

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

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

12

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

14

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

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

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

22 (2) "Planning activities" means any activity conducted pursuant to Title 76, chapters 1 and 2.

23 (3) "Real property" includes:

24 (a) land;

25 (b) growing timber;

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

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

29 (5) "Value" means:

30 (a) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with

1 nominal consideration or a transfer without stated consideration, the amount of the full actual
 2 consideration paid or to be paid, including the amount of any lien or liens on the real property; or

3 (b) in the case of a nonarm's-length transfer, market value as described in 15-8-111.
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5 **NEW SECTION. Section 3. Local option realty transfer tax.** As required by 7-1-112, [sections
 6 1 through 10] specifically delegate to each respective municipality or county the power to authorize the
 7 municipality or county to impose a local option realty transfer tax within the corporate boundary of the
 8 municipality or within the county.
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10 **NEW SECTION. Section 4. Exempt transactions.** The tax that may be imposed by [sections 1
 11 through 10] may not apply to:

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

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

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

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

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

19 (6) a transfer pursuant to a court decree of partition;

20 (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships,
 21 or other business entities;

22 (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration
 23 or in sole consideration of the cancellation or surrender of subsidiary stock;

24 (9) a transfer of decedents' estates;

25 (10) a transfer of a gift;

26 (11) a transfer between husband and wife or parent and child with only nominal actual
 27 consideration for the transfer;

28 (12) an instrument the effect of which is to transfer the property to the same party or parties;

29 (13) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage
 30 foreclosure; or

1 (14) a transfer made in contemplation of death.

2

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

6 (2) The local option realty transfer tax proceeds must be used for planning activities.

7

8 **NEW SECTION. Section 6. Local option realty transfer tax -- election -- notice.** (1) A municipality
9 or county may impose or, as provided in [section 10], amend or repeal a local option realty transfer tax.
10 The local option realty transfer tax question may be imposed by the governing body or may be submitted
11 to the electorate of the municipality or county and, if submitted to the electorate, is effective if approved
12 by a majority of the electors voting on the question.

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

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

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

18 (3) The petition or resolution referring the taxing question must state:

19 (a) the rate of the local option realty transfer tax;

20 (b) the duration of the local option realty transfer tax;

21 (c) the date when the tax becomes effective, which date may not be earlier than 35 days after
22 the election; and

23 (d) the planning activities that may be funded by the local option realty transfer tax revenue.

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

25 (a) impose a local option realty transfer tax;

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

27 (c) have the local option realty transfer tax question placed on the ballot at the next regularly
28 scheduled election.

29 (5) (a) Before the local option realty transfer tax question is imposed or submitted to the electorate
30 of a municipality or county, the governing body of the municipality or the board of county commissioners,

1 as applicable, shall publish notice of the local option realty transfer tax in a newspaper that meets the
2 qualifications of subsection (5)(b). The notice must be published twice, with at least 6 days separating
3 publications. The first publication must be no more than 30 days prior to the imposition of the tax or the
4 election and the last no less than 3 days prior to the imposition of the tax or the election.

5 (b) The newspaper must be:

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

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

8 (iii) published in the county where the imposition of the tax or the election will take place.

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

11

12 **NEW SECTION. Section 7. Imposition of tax.** A local option realty transfer tax at the authorized
13 percentage of the value declared in the certificate required under 15-7-305 is imposed upon the transfer
14 of title to real property. The tax is on the person seeking to record the transfer of title to the real property.
15 The person has the burden of claiming and demonstrating the right to any exemption to the tax provided
16 in [section 4] prior to recording the transfer.

17

18 **NEW SECTION. Section 8. Collection of tax -- appeals -- interest and penalty -- statute of**
19 **limitations -- lien on transferred property.** (1) Before a deed or instrument evidencing a transfer of title
20 subject to the tax imposed by [section 7] may be recorded, the treasurer of the county where the real
21 property or any portion of the real property is located shall calculate and collect the amount of tax due.

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

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

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

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

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

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

8

9 **NEW SECTION. Section 9. Distribution of tax proceeds.** (1) Subject to subsection (2), the county
10 treasurer shall forward the tax collected under [section 8] in the preceding month to the treasurer of the
11 local government imposing the tax.

12 (2) If a tax is subject to [section 10], the county treasurer shall forward the tax collected under
13 [section 8] to the jurisdiction in which the transfer occurred.

14

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

18 (2) If a county approves a local option realty transfer tax after a municipality in the county has
19 approved a local option realty transfer tax on the same person or transaction at the same or a higher rate
20 than the tax imposed by the county, persons or transactions in the municipality are subject to the county
21 tax and the local option realty transfer tax imposed by the municipality is considered reduced to the
22 difference between 1% and the rate of the county local option realty transfer tax. If the local option realty
23 transfer tax imposed by the municipality is at a lower rate than the tax imposed by the county, the
24 governing body of the municipality shall repeal the tax.

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

27

28 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 10] are intended to be
29 codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections
30 1 through 10].

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

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