

SENATE BILL NO. 155

INTRODUCED BY M. LANG

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSISTENCY OF AGRICULTURAL AND VEGETABLE SEED REGULATION BY THE STATE; PROHIBITING LOCAL GOVERNMENT REGULATION OF AGRICULTURAL SEED; PROVIDING EXCEPTIONS; AMENDING SECTIONS 7-1-111, 80-5-120, AND 80-5-136, 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 months' imprisonment, or both, except as specifically authorized by statute;

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

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

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

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

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

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

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

21 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing,  
22 registration, labeling, marketing, sale, storage, transportation, distribution, possession, notification of use, use,  
23 and planting of agricultural seeds or vegetable seeds as defined in 80-5-120;

24 ~~(16)~~(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,  
25 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired  
26 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
27 communications commission of the United States;

28 ~~(17)~~(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio  
29 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person  
30 who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician"

1 or higher class, issued by the federal communications commission of the United States;  
2 ~~(18)~~(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,  
3 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a  
4 highway that is under the jurisdiction of an entity other than the local government unit."  
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6 **Section 2.** Section 80-5-120, MCA, is amended to read:

7 **"80-5-120. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
8 definitions apply:

9 (1) "Advertisement" means a representation, other than a representation on the label, that is  
10 disseminated by any means and that relates to seed governed by the provisions of this chapter.

11 (2) (a) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds  
12 of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures  
13 of seeds.

14 (b) The term does not include seeds from plants of the genus Cannabis that contain more than 0.3%  
15 tetrahydrocannabinol.

16 (3) "Approximate percentage" and "approximate number" mean the percentage or number with the  
17 variations above and below that value as allowed according to the tolerance limits defined in the rules for seed  
18 testing adopted by the association of official seed analysts.

19 (4) "Bulk" means not packaged in separate units.

20 (5) "Certifying agency" means:

21 (a) an agency authorized under the laws of a state, territory, or possession of the United States to  
22 officially certify seed and that has standards and procedures to ensure the genetic purity and identity of the seed  
23 certified; or

24 (b) an agency of a foreign country determined by the department to adhere to procedures and standards  
25 for seed certification that are comparable to those adhered to generally by the seed certifying agencies described  
26 in subsection (5)(a).

27 (6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity  
28 or germination of a seed and require the seed lot to be retested to determine labeling.

29 (7) "Controlling the pollination" means to use a method of hybridization that will produce pure seed that  
30 is at least 75% hybrid seed.

1 (8) "Dormant" means viable seeds, excluding hard seeds, that fail to germinate when provided the  
2 specified germination conditions for the seed in question.

3 (9) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or  
4 other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

5 (10) "Genuine grower declaration" means a statement signed by the grower that indicates, for each lot  
6 of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

7 (11) "Germination" means the emergence and development from the seed embryo as evidence of vitality  
8 when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the  
9 customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the  
10 association of official seed analysts.

11 (12) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they  
12 have not absorbed water because of an impermeable seed coat.

13 (13) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross  
14 produced by controlling the pollination and by combining:

15 (a) two or more inbred lines;

16 (b) one inbred or a single cross with an open pollinated variety; or

17 (c) two or more selected clones, seed lines, varieties, or species except open-pollinated varieties of corn  
18 (*Zea mays*). The second generation of subsequent generations from those crosses may not be regarded as  
19 hybrids. Hybrid designations must be treated as variety names.

20 (14) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where  
21 the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

22 (15) "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus  
23 bodies, and stones as determined by methods defined by the association of official seed analysts.

24 (16) "Kind" means one or more related species or subspecies that are known singly or collectively by one  
25 common name, such as corn, oats, alfalfa, and timothy.

26 (17) "Labeling" means a tag or other device, attached to or written, stamped, or printed on a container  
27 or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under  
28 80-5-123 and that may include any other information relating to the labeled seed.

29 (18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion of  
30 which is uniform within recognized tolerances for the factors that appear in the labeling.

1 (19) "Mixture" means seed consisting of more than one kind, each in excess of 5% by weight of the  
2 whole.

3 (20) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency  
4 who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance  
5 of genetic purity and variety identity, set forth by the establishing agency.

6 (21) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the kind or variety  
7 of seed or the mixture of seeds included as pure seed.

8 (22) "Person" means an individual, firm, partnership, corporation, or association.

9 (23) "Prohibited noxious weed seeds" means the seeds of plant species that are designated as noxious  
10 weeds as defined in 7-22-2101(8)(a)(i).

11 (24) "Protected variety" means a variety for which a certificate has been issued by the United States plant  
12 variety protection office or for which an application for protection has been filed granting the owner or the owner's  
13 authorized agent exclusive rights in the sale and distribution of the variety.

