

1 HOUSE BILL NO. 413
2 INTRODUCED BY E. STAFMAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE PROHIBITION ON THE USE OF INITIATIVES
5 TO REGULATE AUXILIARY CONTAINERS; AMENDING SECTIONS 7-1-111 AND 7-5-131; REPEALING
6 SECTION 7-1-121; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 7-1-111, MCA, is amended to read:

11 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
12 exercising the following:

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

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

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

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

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

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

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

27 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
28 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6

1 months' imprisonment, or both, except as specifically authorized by statute;

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

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

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

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

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

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

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

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

28 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,

1 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
 2 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
 3 communications commission of the United States;

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

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

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

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

15 ~~(22)~~(21) any power that provides for fees, taxation, or penalties based on carbon or carbon use in
 16 accordance with 7-1-116;

17 ~~(23)~~(22) any power to require an employer, other than the local government unit itself, to provide an
 18 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

19 ~~(24)~~(23) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121
 20 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv)
 21 and 7-5-121(2)(c)(iv); or

22 ~~(25)~~(24) any power to prohibit the sale of alternative nicotine products or vapor products as provided
 23 in 16-11-313(1)."

24

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

26 **"7-5-131. Right of initiative and referendum.** (1) Except as provided in subsection (2), the powers of
 27 initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances
 28 within the legislative jurisdiction and power of the governing body of the local government may be proposed or

1 amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-
2 135 and 7-5-137.

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

4 (a) the annual budget;

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

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

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

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

10 (f) ~~the regulation of auxiliary containers, defined in 7-1-121(5), as prohibited by 7-1-121(2)."~~

11

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

14 7-1-121. Statewide uniformity for auxiliary container regulations -- local prohibitions -- definitions.

15

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

17 - END -