



City of Helena

ADMINISTRATIVE MEETING
September 14, 2021 - 4:00 PM
Zoom Online Meeting: <https://zoom.us/j/93843161594>
City-County Joint Work Session

AGENDA

1. **Call to Joint Worksession, introductions**
 - a. Joint Worksession Agenda
2. **Minutes**
3. **Board Appointments**
 - a. Joint Board Appointment - Application Review Airport Authority
4. **Joint Discussion**
 - a. City County Board of Health Authority - HB257 and HB121
5. **Agenda Items for Tuesday, October 5, 2021 - Contact Nadine McCarty X8304**
6. **Public Comment**
7. **Upcoming Events / Joint Announcements**
8. **Adjourn**

The City of Helena is committed to providing access to persons with disabilities for its meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The City will not exclude persons with disabilities from participation at its meetings or otherwise deny them the City's services, programs, or activities.

Persons with disabilities requiring accommodations to participate in the City's meetings, services, programs, or activities should contact the City's ADA Coordinator, Ellie Ray, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following:

Phone: (406) 447- 8490

TTY Relay Service 1-800-253-4091 or 711

Email: citycommunitydevelopment@helenamt.gov

Mailing Address & Physical Location: 316 North Park Avenue, Room 445, Helena, MT 59623.



**JOINT WORK SESSION
CITY OF HELENA - LEWIS & CLARK COUNTY
September 14, 2021 – 4:00 p.m.**

Zoom Meeting:

<https://zoom.us/j/93843161594>



AGENDA

1. Call to order – Mayor Wilmot Collins
 2. Minutes
 3. Joint Board Appointment – Application Review Airport Authority
 4. **Board of Health- HB 121 and HB257.**
 5. Public Comment
 6. Agenda items for Tuesday, October 5, 2021 (Contact Nadine McCarty X 8304)
 7. Upcoming events / Joint Announcements
 8. Adjournment
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ADA NOTICE

Lewis and Clark County and the City of Helena are committed to providing access to persons with disabilities for meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The County and City will not exclude persons with disabilities from participation at their meetings or otherwise deny them access to City or County's services, programs, or activities.

Persons with disabilities requiring accommodations to participate in the County's meetings, services, programs, or activities should contact Keni Grose, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following: (406) 447-8316; TTY Relay Service 1-800-253-4091 or 711; KGROSE@lccountymt.gov; 316 N Park, Room 303.

Persons with disabilities requiring accommodations to participate in the city's meetings, services, programs, or activities should contact the city's ADA Coordinator, Ellie Ray, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following: Phone: (406) 447- 8490; TTY Relay Service 1-800-253-4091 or 711; Email: citycommunitydevelopment@helenamt.gov; Mailing Address & Physical Location: 316 North Park, Avenue, Room 445, Helena, MT 59623.

City of Helena, Montana

September 7, 2021

To: Mayor Collins and the Helena City Commission

From: Rachel Harlow-Schalk, City Manager
Thomas J. Jodoin, City Attorney

Subject: City County Board of Health Authority - HB257 and HB121

Present Situation: Who should function as the “local governing body” for purposes of approving health regulations applicable to the City of Helena?

Proposal/Objective: In order to maintain and ensure continuing public health regulatory authority it is recommended that the Agreement be revised to clarify that the Board cannot appoint the health officer and to define who is the “governing body” to adopt health regulations.

Staff recommends revising the Interlocal Agreement so that the Lewis and Clark County Board of County Commissioners is the “local governing body” for approving Board of Health recommended regulations.

Alternatives for Consideration

1. A three-party independent body comprised of representatives from the Board of County Commissioners, Helena City Commission, and East Helena City Council.
2. Each jurisdiction is the “local governing body” and would be responsible for approving health regulations within its jurisdictional boundaries. The Health Department staff would enforce the applicable regulation in the jurisdiction.
3. Terminate the Interlocal Agreement and the City establish its own health department

Notice of Public Hearing: N/A

<u>ATTACHMENTS:</u>
<input type="checkbox"/> Admin Mtg Memo re Board of Health-HB21 SB257 July 26 2021-2
<input type="checkbox"/> By-Laws and Interlocal Agreement
<input type="checkbox"/> HB121
<input type="checkbox"/> HB257



Administrative Meeting August 18, 2021

helenamt.gov



Subject: City County Board of Health Authority - HB257 and HB121

Date: August 18, 2021

From: Thomas J. Jodoin, City Attorney
Erik Coate, Assistant City Attorney
Carey Kaufman, Paralegal/Office Manager

Policy Issue

Who should function as the “local governing body” for purposes of approving health regulations applicable to the City of Helena?

Recommendation and Alternatives

Staff Recommendation

In order to maintain and ensure continuing public health regulatory authority it is recommended that the Agreement be revised to clarify that the Board cannot appoint the health officer and to define who is the “governing body” to adopt health regulations.

Staff recommends revising the Interlocal Agreement so that the Lewis and Clark County Board of County Commissioners is the “local governing body” for approving Board of Health recommended regulations.

