

May 6, 2021

Governor Gianforte,

The ACLU of Montana and undersigned organizations urge you to veto House Bill 481. This bill's excessive penalties and remarkably broad language would undermine civil liberties and tribal sovereignty in our state.

HB 481 would undermine Montanans' First Amendment right to peaceful assembly by steeply increasing penalties for already-illegal activity and imposing excessive penalties on a wide array of otherwise-legal, peaceful activities. This would create a chilling effect on Montanans' ability to exercise their First Amendment rights, and it would place corporate interests above civil liberties and tribal sovereignty.

Montana law already provides criminal penalties for damaging critical infrastructure and Criminal Trespass with penalties ranging up to 10 years in prison and \$50,000 in fines. Criminal Trespass To Property, *45-6-203, MCA*, already carries a penalty of 6 months in jail and \$500 in fines. Damaging critical infrastructure also carries severe penalties under *45-6-101(3), MCA*, which states that a person who:

“causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both,”

HB 481 would exorbitantly increase these penalties while significantly broadening the range of activities they apply to. Under Section 2(1) and (2) of this bill, penalties for trespassing, defacing, or tampering with equipment on anything that falls within the two-page list of ‘critical infrastructure facilities would be *tripled*. Most egregiously, Section 2(2) of this bill would subject citizens to 30 years in prison and \$150,000 if the actions cause more than \$1,500 in damages.

Such excessive penalties are not only disproportionate to the crimes described, they would impose a significant chilling effect on citizens' ability to exercise their First Amendment right to protest and free assembly.

Beyond the steep penalties imposed on individuals, the provisions of this bill take aim at Montanans' freedom of association by targeting organizations involved in protests with fines as high as \$1.5 million. Under Section 2(3) and Section 3(2), organizations that provide support or remuneration to protestors at an event where the aforementioned crimes occur, even if not intended, could be held vicariously liable subject to financial penalties as high as \$1.5 million. Such provisions heighten the bill's chilling effect on First Amendment activity by threatening to bankrupt organizations that provide support to community members in making their voices heard.

Lastly, HB 481 not only threatens Montanans' First Amendment rights through exorbitant penalties, it targets our state's Indigenous communities and the increasingly-visible efforts to stand up for their basic rights under the Montana and United States Constitutions and the treaty rights that those documents undergird.

'Critical infrastructure' bills like this are a direct reaction to the exercising of First Amendment activity by Indigenous peoples who have stood up to protect their water, land and sovereignty. Such instances were specifically invoked by bill proponents throughout this bill's hearings in the Legislature. Through centuries of land theft and genocide, Indigenous people continue to engage in protest and resistance to protect what is left of their homelands and sacred places.

The language and intent of this legislation codifies corporate interests of oil and gas companies above civil rights and tribal sovereignty. We urge you to stand up for all Montanans' constitutional and treaty rights and stand against efforts to target Indigenous peoples in our state by vetoing HB 481.

Sincerely,

*Sharen Kickingwoman, Indigenous Justice Program Manager*  
*Sam Forstag, Legislative Program Manager*  
ACLU of Montana



Co-signed:

*Keaton Sunchild, Executive Director*  
Western Native Voice

*Kiersten Iwai, Executive Director*  
Forward Montana

*Whitney Tawney, Executive Director*  
Montana Conservation Voters

*Summer Nelson, Director*  
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*Derf Johnson, Staff Attorney*  
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Indigenous Organizers Collective