

HOUSE BILL NO. 50

INTRODUCED BY D. HOWARD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING LOCAL GOVERNING BODIES FROM ENACTING,
5 ADOPTING, IMPLEMENTING, ENFORCING, OR REFERRING TO THE ELECTORATE IMMIGRATION
6 SANCTUARY POLICIES; PROVIDING DEFINITIONS; ~~ALLOWING FOR~~ REQUIRING THE WITHHOLDING OF
7 FUNDS TO LOCAL GOVERNING BODIES THAT DO NOT COMPLY; AMENDING SECTION 7-1-111, MCA;
8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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12 **NEW SECTION. Section 1. Immigration sanctuary policies prohibited -- penalties -- definitions.**

13 (1) (a) A local governing body may not enact, adopt, implement, or enforce a sanctuary policy and may not refer
14 a sanctuary policy to the electors of the governing body's jurisdictional area.

15 (b) A local governing body that violates the provisions of subsection (1)(a) is subject to the provisions
16 of subsection (1)(c).

17 (c) (i) Except as provided in subsection (1)(c)(ii), a state agency that provides state funds or
18 state-administered federal funds to local governing bodies for any purpose may require certification of compliance
19 with subsection (1)(a) as a condition of funding.

20 (ii) A state agency may not require certification of compliance with subsection (1)(a) as a condition of
21 disbursing federal funds administered by the agency if the requirements of the federal law under which the
22 funding is provided prohibit the funding from being conditioned upon compliance with state law.

23 (2) A person who is lawfully domiciled in Montana may seek a writ of mandamus under the provisions
24 of Title 27, chapter 26, to compel compliance with this section.

25 (3) For the purposes of this section, the following definitions apply:

26 (a) "Federal official or law enforcement officer" means a person employed by the United States
27 government or a law enforcement officer ~~whose scope of employment includes enforcing federal immigration laws~~
28 ~~or preserving homeland security~~ AS DEFINED IN 5 U.S.C. 8331(20) AND 5 U.S.C. 8401(17).

29 (b) "Immigration status" means the ~~legal~~ LAWFUL OR UNLAWFUL status of a person's presence in the United
30 States as determined by federal law.

1 (c) "Immigration status information" means information that is relevant to a person's immigration status
 2 ~~or the identity or location of a person who is reasonably believed to be illegally residing in the United States,~~
 3 including but not limited to statements, documents, computer-generated data, recordings, or photographs. The
 4 term does not include information that is required by law to be kept confidential.

5 (d) "Local governing body" means a county, city, town, consolidated municipal-county government,
 6 school district, special district, or any other political subdivision or public corporation.

7 (e) "Local official or employee" means an elected or appointed official, supervisor or manager, employee,
 8 contractor, agent, or peace officer acting on behalf of or in conjunction with a local governing body.

9 (f) "Sanctuary policy" means a regulation, rule, policy, or practice adopted by a local governing body that
 10 prohibits or restricts local officials or employees from ~~communicating or cooperating with federal officials or law~~
 11 ~~enforcement officers with regard to reporting immigration status information while the local official or employee~~
 12 ~~is acting within the scope of the official's or employee's official duties.~~ TAKING ANY OF THE FOLLOWING ACTIONS WITH
 13 RESPECT TO INFORMATION REGARDING A PERSON'S IMMIGRATION STATUS:

14 (I) SENDING INFORMATION TO OR REQUESTING OR RECEIVING IMMIGRATION STATUS INFORMATION FROM FEDERAL
 15 OFFICIALS OR LAW ENFORCEMENT OFFICERS WHILE THE LOCAL OFFICIAL OR EMPLOYEE IS ACTING WITHIN THE SCOPE OF
 16 THE LOCAL OFFICIAL'S OR EMPLOYEE'S OFFICIAL DUTIES;

17 (II) MAINTAINING IMMIGRATION STATUS INFORMATION;

18 (III) EXCHANGING IMMIGRATION STATUS INFORMATION WITH ANY FEDERAL OR STATE GOVERNMENTAL ENTITY OR
 19 LOCAL GOVERNING BODY;

20 (IV) DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE, OR LICENSE PROVIDED BY FEDERAL LAW OR
 21 A LAW OF THIS STATE OR ITS POLITICAL SUBDIVISIONS;

22 (V) VERIFYING A CLAIM OF RESIDENCE OR DOMICILE IF A DETERMINATION OF RESIDENCE OR DOMICILE IS
 23 REQUIRED UNDER FEDERAL LAW OR A LAW OF THIS STATE OR ITS POLITICAL SUBDIVISIONS OR UNDER A JUDICIAL ORDER
 24 ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE;

25 (VI) CONFIRMING THE IDENTITY OF A PERSON WHO IS DETAINED BY LAW ENFORCEMENT OFFICIALS;

26 (VII) DETERMINING WHETHER A PERSON IS IN COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED
 27 BY TITLE II, CHAPTER 7, OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. 1301, ET SEQ., IF THE PERSON IS AN ALIEN;
 28 OR

29 (VIII) ACTING IN ANY OTHER MANNER THAT VIOLATES THE PROVISIONS OF 8 U.S.C. 1373 AND 1644.
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1 **Section 2.** Section 7-1-111, MCA, is amended to read:

2 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
3 exercising the following:

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

6 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective
7 bargaining for public employees, unemployment compensation, or workers' compensation), except that subject
8 to those provisions, it may exercise any power of a public employer with regard to its employees;

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

12 (4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

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

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

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

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

21 (9) any power that applies to or affects the right to keep or bear arms, except that a local government
22 has the power to regulate the carrying of concealed weapons;

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

25 (11) any power that applies to or affects the standards of professional or occupational competence
26 established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession
27 or occupation;

28 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title
29 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

30 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended

1 to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70,
2 chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords
3 to comply with ordinances or provisions that are applicable to all other businesses or residences within the local
4 government's jurisdiction.

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

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

12 (16) pursuant to [section 1], any power to enact, adopt, implement, or enforce an immigration sanctuary
13 policy or refer a sanctuary policy to the electors within the local government's jurisdiction."

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15 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 7, chapter 5, part 1, and the provisions of Title 7, chapter 5, part 1, apply to [section 1].

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

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