Alternatives for Consideration

1. A three-party independent body comprised of representatives from the Board of County Commissioners, Helena City Commission, and East Helena City Council.
2. Each jurisdiction is the “local governing body” and would be responsible for approving health regulations within its jurisdictional boundaries. The Health Department staff would enforce the applicable regulation in the jurisdiction.
3. Terminate the Interlocal Agreement and the City establish its own health department.

Legal Review

Completed.

Background Information

A city of Helena's size (city of the first class) is required by state law to have a health department. The City may fulfill that obligation by mutual agreement with the county to merge health services. In 1975, via written agreement ("Agreement") which is attached as Exhibit 1, the City and Lewis and Clark County created a City-County health department to be overseen by a joint Board of Health ("Board"). The Board possesses all the powers enumerated under Title 50, Chapter 2 of Montana Code Annotated. The County Attorney serves as the legal adviser to the Board. While the bylaws require a resident of East Helena as being a member of the board of health, that position is not presently part of the interlocal agreement establishing the board of health.

Thus, the Board is currently comprised of the following nine (9) members per the By-Laws:

- Lewis and Clark County Commissioner or designated representative;
- City of Helena Commissioner or designated representative;

Seven members appointed by the Board of County Commissioners as follow:

- Superintendent of [Helena] School District No. 1.
- A licensed doctor of medicine practicing in Lewis and Clark County.
- A professional with experience in the field of environmental, biological, chemical or engineering sciences.
- A resident of the City of East Helena recommended by the governing body of the City of East Helena.
- A consumer of health services provided by the Board, preferably with experience in or knowledge of health care, environmental, or human services programs.
- A member at-large residing outside the city limits of the City of Helena.
- A member at-large residing in the City of Helena.

2021 LEGISLATIVE SESSION House Bills 257 and 121

House Bill 257 ("HB257") became effective on May 7, 2021. Section 12(1)(j) of the bill limits the powers and duties of the local board of health, among other things, to merely propose regulations for adoption by the *"local governing body."* Previous to this bill the local board of health could adopt regulations.

The Board still retains the authority to implement and enforce regulations adopted by the governing body and to oversee the daily operations of the health department including supervising the health officer and engaging in enforcement actions.

House Bill 121 ("HB121") became effective on April 16, 2021. For joint city-county boards of health, Section

1(8)(c) defines the “local governing body” as “the entity identified as the governing body as established in the bylaws, interlocal agreement, or memorandum of understanding creating a city-county local board of health or a local district board of health.” Neither the Interlocal Agreement nor the By-Laws define who or what is the governing body.

On May 26, 2021 at the Commission’s administrative meeting staff presented three options. One of those options was alternative #1 noted in this memo. The preferred option of the Commission was to re-appoint the existing Board of Health as the “local governing body.” After further discussion, with Montana League of Cities and Towns and other first-class cities in Montana that option is no longer recommended because the apparent intent of HB257 was to have elected official approval of health regulations. Additionally, Lewis and Clark County and East Helena have expressed the same concerns.

Staff’s recommended option would make the Board of County Commissioners solely responsible for the consideration and approval of health regulations in all unincorporated and incorporated areas of Lewis and Clark County, including the City of Helena and City of East Helena. This may be an untenable solution for the Helena City Commission in terms of representation of City of Helena interests but does represent the simplest solution with the fewest “moving parts.” Nothing in this option precludes the City of Helena from exercising its self-governing powers to adopt its own regulations.

Alternative #1

Equal representation to the Board of County Commissioners, City of Helena, and the City of East Helena. The City of East Helena is not required by law to have a health department. This independent body could be perceived as granting the City of East Helena regulatory authority where currently none exists and where none is required by state law. Logically, this alternative would subject citizens to decisions of elected officials they did not vote for which may be in contradiction to the intent of HBs 257 and 121. Additionally, if this option were to be pursued, liability coverage and counsel for this independent board would need to be determined.

Alternative #2

The current Board of Health makes a recommendation to each respective governing body. Each governing body would adopt its version of the recommended health regulations and the health officer would implement those adopted regulations within each jurisdiction. This may create difficulties enforcing three potentially different standards and create issues with liability coverage for the enforcement. These issues would need to be resolved prior to adoption.

Alternative #3

Terminate the Interlocal Agreement and the City of Helena establish its own health department. The City would need to create, fund, and implement a new City department to enforce its own health codes.

A public hearing at this stage is not needed. A public hearing will be required to amend or adopt a new interlocal agreement.

Respectfully submitted,

Rachel Harlow-Schalk
City Manager

Attachments: House Bill 257
Interlocal Agreement
Board of Health By-Laws

BY-LAWS OF THE LEWIS AND CLARK

CITY-COUNTY BOARD OF HEALTH

SECTION 1. General Powers and Duties

- (a) The Board has the powers and exercises the duties and functions conferred upon it by the legislature of the State of Montana. Title 69 of the Revised Codes of Montana, 1947, including revisions and amendments, is made a part of these by-laws.
- (b) The Board has the power to appoint and fix the salary of the Health Officer of the Lewis and Clark City-County Health Department.
- (c) The Chairman may appoint, subject to a confirmation by the Board, an Executive Committee which may make decisions between regular meetings. Such decisions shall be deemed to be the decisions of the Board. An affirmative vote of a majority of the Executive Committee shall be the act of the Executive Committee and of the Board. The Executive Committee shall report at the next Board meeting of any decisions taken. Any such decisions shall be deemed ratified and approved unless the Board at the next meeting held, modifies or reverses any such decision of the Executive Committee.

