

HOUSE BILL NO. 740
INTRODUCED BY J. MCKENNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING LOCAL GOVERNMENTS AUTHORITY TO IMPOSE A LOCAL OPTION LIMITED SALES TAX NOT TO EXCEED 3 PERCENT THAT OPERATES IN CONNECTION WITH THE STATE SALES TAX AND USE TAX; PROVIDING THAT AT LEAST 10 PERCENT OF THE PROCEEDS OF A LOCAL OPTION LIMITED SALES TAX BE UTILIZED FOR PROPERTY TAX RELIEF; PROVIDING FOR THE ADMINISTRATION OF THE TAX BY THE DEPARTMENT OF REVENUE; PROVIDING THAT IMPOSITION OR REPEAL OF OR AMENDMENT TO A LOCAL OPTION LIMITED SALES TAX MUST BE APPROVED BY THE ELECTORATE; PROVIDING FOR THE DISTRIBUTION OF LOCAL OPTION LIMITED SALES TAX PROCEEDS TO THE TAXING ENTITY, A REGION, AND A SUBREGION; PROVIDING FOR THE COORDINATION OF LOCAL OPTION LIMITED SALES TAXES BY MORE THAN ONE LOCAL GOVERNMENT; PROHIBITING A COMBINED LOCAL OPTION LIMITED SALES TAX BY MULTIPLE UNITS OF LOCAL GOVERNMENT IN EXCESS OF 3 PERCENT; PROHIBITING IMPOSITION OR RENEWAL OF A RESORT TAX; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 7-6-1502, 7-7-4424, 7-7-4428, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Local Option Limited Sales Tax Act".

NEW SECTION. **Section 2. Purpose.** (1) It is the intent of the legislature that the sale and use of property and services made subject to tax by [sections 1 through 14] be the same sale and use of property and services made subject to tax by [sections 2 through 41 of Senate Bill No. 407].

(2) It is the intent of the legislature that the administration of the tax provided for in [sections 1 through 14] be consistent with the administration of the tax provided for in [sections 2 through 41 of Senate Bill No. 407].

NEW SECTION. **Section 3. Definition.** As used in [sections 1 through 14], "department" means the department of revenue provided for in 2-15-1301.

NEW SECTION. Section 4. Coordination of local option limited sales tax and state sales tax and use tax. The provisions of [sections 2 and 4 through 41 of Senate Bill No. 407] apply to [sections 1 through 14].

NEW SECTION. Section 5. Local option taxing authority -- specific delegation. As required by 7-1-112, [sections 1 through 14] specifically delegate to the electors of each municipality or county the power to authorize their municipality or county to impose a local option limited sales tax within the municipality or within the county.

NEW SECTION. Section 6. Limit on local option limited sales tax rate -- goods and services subject to tax. (1) The rate of the local option limited sales tax must be established by the election petition or resolution provided for in [section 7], but the rate may not exceed 3%. The tax rate must be applied uniformly to all goods and services subject to the tax.

(2) (a) Except as provided in [section 14(3)], the local option limited sales tax is a tax on sales made within the municipality or county.

(b) Establishments that sell goods or services subject to the tax shall collect the local option limited sales tax on goods and services subject to the tax.

(3) The tax rate established by a municipality or county may be any whole percentage up to 3%. The tax rate may not be in fractions of a percentage.

(4) The goods and services set forth in [section 3 of Senate Bill No. 407] are the goods and services subject to a local option limited sales tax, and with the exception of the tax rate and the provisions of [section 3(3) of Senate Bill No. 407], the provisions of [section 3 of Senate Bill No. 407] are applicable to [sections 1 through 14].

NEW SECTION. Section 7. Local option limited sales tax -- election required -- procedure -- notice. (1) A municipality or county may not impose, amend, or repeal a local option limited sales tax unless the local option limited sales tax question has been submitted to the electorate of the municipality or county and approved by a majority of the electors voting on the question.

(2) The local option limited sales tax question must be presented to the electors of:

(a) a municipality by a petition of the electors, as provided by 7-1-4130 and 7-5-131 through 7-5-137, or by a resolution of the governing body of the municipality; or

(b) a county by a resolution of the board of county commissioners or by a petition of electors as provided

in 7-1-4130 and 7-5-131 through 7-5-137.

