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HOUSE BILL NO. 241

INTRODUCED BY J. KASSMIER, E. BUTTREY, D. LOGE, B. LER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE STATE AND LOCAL GOVERNMENTS  
~~AND LOCAL GOVERNMENTS~~ CANNOT REQUIRE THAT BUILDINGS BE CONSTRUCTED TO HAVE  
SOLAR PANELS OR WIRING, BATTERIES, OR OTHER EQUIPMENT FOR SOLAR PANELS OR ELECTRIC  
VEHICLES VEHICLE CHARGERS; AND AMENDING SECTIONS 7-1-111 AND SECTION SECTIONS 7-1-111  
AND 50-60-203, MCA."

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, 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 compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;~~

(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~~

**Amendment - 2nd Reading/2nd House-tan - Requested by: Steve Fitzpatrick - (S) Committee of Whole**

68th Legislature

Drafter: Toni Henneman, 406-444-3593

HB0241.002.001

1 ~~quality with regard to a certificate of compliance;~~

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

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

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

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

11 ~~(12) — except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to~~  
12 ~~or affects Title 75, chapter 7, part 1, or Title 87;~~

13 ~~(13) — any power that applies to or affects landlords, as defined in 70-24-103, when that power is~~  
14 ~~intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title~~  
15 ~~70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require~~  
16 ~~landlords to comply with ordinances or provisions that are applicable to all other businesses or residences~~  
17 ~~within the local 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~~  
21 ~~may enter into a cooperative agreement with the department of agriculture concerning the use and application~~  
22 ~~of 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) — subject to 80-5-136 (10), any power to regulate the cultivation, harvesting, production,~~  
26 ~~processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or~~  
27 ~~vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local~~

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1 ~~government from adopting or implementing zoning regulations or building codes governing the physical location~~  
2 ~~or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or~~  
3 ~~distribution 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 as prohibited in 7-1-121 (2) affecting, applying to, or regulating the use, disposition,~~  
18 ~~sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121 (5);~~

19 (22) ~~any power that provides for fees, taxation, or penalties based on carbon or carbon use in~~  
20 ~~accordance with 7-1-116 ;~~

21 (23) ~~any power to require an employer, other than the local government unit itself, to provide an~~  
22 ~~employee or class of employees with a wage or employment benefit that is not required by state or federal law;~~

23 (24) ~~any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and~~  
24 ~~any power to bring a retributive action against a private business owner as prohibited in 7-5-103 (2)(d)(iv) and~~  
25 ~~7-5-121 (2)(c)(iv); or~~

26 (25) ~~any power to prohibit the sale of alternative nicotine products or vapor products as provided in~~  
27 ~~16-11-313 (1). ; or~~

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1           ~~(26) any power to require that buildings be constructed to have solar panels or wiring, batteries, or~~  
2 ~~other equipment for solar panels or electric vehicles."~~

3

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

5           **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from  
6 exercising the following:

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

9           (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject  
10 to those provisions, it may exercise any power of a public employer with regard to its employees;

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

14           (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of  
15 public convenience and necessity pursuant to Title 69, chapter 12;

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

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

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

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

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

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

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

3 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to  
4 or affects Title 75, chapter 7, part 1, or Title 87;

5 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is  
6 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title  
7 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require  
8 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences  
9 within the local government's jurisdiction.

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

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

17 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,  
18 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or  
19 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local  
20 government from adopting or implementing zoning regulations or building codes governing the physical location  
21 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or  
22 distribution facilities.

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

27 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio

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- 1 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a  
2 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,  
3 "technician" or higher class, issued by the federal communications commission of the United States;
- 4 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,  
5 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a  
6 highway that is under the jurisdiction of an entity other than the local government unit;
- 7 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in  
8 relation to a wildfire;
- 9 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,  
10 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);
- 11 (22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in  
12 accordance with 7-1-116;
- 13 (23) any power to require an employer, other than the local government unit itself, to provide an  
14 employee or class of employees with a wage or employment benefit that is not required by state or federal law;
- 15 (24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and  
16 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-  
17 5-121(2)(c)(iv); ~~or~~
- 18 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in  
19 16-11-313(1); or
- 20 (26) any power to require that buildings be constructed to have solar panels or wiring, batteries, or  
21 other equipment for solar panels or electric vehicles."

22  
23 **Section 2.** Section 50-60-203, MCA, is amended to read:

24 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
25 rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all  
26 buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with  
27 disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of

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1 significant public interest for purposes of 2-3-103.

2 (b) Rules concerning the conservation of energy must conform to the policy established in 50-60-  
3 801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

4 (2) The department may adopt by reference nationally recognized building codes in whole or in  
5 part, except as provided in subsection (5), and may adopt rules more stringent than those contained in national  
6 codes.

7 (3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code"  
8 and are acceptable for the buildings to which they are applicable.

9 (4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum  
10 gas-burning appliances.

11 (5) The department may not include in the state building code:

12 (a) a requirement for the installation of a fire sprinkler system in a single-family dwelling or a  
13 residential building that contains no more than two dwelling units; or

14 (b) a requirement that buildings be constructed to have WITH to have solar panels or wiring or  
15 wiring, batteries, or other equipment for solar panels or other equipment for solar panels or electric vehicles  
16 VEHICLE CHARGERS vehicles.

17 (6) (a) The department shall, by rule, adopt by reference the most recently published edition of the  
18 national fire protection association's publication NFPA 99C for the installation of medical gas piping systems.  
19 The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of  
20 medical gas piping systems.

21 (b) A state, county, city, or town building code compliance officer shall, as part of any inspection,  
22 request proof of a medical gas piping installation endorsement from any person who is required to hold an  
23 endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity.  
24 The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the  
25 employing agency shall report the violation to the board of plumbers."

26 - END -