

SENATE BILL NO. 208

INTRODUCED BY J. SMALL, M. CUFFE, S. FITZPATRICK, T. MANZELLA, B. MITCHELL

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING LOCAL GOVERNMENTS FROM BANNING OR LIMITING ENERGY CHOICES; PROVIDING A DEFINITION; AMENDING SECTIONS 7-1-111 AND 50-60-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Energy source restrictions -- prohibition. (1) Notwithstanding any other provision of law, a local government may not adopt or enforce an ordinance, resolution, or policy that prohibits or impedes, or has the effect of prohibiting or impeding, the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider.

(2) For the purposes of this section, "local government" includes a county, a consolidated government, an incorporated city or town, or a special district.

Section 2. 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

- 1 public convenience and necessity pursuant to Title 69, chapter 12;
- 2 (5) any power that establishes a rate or price otherwise determined by a state agency;
- 3 (6) any power that applies to or affects any determination of the department of environmental
4 quality with regard to any mining plan, permit, or contract;
- 5 (7) any power that applies to or affects any determination by the department of environmental
6 quality with regard to a certificate of compliance;
- 7 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
8 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
9 months' imprisonment, or both, except as specifically authorized by statute;
- 10 (9) any power that applies to or affects the right to keep or bear arms;
- 11 (10) any power that applies to or affects a public employee's pension or retirement rights as
12 established by state law, except that a local government may establish additional pension or retirement
13 systems;
- 14 (11) any power that applies to or affects the standards of professional or occupational competence
15 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- 16 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to
17 or affects Title 75, chapter 7, part 1, or Title 87;
- 18 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is
19 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title
20 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require
21 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences
22 within the local government's jurisdiction.
- 23 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- 24 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
25 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
26 may enter into a cooperative agreement with the department of agriculture concerning the use and application
27 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
28 government from adopting or implementing zoning regulations or fire codes governing the physical location or

1 siting of fertilizer manufacturing, storage, and sales facilities.

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

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

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

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

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

21 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,
22 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

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

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

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

1 5-121(2)(c)(iv); or
 2 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in
 3 16-11-313(1); or
 4 (26) any power to prohibit or impede the connection or reconnection of an electric, natural gas,
 5 propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or
 6 other energy or fuel provider."

7
 8 **Section 3.** Section 50-60-203, MCA, is amended to read:

9 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt
 10 rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all
 11 buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with
 12 disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of
 13 significant public interest for purposes of 2-3-103.

14 (b) Rules concerning the conservation of energy must conform to the policy established in 50-60-
 15 801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

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

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

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

23 (5) The department may not include in the state building code a requirement for the installation of
 24 a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two
 25 dwelling units.

26 (6) The department may not include in the state building code a prohibition of or limitation on the
 27 use of electric, natural gas, propane, or other energy source.

28 ~~(6)(7)~~ (a) The department shall, by rule, adopt by reference the most recently published edition of the

1 national fire protection association's publication NFPA 99C for the installation of medical gas piping systems.
2 The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of
3 medical gas piping systems.

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

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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].

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13 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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