SECTION 2. Membership

- (a) The Board shall be composed of nine members appointed by the governing bodies of Lewis and Clark County and the Cities of Helena and East Helena in accordance with the agreement signed December 24, 1975.

SECTION 3. Election of Officers

- (a) The Board shall elect a chairman who shall conduct both regular and special meetings of the Board.
- (b) In addition, the Board shall elect a vice-chairman who shall conduct all meetings of the Board in the absence of the chairman.
- (c) Officers of the Board shall be elected at the first regular meeting of each fiscal year and shall serve for a period of one year, commencing immediately upon election.
- (d) The election of officers shall be in accordance with Section 8 of these by-laws.

SECTION 4. Regular Meetings

- (a) A regular meeting of the Board will be held on the fourth (4th) Thursday of each month at 1:30 p.m., at the offices of the City-County Department of the Health.

- (b) All regular meetings of the Board shall be open to the public in accordance with Section 82-3402, R.C.M., 1947. Meetings regarding the employment, appointment, promotion, dismissal, demotion or resignation of any employee may be closed unless the employee requests an open meeting.

SECTION 5. Special Meetings

- (a) Special meetings may be called as necessary by or at the request of the chairman, or any two members of the Board, and may be held at any predesignated place and time for any purpose including the viewing of any places of potential health hazard.
- (b) Notice of special meetings shall be given to all members of the Board as provided in Section 6 of these by-laws. No special meeting shall be held unless all members of the Board have been given notice of it.

SECTION 6. Notice of Meetings

The Health Officer shall notify all members of all special meetings. A written agenda for the meeting shall accompany notification if time permits. The Health Officer shall also remind all members of the Board of each regular meeting and shall send a written agenda for the regular meeting to all members of the Board. The failure to remind or to send a written agenda shall not affect the legality of any regular meeting.

SECTION 7. Quorum

A majority of the members appointed to the Board shall constitute a quorum for the transaction of business at any meeting.

SECTION 8. Board Decisions and Voting

- (a) The act or affirmative vote of the majority of the members of the Board present at a meeting at which a quorum is present shall be the act of the Board, except that a vote of not less than two-thirds of all members shall be required to amend or add to these by-laws.
- (b) There shall be no voting by proxy.
- (c) Any alteration of rules or regulations promulgated and/or administered by the Board requires a majority of Board members to vote in the affirmative.

SECTION 9. Minutes and record keeping

- (a) Minutes of all regular and special meetings of the Board declared to be open shall be kept by the Health Officer, or his representative, and shall be signed. Minutes shall be available for inspection by the public.

- (b) The minutes of all meetings shall be placed in a "Minute Book" and the pages of that book consecutively numbered. The "Minute Book" shall be indexed at the close of each fiscal year.
- (c) Rules, regulations and policies adopted by the Board shall be kept in a "Rules and Regulations" manual in the same manner as the "Minute Book" and indexed.

SECTION 10. Rules and Regulations

The Board may, from time to time, adopt policy statements on certain subjects. Such statements once adopted pursuant to Section 8 (c) shall be binding upon the Department.

SECTION 11. Fiscal Year and Budget

- (a) The fiscal year of the Board begins on the first day of July.
- (b) The Board and the Department is financed as provided by law.
- (c) The Board shall approve, adopt and present a preliminary budget for each fiscal year on or before the first day of May of each such year or at such time as specified by the County of Lewis and Clark or other funding agency.

SECTION 12. Health Officer

- (a) The Board shall appoint a health officer and fix his salary.
- (b) The health officer shall:
 - (1) act, personally or through his representative, as secretary at all meetings of the Board;
 - (2) keep the "Minute Book" and the "Rules and Regulations" manual and index these books;
 - (3) be responsible for the employment, or termination of employment of all employees of the Lewis and Clark City-County Health Department, subject to such resolutions or orders made by the Board in this regard from time to time, and subject to all applicable laws of the State of Montana and all applicable regulations promulgated by the State of Montana, its departments or sub-divisions;
 - (4) manage and supervise the Lewis and Clark City-County Health Department;
 - (5) sign contracts, accept, account for, and disburse funds and purchase equipment and supplies for the Lewis and Clark City-County Health Department.

SECTION 13. Amendment to the By-Laws

These by-laws, except those sections or parts of sections based upon statutory authority, may be altered, or repealed and new by-laws adopted by the Board in accordance with Section 8 of these by-laws.

SECTION 14. Parliamentary Procedure

The Board shall follow Roberts Rules of Order, in its latest edition, at its meetings.

