

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 BY REQUEST OF THE LOCAL GOVERNMENT FUNDING AND STRUCTURE COMMITTEE

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A LOCAL OPTION REALTY TRANSFER TAX;  
7 PROVIDING FOR VOTER APPROVAL FOR A LOCAL OPTION REALTY TRANSFER TAX; LIMITING THE  
8 RATE OF A LOCAL OPTION REALTY TRANSFER TAX; ALLOCATING TAX PROCEEDS TO THE STATE  
9 AND THE LOCAL GOVERNMENT WHERE THE TRANSFER OCCURRED; REQUIRING THAT TAX PROCEEDS  
10 BE USED FOR INFRASTRUCTURE PROJECTS; PROVIDING THAT DOCUMENTS TRANSFERRING TITLE  
11 TO REAL PROPERTY MAY NOT BE RECORDED UNTIL THE TAX IS PAID; PROVIDING FOR PENALTIES  
12 AND INTEREST FOR NONPAYMENT OF THE TAX; PROHIBITING DUAL TAXATION AT MORE THAN THE  
13 ALLOWABLE RATE OF A LOCAL OPTION REALTY TRANSFER TAX; AND PROVIDING AN IMMEDIATE  
14 EFFECTIVE DATE."

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

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18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Local Option  
19 Realty Transfer Tax Act".

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21 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], the following  
22 definitions apply:

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(1) "Infrastructure" means:

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(a) drinking water systems;

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(b) wastewater treatment;

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(c) sanitary sewer or storm sewer systems;

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(d) solid waste disposal and separation systems, including site acquisition, preparation, or

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monitoring;

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(e) streets, roads, and bridges;

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(f) parking facilities;

1 (g) street lighting; or

2 (h) public buildings.

3 (2) "Person" includes an individual, corporation, partnership, other business organization, trust,  
4 fiduciary, agent, or any other party presenting a document for recordation.

5 (3) "Real property" includes:

6 (a) land;

7 (b) growing timber;

8 (c) buildings, structures, fixtures, fences, and improvements affixed to land.

9 (4) "Transfer" means an act of the parties or of the law by which the title to real property is  
10 conveyed from one person to another.

11 (5) "Value" means:

12 (a) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with  
13 nominal consideration or a transfer without stated consideration, the amount of the full actual  
14 consideration paid or to be paid, including the amount of any lien or liens on the real property; or

15 (b) in the case of a nonarm's-length transfer, market value as described in 15-8-111.

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17 **NEW SECTION. Section 3. Local option realty transfer tax.** As required by 7-1-112, [sections  
18 1 through 10] specifically delegate to the electors of each respective municipality or county the power to  
19 authorize their municipality or county to impose a local option realty transfer tax within the corporate  
20 boundary of the municipality or within the county.

21

22 **NEW SECTION. Section 4. Exempt transactions.** The tax that may be imposed by [sections 1  
23 through 10] may not apply to:

24 (1) an instrument recorded prior to [the effective date of this act];

25 (2) the sale of agricultural land when the land is used for agricultural purposes;

26 (3) a transfer solely to provide or release security for a debt or obligation;

27 (4) the United States, this state, or any instrumentality, agency, or subdivision of the United  
28 States or this state;

29 (5) an instrument that, without added consideration, confirms, corrects, modifies, or supplements  
30 a previously recorded instrument;

- 1 (6) a transfer pursuant to a court decree of partition;
- 2 (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships,  
3 or other business entities;
- 4 (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration  
5 or in sole consideration of the cancellation or surrender of subsidiary stock;
- 6 (9) a transfer of decedents' estates;
- 7 (10) a transfer of a gift;
- 8 (11) a transfer between husband and wife or parent and child with only nominal actual  
9 consideration for the transfer;
- 10 (12) an instrument the effect of which is to transfer the property to the same party or parties;
- 11 (13) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage  
12 foreclosure; or
- 13 (14) a transfer made in contemplation of death.

14

15 **NEW SECTION. Section 5. Limit on tax rate -- use of proceeds.** (1) The rate of the local option  
16 realty transfer tax must be established by the election petition or resolution provided for in [section 6], but  
17 the rate may not exceed 1%.

18 (2) The local option realty transfer tax proceeds must be used for the construction, reconstruction,  
19 and maintenance of infrastructure as authorized by the electors of the local government. Tax proceeds  
20 may be used to pay the principal and interest payments on bonds issued for infrastructure projects.

21

22 **NEW SECTION. Section 6. Local option realty transfer tax -- election required -- notice.** (1) A  
23 municipality or county may not impose or, except as provided in [section 10], amend or repeal a local  
24 option realty transfer tax unless the local option realty transfer tax question has been submitted to the  
25 electorate of the municipality or county and approved by a majority of the electors voting on the question.

26 (2) The local option realty transfer tax question may be presented to the electors of:

27 (a) a municipality by a resolution of the governing body of the municipality or by a petition of the  
28 electors, as provided in 7-1-4130 and 7-5-132 through 7-5-137; or

29 (b) a county by a resolution of the board of county commissioners or by a petition of the electors,  
30 as provided in 7-1-4130 and 7-5-132 through 7-5-137.