14 (25) "Pure live seed" means the product of the percentage of germination plus hard seed or dormant seed  
15 multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

16 (26) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being  
17 considered, as determined by methods defined by the association of official seed analysts.

18 (27) "Restricted weed seeds" means the seeds of any plant that may adversely affect agriculture or the  
19 environment and that are designated as restricted weed seeds under rules adopted by the department.

20 (28) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other  
21 materials removed from seed by any kind of cleaning or conditioning.

22 (29) "Seed conditioning plant" means a place of business, whether a permanent or portable facility, that  
23 conditions seeds.

24 (30) "Seed dealer" means a person who sells seeds.

25 (31) "Seed labeler" means a person affixing labels to seeds, with that person's name, address, and other  
26 information as required in 80-5-123.

27 (32) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or  
28 trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

29 (33) "Stop sale" means an administrative order provided by law that restrains the sale, use, disposition,  
30 and movement of a definite amount of seed.

1 (34) "Treated" means that seed has received an application of a substance or has been subjected to a  
2 process for which a claim is made.

3 (35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly  
4 differentiated except under special conditions.

5 (36) "Variety" means a subdivision of a kind that is:

6 (a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological,  
7 physiological, or other characteristics from all other varieties known publicly;

8 (b) uniform, in the sense that the variations in essential and distinctive characteristics are describable;  
9 and

10 (c) stable, in the sense that the variety will remain unchanged in its essential and distinctive  
11 characteristics and its uniformity when reproduced or reconstituted as required by the different categories of  
12 varieties.

13 (37) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck  
14 farms and are or may be sold generally under the name of vegetable seeds or herbs.

15 (38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing  
16 conditions after all forms of dormancy have been overcome, if present.

17 (39) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and  
18 includes noxious weed seeds."

19

20 **Section 3.** Section 80-5-136, MCA, is amended to read:

21 **"80-5-136. Administration -- stop sale order -- violation -- cancellation of license -- enforcement.**

22 (1) The department shall administer and enforce the provisions of this part and the rules promulgated under this  
23 part.

24 (2) The department may issue and enforce a written or printed stop sale order to the owner or custodian  
25 of any lot of seed that the department finds to be in violation of this chapter. The order shall prohibit further sale  
26 or movement of the seed until the department has evidence that this chapter has been complied with. Upon  
27 proper correction by reconditioning, labeling, or otherwise and when in the judgment of the department the  
28 requirements of this chapter have been met, the stop sale order must be lifted and the seed may be sold. If a  
29 violation cannot be corrected after adequate opportunity has been provided, the department may order the  
30 destruction of any lot of seed remaining in violation. An order for the destruction of a lot of seed is subject to the

1 contested case provisions of Title 2, chapter 4, part 6.

2 (3) Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued  
3 under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee,  
4 provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

5 (4) A person who violates or aids in the violation of any provision of this chapter or rules adopted under  
6 this chapter is subject to one or both of the following penalties:

7 (a) an administrative civil penalty of not more than \$1,000 for each offense. Assessment of a penalty  
8 under this subsection (4)(a) may be made in conjunction with any other warning, order, or administrative action  
9 by the department under the authority of this part.

10 (b) a misdemeanor punishable by a fine of not less than \$100 or more than \$300 plus costs of  
11 prosecution for the first violation and not less than \$500 or more than \$1,000 plus costs of prosecution for each  
12 subsequent violation.

13 (5) The department shall establish by rule a penalty matrix that schedules the types of penalties, the  
14 amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil  
15 penalties under subsection (4)(a). The issuance of a civil penalty is subject to the contested case procedures of  
16 Title 2, chapter 4, part 6.

17 (6) Nothing in this part may be construed as requiring the department or its representatives to report  
18 violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

19 (7) It is the duty of each county attorney to whom any violation is reported to cause appropriate  
20 proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

21 (8) The department is authorized to apply for and the court to grant a temporary or permanent injunction  
22 restraining any person from violating or continuing to violate any of the provisions of this part or any rule  
23 promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued  
24 without bond.

25 (9) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part  
26 may within 30 days bring action in the district court of the county or any county where the alleged violation  
27 occurred for trial of the issues bearing upon the act.

28 (10) (a) Except as otherwise provided in this chapter, a political subdivision may not regulate by adopting  
29 or continuing in effect any local legislation or regulation relating to the cultivation, harvesting, production,  
30 processing, registration, labeling, marketing, sale, storage, transportation, distribution, possession, notification

1 of use, use, and planting of agricultural seeds or vegetable seeds.

2 (b) Local legislation adopted or continued in violation of this section is void and unenforceable."

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

5 - END -