LEWIS AND CLARK CITY-COUNTY
HEALTH DEPARTMENT

By
Chairman

By
Vice-Chairman

11-25-86 eh
8612A B:By-Laws

AGREEMENT

THIS AGREEMENT, made and entered into on the 24th day of December, 1975 and amended on the 14th day of March, 2000, by and between LEWIS AND CLARK COUNTY, a municipal or governmental corporation of the State of Montana, acting by and through its duly elected and qualified Board of County Commissioners, party of the First Party, hereinafter referred to as "County", and the CITY OF HELENA, a municipal corporation of the State of Montana, situated within the County of Lewis and Clark, State of Montana, a first class city, acting by and through its duly elected and qualified Mayor and its duly appointed and qualified City Clerk, who have been authorized by the Commission of said city to execute this Agreement for and on its behalf, party of the Second Party, hereinafter referred to as "City".

WITNESSETH:

THAT, WHEREAS, under and by virtue of Chapter 45, Title 69, Revised Codes of Montana, 1947, now codified in Chapter 2, Title 50, Montana Codes Annotated, 1999, it is required that a County Board of Health be created, and it is further provided in said Chapter that any first class city located within a County in which a Health Department is now being maintained, or may be organized, may by mutual agreement between the municipal government and the county government merge its health service with that of the County in which it is located and participate in the financial maintenance of a full time City-County Health Department, which shall have full supervision and control of all matters pertaining to the prevention of disease and the promotion of public health within such City; and

WHEREAS, under the authority and provisions of said Chapter said County and City have mutually agreed to unite in the organization and maintenance of a City-County Health Department, which shall have full supervision and control of all matters pertaining to the prevention of disease and the promotion of public health within such City; and

WHEREAS, under the authority and provisions of said Chapter said County and City have mutually agreed to unite in the organization and maintenance of a City-County Health Department, to be known as CITY-COUNTY HEALTH DEPARTMENT, and to participate in the financial maintenance of said Health Department.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN SAID COUNTY AND CITY AS FOLLOWS:

1. That there shall be created a combined City and County Board of Health for the CITY-COUNTY HEALTH DEPARTMENT, which said Board of Health shall have full supervision and control over all matters pertaining to the prevention of disease and promotion of the public health within such County and City and such other duties and obligations as are provided by law.
2. That said Board of Health shall consist of nine (9) members, all of whom shall be qualified electors of the State of Montana and of the County of Lewis and Clark. Membership of the City-County Board of Health shall consist of:
 - (1) A Lewis and Clark County Commissioner or the designated representative of the Board of County Commissioners of Lewis and Clark County, who shall serve at the pleasure of said Board;

(2) A member of the City Commission of the City of Helena or a designated representative thereof, who shall serve at the pleasure of the said Commission;

(3) Seven additional members to be appointed by the Board of County Commissioners of Lewis and Clark County as follows:

(a) The Superintendent of School District No. 1;

(b) A licensed doctor of medicine practicing in Lewis and Clark County;

(c) A professional person with experience in the field of environmental, biological, chemical or engineering sciences;

(d) A resident of the City of East Helena recommended by the governing body of the City of East Helena;

(e) A consumer of health services provided by the local Board, preferably with experience in or knowledge of health care, environmental, or human services programs;

(f) A member at large chosen from the population of the County residing outside the city limits of the City of Helena;

(g) A member at large chosen from and residing in the City of Helena.

The by-laws adopted by the Board of Health may provide for non-voting advisory members who may serve on the Board of Health at the Board's pleasure. All of the members designated in subparagraphs (a) through (g) shall serve three (3) year terms which are staggered as provided in Section 50-2-106, MCA (1999). Vacancies which occur on the Board of Health by reason of

death or resignation, or for other reasons, shall be filled for the unexpired term of the vacated member and appointments to fill said vacancies shall be made as hereinbefore specified.

3. As soon as practicable after their appointment, the said Board of Health shall meet and organize by electing a Chairman, a Vice-Chairman, and such other officers as it may deem best and advisable. The Health Officer hereinafter provided for shall not be a member of the Board of Health, but shall act as its secretary and shall perform duties as such secretary as required by said Board.

4. Said Board of Health shall employ a Health Officer and such assistants, nurses, sanitarians, clerks, and other employees as said Board may deem necessary, all of whom shall be under the supervision of said Board of Health, and said Board is hereby authorized and empowered to fix the compensation of said Officer, assistants, nurses, and other employees in accordance with the laws of the State of Montana.

5. Said Board of Health shall possess and have all the powers given to Boards of Health under the laws of the State of Montana and the rules and regulations of the State Board of Health of the State of Montana, the ordinances of the City of Helena, Montana, and such powers as may be conferred upon it by any United States Health Service or other agency of the United States Government pertaining to Boards of Health.

6. That said Board shall have power to enact such rules and regulations pertaining to the prevention of disease and the promotion of public health in said County and City, but in no instance shall such rule or regulations be less effective or in conflict with the rules and regulations promulgated by the State Board of Health.

7. That said Board shall submit at the times and in the manner required by law to said County a budget of its requirements for each fiscal year, which said budget shall be approved by the Board of County Commissioners of said County. The County of Lewis and Clark will finance said Board as provided by law.