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

(a) the rate of the local option limited sales tax;

(b) the duration of the local option limited sales tax;

(c) the percentage of the annually anticipated receipts from the local option limited sales tax that will be applied to reduce municipal or county property taxes; and

(d) the estimated revenue that the tax would raise during the first year.

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

(a) conduct a special election on the local option limited sales tax question by mail-in ballot; or

(b) have the local option limited sales tax question placed on the ballot at the next regularly scheduled statewide general election.

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

(b) The newspaper must be:

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

(ii) published at least once a week; and

(iii) published or generally circulated in the county where the election will take place.

(6) If approved by the electorate, the tax becomes effective on the first day of July of the calendar year following the election.

(7) The question of the imposition of a local option limited sales tax may not be placed before the electors more than once in any fiscal year.

NEW SECTION. Section 8. Administration -- rules. The department shall:

(1) administer and enforce the provisions of [sections 1 through 14];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 14]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of

[sections 1 through 14].

NEW SECTION. Section 9. Local option limited sales tax account. (1) There is within the state special revenue fund an account for local option limited sales tax money.

(2) All money collected under [sections 1 through 14] must be paid by the department into the account.

(3) There must be retained in the account the amounts necessary under [sections 1 through 14] to repay overpayments, pay any erroneous receipts illegally assessed or collected, and pay any other refunds otherwise required.

(4) After retaining the amount necessary for the purposes of subsection (3), all remaining revenue in the account is statutorily appropriated, as provided in 17-7-502, to the department for distribution to the appropriate local governments.

NEW SECTION. Section 10. Fund transfers. On or before May 31, August 31, November 30, and February 28, the department shall transfer to the appropriate local governing body the revenue in the local option limited sales tax account as provided in [section 9].

NEW SECTION. Section 11. Use of local option limited sales tax revenue -- bond issue -- pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in [section 7], and except as provided by [section 12], a municipality or county may appropriate and expend revenue derived from a local option limited sales tax for any activity, undertaking, or administrative service that the municipality or county is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A municipality or county may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality or county that the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A municipality or county may pledge for repayment of bonds issued under this section the revenue derived from a local option limited sales tax, special assessments levied for and revenue collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the municipality or county. The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the

bonds, the municipality or county determines that the local option limited sales tax revenue, special assessments levied for and revenue from the facilities, improvements, or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal and interest of the bonds when due. Bonds may not be issued pledging proceeds of the local option limited sales tax for repayment unless the municipality or county in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenue expected to be derived from the local option limited sales tax will pay the amount of the principal and interest payable on the bonds and any other outstanding bonds payable from the local option limited sales tax except any bonds to be refunded upon the issuance of the proposed bonds even if the county in which a municipality is located or other municipalities within a county enact a local option limited sales tax.

NEW SECTION. Section 12. Local option limited sales tax -- property tax relief. (1) At least 10% of the annually anticipated receipts from the local option limited sales tax received by a municipality or by a county must be applied to reduce the municipal or county property taxes.

(2) At least 10% of the distributions received pursuant to [section 13] by a municipality or county that has not enacted a local option limited sales tax must be applied to reduce the municipal or county property taxes.

NEW SECTION. Section 13. Distribution of local option limited sales tax proceeds. (1) For the purposes of this section, the following regions are established:

(a) Region 1 consists of the following two subregions:

(i) Flathead and Lincoln Counties; and

(ii) Granite, Lake, Mineral, Missoula, Ravalli, and Sanders Counties.

(b) Region 2 consists of the following three subregions:

(i) Broadwater, Jefferson, Lewis and Clark, and Meagher Counties;

(ii) Beaverhead, Deer Lodge, Powell, and Silver Bow Counties; and

(iii) Gallatin, Madison, and Park Counties.

(c) Region 3 consists of the following two subregions:

(i) Cascade, Chouteau, Fergus, Glacier, Judith Basin, Pondera, Teton, and Toole Counties; and

(ii) Blaine, Hill, Liberty, and Phillips Counties.