1 (3) The resolution or petition referring the taxing question must state:  
 2 (a) the rate of the local option realty transfer tax;  
 3 (b) the duration of the local option realty transfer tax;  
 4 (c) the date when the tax becomes effective, which date may not be earlier than 35 days after  
 5 the election; and

6 (d) the purposes that may be funded by the local option realty transfer tax revenue.

7 (4) Upon receipt of an adequate petition, the governing body may:

8 (a) call a special election on the local option realty transfer tax question; or

9 (b) have the local option realty transfer tax question placed on the ballot at the next regularly  
 10 scheduled election.

11 (5) (a) Before the local option realty transfer tax question is submitted to the electorate of a  
 12 municipality or county, the governing body of the municipality or the board of county commissioners, as  
 13 applicable, shall publish notice of the local option realty transfer tax in a newspaper that meets the  
 14 qualifications of subsection (5)(b). The notice must be published twice, with at least 6 days separating  
 15 publications. The first publication must be no more than 30 days prior to the election and the last no less  
 16 than 3 days prior to the election.

17 (b) The newspaper must be:

18 (i) of general, paid circulation with a second-class mailing permit;

19 (ii) published at least once a week; and

20 (iii) published in the county where the election will take place.

21 (6) The question of the imposition of a local option realty transfer tax may not be placed before  
 22 the electors more than once in any fiscal year.

23

24 NEW SECTION. **Section 7. Imposition of tax.** If authorized by the electorate, tax at the authorized  
 25 percentage of the value declared in the certificate required under 15-7-305 is imposed upon the transfer  
 26 of title to real property. The tax is on the person seeking to record the transfer of title to the real property.  
 27 The person has the burden of claiming and demonstrating the right to any exemption to the tax provided  
 28 in [section 4] prior to recording the transfer.

29

30 NEW SECTION. **Section 8. Collection of tax -- appeals -- interest and penalty -- statute of**

1 **limitations -- lien on transferred property.** (1) Before a deed or instrument evidencing a transfer of title  
2 subject to the tax imposed by [section 7] may be recorded, the treasurer of the county where the real  
3 property or any portion of the real property is located shall calculate and collect the amount of tax due.

4 (2) If the taxpayer contests the tax assessment or the denial of an exemption from the tax by the  
5 treasurer, the taxpayer may appeal the tax assessment or the denial of the exemption to the department  
6 of revenue. The appeal is governed by the provisions of 15-1-211.

7 (3) If the treasurer determines that the amount of tax due is greater than the amount collected,  
8 the treasurer shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to  
9 be assessed. A penalty of 10% of the unpaid tax must be assessed. In addition, any deficiency  
10 assessment bears interest until paid at the rate of 1% a month or fraction of a month, computed from the  
11 date on which the transfer was recorded.

12 (4) The taxpayer may seek a review of the determination by the department pursuant to 15-1-211.

13 (5) The deficiency may not be assessed unless notice of the additional tax proposed to be  
14 assessed is mailed within 5 years from the date on which the transfer was recorded. If the certificate filed  
15 is fraudulent, the 5-year period does not begin until discovery of the fraud.

16 (6) The treasurer may collect any additional tax, penalty, and interest pursuant to 15-16-102.

17 (7) The additional tax, penalty, and interest are a lien against the real property that was transferred  
18 and may be collected and enforced in the manner as other tax liens on real property are enforced. The use  
19 of one method of collection does not preclude the use of an alternative method of collection.

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21 NEW SECTION. **Section 9. Distribution of tax proceeds.** (1) Pursuant to 15-1-504, the county  
22 treasurer shall forward to the state treasurer 20% of the amount of the tax collected under [section 8] in  
23 the preceding month. The remaining portion of the tax collected under [section 8] in the preceding month  
24 must be forwarded to the treasurer of the local government imposing the tax.

25 (2) The state portion of the tax must be deposited in the treasure state endowment state special  
26 revenue account provided for in 17-5-703.

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28 NEW SECTION. **Section 10. Double taxation prohibited.** (1) A local option realty transfer tax, in  
29 excess of a combined total of 1%, may not be levied on the same person or transaction by more than one  
30 local government.

1           (2) If the electorate of a county approves a local option realty transfer tax after the electorate of  
2 a municipality in the county has approved a local option realty transfer tax on the same person or  
3 transaction at the same or a higher rate than the tax imposed by the county, persons or transactions in  
4 the municipality are subject to the county tax and the local option realty transfer tax imposed by the  
5 municipality is considered reduced to the difference between 1% and the rate of the county local option  
6 realty transfer tax. If the local option realty transfer tax imposed by the municipality is at a lower rate than  
7 the tax imposed by the county, the governing body of the municipality shall repeal the tax without a vote  
8 of the electorate.

9           (3) A municipality may not enact a local option realty transfer tax if a 1% local option realty  
10 transfer tax is in effect in the county within which the municipality lies.

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12           NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be  
13 codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections  
14 1 through 10].

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16           NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

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