IN WITNESS WHEREOF, the said County has caused these presents to be executed by its duly authorized Chairman of its Board of County Commissioners and attested by its County Clerk, and its Corporate Seal affixed hereto, and said City has caused these presents to be duly executed by its Mayor and attested by its City Clerk, and its Corporate Seal affixed hereto, all on the day and year above written.

(SEAL OF LEWIS AND
CLARK COUNTY)

ATTEST:

Paulette Seltart
County Clerk and Recorder

LEWIS AND CLARK COUNTY

BY

[Signature]
Chairman, Board of County
Commissioners

(SEAL OF CITY OF HELENA,
MONTANA)

ATTEST:

Debbie Huens
City Clerk

CITY OF HELENA

BY

[Signature]
Mayor of the City of Helena



AN ACT REVISING LAWS RELATED TO LOCAL BOARDS OF HEALTH; REQUIRING THAT CERTAIN RULES, REGULATIONS, AND FEES BE PROPOSED BY A LOCAL BOARD OF HEALTH AND ADOPTED BY THE GOVERNING BODY; ALLOWING A LOCAL BOARD OF HEALTH TO ADOPT RULES TO IMPLEMENT A REGULATION ADOPTED BY A LOCAL GOVERNING BODY; ALLOWING A GOVERNING BODY TO AMEND A DIRECTIVE, MANDATE, OR ORDER GIVEN BY A LOCAL BOARD OF HEALTH DURING A TIME OF EMERGENCY OR DISASTER; ALLOWING A GOVERNING BODY TO AMEND AN ORDER GIVEN BY A LOCAL HEALTH OFFICER DURING A TIME OF EMERGENCY OR DISASTER; PROVIDING FOR RELIGIOUS FREEDOM; REVISING PENALTIES ALLOWED FOR THE VIOLATION OF A LOCAL BOARD RULE; REVISING AND PROVIDING DEFINITIONS; AMENDING SECTIONS 50-1-101, 50-2-116, 50-2-118, 50-2-124, AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in chapter 2 and this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Condition of public health importance" means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.

(3) "Department" means the department of public health and human services provided for in 2-15-

2201.

(4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

- (a) in which an infectious agent normally lives and multiplies;
- (b) on which an infectious agent depends primarily for survival; and
- (c) where an infectious agent reproduces in a manner that allows the infectious agent to be

transmitted to a susceptible host.

(5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health and safety that:

- (a) limit access to or limit or condition the use of environmentally contaminated property or media;
- (b) provide for the protection or preservation of environmental cleanup measures; or
- (c) inform the public that property or media is or may be environmentally contaminated.

(6) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected ~~or reasonably believed to be infected~~ with a communicable disease ~~or possibly communicable disease~~ from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(7) "Local board of health" or "local board" means a county, city, city-county, or district board of health.

(8) "Local governing body" or "governing body" means:

(a) the board of county commissioners that oversees a county local board of health;

(b) the elected governing body of a city that oversees a city local board of health; or

(c) the entity identified as the governing body as established in the bylaws, interlocal agreement, or memorandum of understanding creating a city-county local board of health or a local district board of health.

~~(8)~~(9) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term may include an authorized representative of the local health officer.

~~(9)~~(10) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

~~(10)~~(11) "Physician" has the meaning provided in 37-3-102.

~~(11)~~(12) "Public health services and functions" means those services and functions necessary to promote the conditions in which the population can be healthy and safe, including:

(a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or

(b) the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and epidemiological research, developing public health policy, and responding to public health needs and emergencies.

~~(12)~~(13) "Public health system" means state and local public health agencies and their public and private sector partners.

~~(13)~~(14) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who ~~are or may have been exposed to a communicable disease or possibly communicable disease~~ and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals.

~~(14)~~(15) "Screening" means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition's precursor in an individual.

~~(15)~~(16) "Testing" has the same meaning as screening."

Section 2. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) It is a purpose of this chapter to address ongoing issues or conditions created during a declared state of emergency as a result of orders, directives, or mandates issued by the governor as allowed under Title 10, chapter 3, for a state of emergency acting longer than 7 days. It is not a purpose of this chapter to hinder, slow, or remove nonemergency-related powers granted to a local board of health.

(2) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) ~~appoint and fix the salary~~ recommend to the governing body the appointment of a local health

officer who is:

- (i) a physician;
- (ii) a person with a master's degree in public health; or
- (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- ~~(c) employ qualified staff;~~
- ~~(d)(c)~~ adopt bylaws to govern meetings;
- ~~(e)(d)~~ hold regular meetings at least quarterly and hold special meetings as necessary;
- ~~(f)(e)~~ identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;
 - (iii) isolation and quarantine measures;
 - (iv) diagnosis, treatment, and case management;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information;
 - (viii) education and training of health professionals; or
 - (ix) other public health measures as allowed by law;
- ~~(g)(f)~~ protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- ~~(h)(g)~~ supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- ~~(i)(h)~~ bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- ~~(j)(i)~~ identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the

jurisdiction.

