

SENATE BILL NO. 505

INTRODUCED BY B. PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ZONING LAWS; ALLOWING FOR A PROHIBITION ON THE CONSTRUCTION OF WIND GENERATION FACILITIES; AMENDING SECTIONS 7-1-111 AND 76-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 quality with regard to a certificate of compliance;
- (8) any power that defines as an offense conduct made criminal by state statute, that defines an 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) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when
11 that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is
12 provided in Title 70, chapters 24, 25, and 33; or
- 13 (b) any power to deviate from or add to the exclusive application of the provisions of:
- 14 (i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;
- 15 (ii) residential tenants' security deposit law in Title 70, chapter 25; or
- 16 (iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.
- 17 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- 18 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
19 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
20 may enter into a cooperative agreement with the department of agriculture concerning the use and application
21 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
22 government from adopting or implementing zoning regulations or fire codes governing the physical location or
23 siting of fertilizer manufacturing, storage, and sales facilities.
- 24 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,
25 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or
26 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local
27 government from adopting or implementing zoning regulations or building codes governing the physical location
28 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or

1 distribution facilities.

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

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

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

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

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

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

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

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

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

26 (26) any power to control the amount of rent charged for private residential or commercial property.
27 Private residential property does not include property in which the local government unit has a property interest
28 or in which the local government unit has an interest through a housing authority.

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

2 (28) any power to prohibit or impede the connection or reconnection of an electric, natural gas,
3 propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or
4 other energy or fuel provider, except for wind generation facilities as defined in 75-26-301;

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

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

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11 **Section 2.** Section 76-2-101, MCA, is amended to read:

12 **"76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of
13 subsection (5), whenever the public interest or convenience may require and on petition of 60% of the affected
14 real property owners in the proposed district, or 55% of the affected real property owners in the proposed
15 district if the purpose is to prohibit the construction of wind generation facilities as defined in 75-26-301, the
16 board of county commissioners may create a planning and zoning district and may appoint a planning and
17 zoning commission consisting of up to seven members.

18 (2) A planning and zoning district may not be created in an area that has been zoned by an
19 incorporated city pursuant to 76-2-310 and 76-2-311.

20 (3) For the purposes of this part, the word "district" means any area that consists of not less than
21 40 acres.

22 (4) An action challenging the process to create a planning and zoning district must begin within 6
23 months after the date of the order by the board of county commissioners creating the district.

24 (5) (a) Before the board of county commissioners determines whether the number of affected real
25 property owners necessary to meet the petition requirement of subsection (1) has been met, draft documents of
26 the proposed materials that may potentially govern the proposed district must be made available to the board of
27 county commissioners. Draft documents of the proposed materials required in this subsection (5) may include
28 but are not limited to drafts of:

- 1 (i) a development pattern as provided in 76-2-104;
- 2 (ii) a resolution as provided in 76-2-107; and
- 3 (iii) the land use and zoning regulations as provided in 76-2-107.
- 4 (b) The final adopted development pattern, resolutions, and other materials that govern the zoning
- 5 district as required in 76-2-104 and 76-2-107 must be similar to the draft documents provided to the county
- 6 commissioners as required in subsection (5)(a)."

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8 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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