 (e) the use of auxiliary containers on property owned by a local unit of government.
- 2 (5) As used in this section, unless the context requires otherwise, the following terms apply:
- 3 (a) "Auxiliary container" means a bag, cup, bottle, can, device, eating or drinking utensil or tool, or
4 other packaging, whether reusable or single use, that is:
- 5 (i) made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated
6 material, aluminum, glass, postconsumer recycled material, or similar material or substrates, including coated,
7 laminated, or multilayer substrates; and
- 8 (ii) designed for transporting, consuming, or protecting merchandise, food, or a beverage to or from, or
9 at, a food service, manufacturing, distribution or processing facility, or retail facility.
- 10 (b) "Local unit of government" means any county, municipality, school district, special district or other
11 political subdivision of the state, including any agency or governing body of a local unit of government as
12 defined by 7-4-502, or a similar unit of government of another state or nation.

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- 14 **Section 2.** Section 7-1-111, MCA, is amended to read:
- 15 **"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with
16 self-government powers is prohibited from 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, except that subject to
20 those provisions, it may exercise any power of a public employer with regard to its employees;
- 21 (3) any power that applies to or affects the public school system, except that a local unit may impose
22 an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall
23 exercise any power that it is required by law to exercise regarding the public school system;
- 24 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public
25 convenience and necessity pursuant to Title 69, chapter 12;
- 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
28 with regard to any mining plan, permit, or contract;

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

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

6 (9) any power that applies to or affects the right to keep or bear arms;

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

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

12 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title
13 75, chapter 7, part 1, or Title 87;

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

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

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

26 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing,
27 sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable
28 seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from

1 adopting or implementing zoning regulations or building codes governing the physical location or siting of
 2 agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution
 3 facilities.

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

8 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
 9 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
 10 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
 11 "technician" or higher class, issued by the federal communications commission of the United States;

12 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
 13 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
 14 highway that is under the jurisdiction of an entity other than the local government unit;

15 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
 16 relation to a wildfire;

17 (21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products
 18 providers, and adult-use dispensaries from being located within the jurisdiction of the local government except
 19 as allowed in Title 16, chapter 12; or

20 (22) any power as prohibited in [section 1(2)] affecting, applying to, or regulating the use, disposition,
 21 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in [section 1(5)]."

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23 **Section 3.** Section 7-5-131, MCA, is amended to read:

24 **"7-5-131. Right of initiative and referendum.** (1) ~~The~~ Except as provided in subsection (2), the
 25 powers of initiative and referendum are reserved to the electors of each local government. Resolutions and
 26 ordinances within the legislative jurisdiction and power of the governing body of the local government, ~~except~~
 27 ~~those set out in subsection (2),~~ may be proposed or amended and prior resolutions and ordinances may be
 28 repealed in the manner provided in 7-5-132 through 7-5-135 and 7-5-137.

- 1 (2) The powers of initiative do not extend to the following:
- 2 (a) the annual budget;
- 3 (b) bond proceedings, except for ordinances authorizing bonds;
- 4 (c) the establishment and collection of charges pledged for the payment of principal and interest on
- 5 bonds;
- 6 (d) the levy of special assessments pledged for the payment of principal and interest on bonds; ~~or~~
- 7 (e) the prioritization of the enforcement of any state law by a unit of local government; or
- 8 (f) the regulation of auxiliary containers, defined in [section 1(5)], as prohibited by [section 1(2)]."

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10 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an

11 integral part of Title 7, and the provisions of Title 7 apply to [section 1].

12 - END -