~~(k)(j)~~ subject to the provisions of 50-2-130, ~~adopt~~ propose for adoption by the local governing body necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

~~(2)(3)~~ Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) ~~adopt~~ propose for adoption by the local governing body necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) ~~adopt~~ propose for adoption by the local governing body regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws;

(d) adopt rules necessary to implement and enforce regulations adopted by the local governing body;

and

~~(d)~~(e) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

~~(3)~~(4) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

(5) A directive, mandate, or order issued by a local board of health in response to a declaration of emergency or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship."

Section 3. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

~~(1)~~(a) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

~~(2)~~(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and

canceling events;

~~(3)(c)~~ report communicable diseases to the department as required by rule;

~~(4)(d)~~ establish and maintain quarantine and isolation measures as adopted by the local board of health; and

~~(5)(e)~~ pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) A directive, mandate, or order issued by a local health officer in response to a declaration of emergency or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship."

Section 4. Section 50-2-124, MCA, is amended to read:

"50-2-124. Penalties for violations. (1) (a) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, the person shall be fined is subject to a civil penalty of not less than \$10 or more than \$200.

(b) A business entity that does not comply with rules adopted by a local board is subject to a civil penalty of not more than \$250.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) The local board or the county attorney of the county in which a violation allowed in subsection (1) occurred may petition a court of limited jurisdiction to impose the civil penalties allowed in subsection (1).

Venue for an action to collect a civil penalty pursuant to subsection (1) is in the county in which the violation occurred or in a court of limited jurisdiction.

~~(4)(5)~~ Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

(6) (a) As used in this section, "business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, sole proprietorship, or other legal entity recognized under state law.

(b) The term does not include an individual."

Section 5. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not ~~adopt~~ propose for adoption by the local governing body a rule under ~~50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)~~ 50-2-116(2)(j), (3)(c)(iii), or (3)(c)(iv) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may ~~adopt~~ propose for adoption by the local governing body a rule to implement ~~50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)~~ 50-2-116(2)(j), (3)(c)(iii), or (3)(c)(iv) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and
 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April

14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 121, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 121

INTRODUCED BY D. BEDEY, J. ELLSWORTH

AN ACT REVISING LAWS RELATED TO LOCAL BOARDS OF HEALTH; REQUIRING THAT CERTAIN RULES, REGULATIONS, AND FEES BE PROPOSED BY A LOCAL BOARD OF HEALTH AND ADOPTED BY THE GOVERNING BODY; ALLOWING A LOCAL BOARD OF HEALTH TO ADOPT RULES TO IMPLEMENT A REGULATION ADOPTED BY A LOCAL GOVERNING BODY; ALLOWING A GOVERNING BODY TO AMEND A DIRECTIVE, MANDATE, OR ORDER GIVEN BY A LOCAL BOARD OF HEALTH DURING A TIME OF EMERGENCY OR DISASTER; ALLOWING A GOVERNING BODY TO AMEND AN ORDER GIVEN BY A LOCAL HEALTH OFFICER DURING A TIME OF EMERGENCY OR DISASTER; PROVIDING FOR RELIGIOUS FREEDOM; REVISING PENALTIES ALLOWED FOR THE VIOLATION OF A LOCAL BOARD RULE; REVISING AND PROVIDING A DEFINITION DEFINITIONS; AND AMENDING SECTIONS 50-1-101, 50-2-116, 50-2-118, 50-2-124, AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



AN ACT GENERALLY REVISING LAWS RELATED TO PROHIBITING ACTIONS THAT IMPEDE A PRIVATE BUSINESS'S ABILITY TO CONDUCT BUSINESS; PROHIBITING CERTAIN TYPES OF LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS; PROHIBITING AN EMERGENCY PLAN OR PROGRAM THAT RESTRICTS THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; PROHIBITING A LOCAL BOARD OF HEALTH AND LOCAL HEALTH OFFICER FROM CERTAIN ACTIONS THAT RESTRICT THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; AMENDING SECTIONS 7-1-111, 7-1-2103, 7-1-4124, 7-5-103, 7-5-121, 7-5-4201, 10-3-301, 50-2-116, 50-2-118, 50-2-123, AND 50-2-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY 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. (Subsection (21) effective October 1, 2021) 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;
- (9) any power that applies to or affects the right to keep or bear arms;
- (10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;
- (11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;
- (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.
- (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

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

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

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

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

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

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; or

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

Section 2. Section 7-1-2103, MCA, is amended to read:

"7-1-2103. County powers. A county has power to:

- (1) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), sue and be sued;
- (2) purchase and hold lands within its limits;
- (3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (4) make orders for the disposition or use of its property that the interests of its inhabitants require;
- (5) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law."

Section 3. Section 7-1-4124, MCA, is amended to read:

"7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

- (1) enact ordinances and resolutions;
- (2) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), sue and be sued;
- (3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;
- (4) contract with persons, corporations, or any other governmental entity;
- (5) pay debts and expenses;
- (6) borrow money;
- (7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;
- (8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;
- (9) make grants and loans of money, property, and services for public purposes;
- (10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;
- (11) hire, direct, and discharge employees and appoint and remove members of boards;
- (12) ratify any action of the municipality or its officers or employees that could have been approved in advance;

- (13) have a corporate seal and flag;
- (14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;
- (15) initiate a civil action to restrain or enjoin violation of an ordinance;
- (16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;
- (17) conduct a census;
- (18) conduct inventories of public property and preparatory studies;
- (19) condemn and demolish hazardous structures;
- (20) purchase insurance and establish self-insurance plans;
- (21) impound animals and other private property creating a nuisance or obstructing a street or highway;
- (22) establish quarantines;
- (23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and
- (24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions."

