

## 1 HOUSE BILL NO. 160

2 INTRODUCED BY E. STAFMAN, B. EDWARDS, M. LEE, P. STRAND, B. CLOSE, P. ELVERUM, D.

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LOCAL GOVERNMENT PROHIBITION OF THE  
6 REGULATION OF AUXILIARY CONTAINERS; AMENDING SECTIONS 7-1-111 AND 7-5-131, MCA; AND  
7 REPEALING SECTION 7-1-121, MCA."

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

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

12 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from  
13 exercising the following:

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

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

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

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

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

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

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

28 (8) any power that defines as an offense conduct made criminal by state statute, that defines an

1 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6  
2 months' 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;

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

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

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

11 (13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when  
12 that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is  
13 provided in Title 70, chapters 24, 25, and 33; or

14 (b) any power to deviate from or add to the exclusive application of the provisions of:

15 (i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

16 (ii) residential tenants' security deposit law in Title 70, chapter 25; or

17 (iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

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  
28 government from adopting or implementing zoning regulations or building codes governing the physical location

1 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or  
2 distribution facilities.

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

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

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

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

16 ~~(21) any power as prohibited in 7-1-121 (2) affecting, applying to, or regulating the use, disposition,~~  
17 ~~sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121 (4);~~

18 ~~(22)~~(21) any power that provides for fees, taxation, or penalties based on carbon or carbon use in  
19 accordance with 7-1-116;

20 ~~(23)~~(22) any power to require an employer, other than the local government unit itself, to provide an  
21 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

22 ~~(24)~~(23) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and  
23 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-  
24 5-121(2)(c)(iv);

25 ~~(25)~~(24) any power to prohibit the sale of alternative nicotine products or vapor products as provided in  
26 16-11-313(1);

27 ~~(26)~~(25) any power to control the amount of rent charged for private residential or commercial property.

28 Private residential property does not include property in which the local government unit has a property interest

or in which the local government unit has an interest through a housing authority.

~~(27)(26)~~any power to require additional licensing when the state is the original issuer of the license;

~~(28)(27)~~any power to prohibit or impede 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;

~~(29)(28)~~any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels; or

~~(30)(29)~~any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles."

**Section 2.** Section 7-5-131, MCA, is amended to read:

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

(2) The powers of initiative do not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds;

(d) the levy of special assessments pledged for the payment of principal and interest on bonds; or

(e) the prioritization of the enforcement of any state law by a unit of local government; ~~or~~

(f) ~~the regulation of auxiliary containers, defined in 7-1-121(4), as prohibited by 7-1-121(2).~~"

NEW SECTION. **Section 3. Repealer.** The following section of the Montana Code Annotated is repealed:

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