(d) Region 4 consists of the following three subregions:

(i) Big Horn, Carbon, Golden Valley, Musselshell, Petroleum, Rosebud, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone Counties;

- (ii) Daniels, Garfield, McCone, Roosevelt, Sheridan, and Valley Counties; and
 - (iii) Carter, Custer, Dawson, Fallon, Powder River, Prairie, Richland, and Wibaux Counties.
- (2) Local option limited sales tax revenue must be allocated as follows:
- (a) If the entity imposing the tax is a municipality:
 - (i) 70% must be allocated and distributed to the municipality;
 - (ii) 20% must be allocated to the region in which the municipality is located and distributed to each county and municipality within the region on a per capita basis; and
 - (iii) 10% must be allocated to the subregion in which the municipality is located and distributed to each county and municipality within the subregion on a per capita basis.
 - (b) If the entity imposing the tax is a county:
 - (i) 70% must be allocated to the county and distributed as follows:
 - (A) 50% of the county's allocation is distributed to the county and each municipality within the county on a per capita basis; and
 - (B) 50% of the county's allocation is distributed to the county and each municipality within the county based upon the point of origin of the local option limited sales tax revenue;
 - (ii) 20% must be allocated to the region in which the county is located and distributed to each county and municipality within the region on a per capita basis; and
 - (iii) 10% must be allocated to the subregion in which the county is located and distributed to each county and municipality within the subregion on a per capita basis.
- (3) For purposes of determining per capita ratios for distribution of local option sales tax revenue, individuals residing within a municipality are not considered county residents.
- (4) Except as provided in [section 14(3)], a local option limited sales tax imposed by the county must be levied countywide.
- (5) (a) In distributing local option limited sales tax revenue based upon population, the department shall use population figures from the most recent estimates by the U.S. bureau of the census or, if estimates are not available, derived from the most recent federal decennial census.
- (b) The department shall determine population distributions based upon population figures as of August 15 of each year. The department shall make its determination on or before September 30 of each year, and the department's annual determination must be used for disbursements made during the following four quarterly disbursements.
- (6) For purposes of revenue distribution under this section, a resort community, resort area, or resort

area district that has imposed a tax pursuant to Title 7, chapter 6, part 15, must be excluded from the revenue distribution and population calculations.

(7) If the department makes adjustments to tax collections that have already been distributed pursuant to this section, the adjustments must be treated as issued for the current distribution period.

NEW SECTION. Section 14. Double taxation prohibited. (1) Except as provided in subsection (2), a local option limited sales tax may not be imposed in the same geographical area by more than one local government.

(2) If both a county and municipality in the county adopt a local option limited sales tax, the combined rate may not exceed 3%. If a county adopts a local option limited sales tax, a municipality may not adopt a local option limited sales tax in excess of the difference between 3% and the rate adopted by the county. If a county adopts a 3% local option limited sales tax, a municipality within the county may not impose a local option limited sales tax.

(3) A county local option limited sales tax may not be imposed in an existing resort community, resort area, or resort area district.

Section 15. Section 7-6-1502, MCA, is amended to read:

"7-6-1502. Resort community taxing authority -- specific delegation. (1) As required by 7-1-112, 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507.

(2) After July 1, 2003, a resort community, resort area, or resort area district may not enact or renew a resort tax."

Section 16. Section 7-7-4424, MCA, is amended to read:

"7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509 and [sections 1 through 14] constitute revenue of the

undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves."

Section 17. Section 7-7-4428, MCA, is amended to read:

"7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property tax, and resort tax, and local option limited sales tax revenue referred to in 7-7-4424;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other or additional bonds payable from the revenue of the undertaking;

(5) the operation and maintenance of the undertaking;

(6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue ~~thereafter~~ arising from the undertaking in the same manner as the municipality ~~itself might do.~~"

Section 18. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; section 9; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

NEW SECTION. Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 21. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 14].

NEW SECTION. **Section 22. Contingent voidness.** If Senate Bill No. 407 is not passed and approved, [this act] is void.

NEW SECTION. **Section 23. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2003.

(2) [Section 15 and this section] are effective on passage and approval.

NEW SECTION. **Section 24. Applicability.** [This act] applies to the sale of goods and services after December 31, 2004, if a local option limited sales tax is approved in a jurisdiction.

- END -