Section 4. Section 7-5-103, MCA, is amended to read:

"7-5-103. Ordinance requirements. (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance passed may not:

(a) contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances;

(b) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(c) deny a customer of a private business the ability to access goods or services provided by the private business; or

(d) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(b) and (2)(c):

- (i) allow for the assessment of a fee or fine;
- (ii) require the revocation of a license required for the operation of a private business;
- (iii) find a private business owner guilty of a misdemeanor; or
- (iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided in subsection (2)(c) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

(4) The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to the adoption of an ordinance allowed in 75-7-411.

~~(3)~~(5) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.

~~(4)~~(6) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 5. Section 7-5-121, MCA, is amended to read:

"7-5-121. Resolution requirements. (1) All resolutions ~~shall~~ must be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the

private business; or

(c) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(a) and (2)(b):

(i) allow for the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

~~(2)(4)~~ Resolutions may be submitted and adopted at a single meeting of the governing body.

~~(3)(5)~~ After passage and approval, all resolutions ~~shall~~ must be entered into the minutes and signed by the chairperson of the governing body.

(6) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 6. Section 7-5-4201, MCA, is amended to read:

"7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of.... (or town of....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in the mayor's stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) An ordinance may not:

(a) include a prohibited action provided in 7-5-103; or

(b) contain ~~be passed containing~~ more than one subject, which must be clearly expressed in its title,

except ordinances for the codification and revision of ordinances."

Section 7. Section 10-3-301, MCA, is amended to read:

"10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

- (a) prevention and minimization of injury and damage caused by disaster;
- (b) prompt and efficient response to an incident, emergency, or disaster;
- (c) emergency relief;
- (d) identification of areas particularly vulnerable to disasters;
- (e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (f) organization of personnel and chains of command;
- (g) coordination of federal, state, and local disaster and emergency activities; and
- (h) other necessary matters.

(2) The state disaster and emergency plan and program may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services; or

(b) deny a customer of a private business the ability to access goods or services provided by the private business.

(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

~~(2)~~(4) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

(5) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 8. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) Except as provided in subsection (4),
~~in~~ in order to carry out the purposes of the public health system, in collaboration with federal, state, and local
partners, each local board of health shall:

- (a) appoint and fix the salary of a local health officer who is:
 - (i) a physician;
 - (ii) a person with a master's degree in public health; or
 - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) employ qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;
 - (iii) isolation and quarantine measures;
 - (iv) diagnosis, treatment, and case management;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information;
 - (viii) education and training of health professionals; or
 - (ix) other public health measures as allowed by law;
- (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing

establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

(4) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance of actions described in subsections (4)(a) and (4)(b):

(i) require the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.

(5) The prohibition provided for in subsection (4)(b) does not apply to persons confirmed to have a

communicable disease and who are currently under a public quarantine order.

(6) The prohibitions provided for in subsection (4) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 9. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Except as provided in subsection (2), in order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

(1)(a) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

(2)(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

(3)(c) report communicable diseases to the department as required by rule;

(4)(d) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

(5)(e) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) A local health officer may not enforce a regulation, directive, or order or issue an order that is in violation of 50-2-116(4).

(3) The prohibitions provided for in 50-2-116(4) do not restrict a local health officer from exercising the health officer's authority under this section or 50-2-123 to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders."

Section 10. Section 50-2-123, MCA, is amended to read:

"50-2-123. Compliance order authorized. (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses ~~shall~~ must be brought in the name of the city or county.

(2) An order of compliance or action allowed pursuant to subsection (1) may not be initiated for an order that violates 50-2-116(4) or 50-2-118(2)."

Section 11. Section 50-2-124, MCA, is amended to read:

"50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board that are not in conflict with 50-2-116(4) or 50-2-118(2) is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs."

Section 12. Coordination instruction. If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-116, then the sections amending 50-2-116 are void and 50-2-116 must be amended as follows:

"50-2-116. Powers and duties of local boards of health. (1) Except as provided in subsection (5), ~~in~~ in order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) ~~appoint and fix the salary~~ recommend to the governing body the appointment of a local health

officer who is:

- (i) a physician;
- (ii) a person with a master's degree in public health; or
- (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- ~~(c) employ qualified staff;~~
- ~~(d)~~(c) adopt bylaws to govern meetings;
- ~~(e)~~(d) hold regular meetings at least quarterly and hold special meetings as necessary;
- ~~(f)~~(e) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;
 - (iii) isolation and quarantine measures;
 - (iv) diagnosis, treatment, and case management;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information;
 - (viii) education and training of health professionals; or
 - (ix) other public health measures as allowed by law;
- ~~(g)~~(f) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- ~~(h)~~(g) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- ~~(i)~~(h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- ~~(j)~~(i) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the

jurisdiction.

~~(k)(j)~~ subject to the provisions of 50-2-130, ~~adopt~~ propose for adoption by the local governing body necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) ~~adopt~~ propose for adoption by the local governing body necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) ~~adopt~~ propose for adoption by the local governing body regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws;

(d) adopt rules necessary to implement and enforce regulations adopted by the local governing body;

and

~~(d)~~(e) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

(4) A directive, mandate, or order issued by a local board of health in response to a declaration of emergency and/or or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.

(5) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive, mandate, or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance of actions described in subsections (4)(a) and (4)(b):

- (i) require the assessment of a fee or fine;
 - (ii) require the revocation of a license required for the operation of a private business;
 - (iii) find a private business owner guilty of a misdemeanor; or
 - (iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.
- (6) The prohibition provided for in subsection (5)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public isolation order.
- (7) The prohibitions provided for in subsection (5) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.
- (8) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 13. Coordination instruction. If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-118, then the sections amending 50-2-118 are void and 50-2-118 must be amended as follows:

"50-2-118. Powers and duties of local health officers. (1) Except as provided in subsection (3), ~~in~~ in order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

~~(4)(a)~~ (1)(a) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

~~(2)(b)~~ (2)(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

~~(3)(c)~~ (3)(c) report communicable diseases to the department as required by rule;

~~(4)(d)~~ (4)(d) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

~~(5)(e)~~ pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) A directive, mandate, or order issued by a local health officer in response to a declaration of emergency and/or or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.

(3) A local health officer may not enforce a regulation, directive, mandate, or order or issue an order that is in violation of 50-2-116(5).

(4) The prohibitions provided for in 50-2-116(5) do not restrict a local health officer from exercising the local health officer's authority under this section or 50-2-123 to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders."

Section 14. Coordination instruction. If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-124, then the sections amending 50-2-124 are void and 50-2-124 must be amended as follows:

"50-2-124. Penalties for violations. (1) (a) A person who does not comply with rules adopted by a local board that are not in conflict with 50-2-116(5) or 50-2-118(3) is guilty of a misdemeanor. On conviction, the person shall be fined subject to a civil penalty of not less than \$10 or more than \$200.

(b) A business entity that does not comply with rules adopted by a local board is subject to a civil penalty of not more than \$250.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) The local board or the county attorney of the county in which a violation described in subsection (1) occurred may petition a court of limited jurisdiction to impose the civil penalties allowed in subsection (1). Venue for an action to collect a civil penalty pursuant to subsection (1) is in the county in which the violation occurred or in a court of limited jurisdiction.

~~(4)~~(5) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

(6) (a) As used in this section, "business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, sole proprietorship, or other legal entity recognized under state law.

(b) The term does not include an individual."

Section 15. Coordination instruction. If House Bill No. 121 and [this act] are passed and approved, then the section amending 50-2-123 in [this act] is void and 50-2-123 must be amended as follows:

"50-2-123. Compliance order authorized. (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

(2) An order of compliance or action allowed pursuant to subsection (1) may not be initiated for an order that violates 50-2-116(5) or 50-2-118(3)."

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

Section 17. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021.

- END -

I hereby certify that the within bill,
HB 257, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 257

INTRODUCED BY J. HINKLE, M. BLASDEL, K. BOGNER, B. BROWN, J. ESP, T. GAUTHIER, B. GILLESPIE,
C. GLIMM, S. HINEBAUCH, D. HOWARD, T. MANZELLA, B. MOLNAR, C. SMITH, G. VANCE, F.
ANDERSON, D. BARTEL, B. BEARD, S. BERGLEE, M. BINKLEY, E. BUTTREY, J. CARLSON, J. DOOLING,
P. FIELDER, R. FITZGERALD, F. FLEMING, S. GALLOWAY, W. GALT, J. GILLETTE, S. GUNDERSON, E.
HILL, C. HINKLE, B. LER, D. LOGE, R. MARSHALL, B. PHALEN, J. READ, A. REGIER, K. SEEKINS-
CROWE, L. SHELDON-GALLOWAY, D. SKEES, M. STROMSWOLD, J. TREBAS, B. USHER, S. VINTON, K.
WHITMAN

AN ACT GENERALLY REVISING LAWS RELATED TO PROHIBITING ACTIONS THAT IMPEDE A PRIVATE
BUSINESS'S ABILITY TO CONDUCT BUSINESS; PROHIBITING CERTAIN TYPES OF LOCAL
GOVERNMENT ORDINANCES AND RESOLUTIONS; PROHIBITING AN EMERGENCY PLAN OR PROGRAM
THAT RESTRICTS THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; PROHIBITING A
LOCAL BOARD OF HEALTH AND LOCAL HEALTH OFFICER FROM CERTAIN ACTIONS THAT RESTRICT
THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; AMENDING SECTIONS 7-1-111, 7-1-
2103, 7-1-4124, 7-5-103, 7-5-121, 7-5-4201, 10-3-301, 50-2-116, 50-2-118, 50-2-123, AND 50-2-124, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.