

SENATE BILL NO. 297

INTRODUCED BY GLASER, ERICKSON, FUCHS, LEWIS, STONINGTON, STORY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ALL MUNICIPALITIES AND COUNTIES, BY A VOTE OF THE ELECTORATE, TO ADOPT A LOCAL OPTION SALES TAX; LIMITING THE GOODS AND SERVICES THAT MAY BE SUBJECT TO A LOCAL OPTION SALES TAX; PROVIDING FOR THE DISTRIBUTION OF LOCAL OPTION SALES TAX REVENUE; PROVIDING THAT LOCAL OPTION SALES TAX REVENUE MAY BE USED FOR ANY PURPOSE REFLECTED IN THE RESOLUTION AUTHORIZING THE LOCAL OPTION SALES TAX; PROHIBITING DOUBLE TAXATION; REQUIRING CESSATION OF A LOCAL OPTION SALES TAX IF A STATEWIDE GENERAL SALES TAX AND USE TAX IS ENACTED; ALLOWING REINSTATEMENT OF A LOCAL OPTION SALES TAX WITH A MAXIMUM RATE OF 2 PERCENT UPON A VOTE; PROVIDING THAT AN EXISTING RESORT TAX IMPOSED BY A RESORT COMMUNITY, RESORT AREA, OR RESORT AREA DISTRICT REMAINS IN EFFECT; AMENDING SECTIONS 7-6-1508, 7-6-1532, 7-7-4424, AND 7-7-4428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Local option sales tax -- definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) (a) "Luxury goods and services" means any gift item, luxury item, or other item or any service normally sold to the public and to transient visitors or tourists, including but not limited to the following:

- (i) lodging facilities and campgrounds as defined in 15-65-101;
- (ii) meals prepared either for onsite consumption or to take out;
- (iii) alcoholic beverages sold by the drink;
- (iv) rentals of automobiles, boats, snowmobiles, off-road vehicles, and other vehicles used for travel or recreation;
- (v) rentals of camping, hunting, fishing, or other recreational equipment;
- (vi) ski lift tickets at destination resorts, hunting and fishing guide services, guided tours, trail rides, and other recreational services and facilities;
- (vii) admissions for movies, theatrical presentations, exhibits, and sporting events other than school-related events or nonprofit events;

- (viii) daily fees at golf courses ~~that are not owned by a governmental entity~~;
- (ix) admissions for water slides, amusement parks, or hot springs or other resorts; and
- (x) souvenir items.

(b) The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, clothing other than souvenirs, household bedding and furnishings, goods used in agricultural production, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician-prescribed and over-the-counter medications.

NEW SECTION. Section 2. Local option taxing authority -- specific delegation. As required by 7-1-112, [sections 1 through 9] specifically delegate to the electors of each respective municipality or county the power to authorize their municipality or county to impose a local option sales tax within the county or within the corporate boundary of the municipality.

NEW SECTION. Section 3. Limit on local option sales tax rate -- luxury goods and services subject to tax. (1) The rate of the local option sales tax must be established by the election petition or resolution provided for in [section 4], but, EXCEPT AS PROVIDED IN [SECTION 9(4)], the rate may not exceed 4%. The tax rate must be applied uniformly to all luxury goods and services subject to the tax.

(2) (a) The local option sales tax is a tax on the retail value of all luxury goods and services sold as provided in the petition or resolution, except for goods and services sold for resale, within the municipality or county.

(b) Establishments that sell luxury goods or services, or both, shall collect the sales tax on luxury goods and services subject to the tax.

NEW SECTION. Section 4. Local option sales tax -- election required -- procedure -- notice. (1) A municipality or county may not impose or, except as provided in [section 5], amend or repeal a local option sales tax unless the local option 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 sales tax question may 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 7-5-131 through 7-5-137.

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

(a) the luxury goods and services subject to the local option sales tax;

(b) the rate of the local option sales tax;

(c) the duration of the local option sales tax, WHICH MAY NOT EXCEED 20 YEARS;

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

and

(e) the purposes that may be funded by the local option sales tax revenue.

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

(a) call a special election on the local option sales tax question; or

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

(5) (a) Before the local option 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 goods and services subject to the local option sales tax in a newspaper that meets the qualifications of subsection (5)(b). The notice must be published twice, with at least 6 days separating 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 in the county where the election will take place.

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

NEW SECTION. Section 5. Local option sales tax administration. (1) In this section, "governing body" means:

(a) the governing body of a municipality; or

(b) if the local option sales tax has been approved by the electors of a county, the board of county

commissioners.

(2) Not less than 30 days prior to the date that the local option sales tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the local option sales tax. This administrative ordinance may be amended at any time as may be necessary to effectively administer the local option sales tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the local option sales tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of the local option sales tax and the methods and procedures to be used in enforcing the collection of local option sales taxes due; and

(d) the penalties for failure to report local option sales taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of local option sales taxes, not to exceed 50% of the taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of luxury goods and services that are subject to the local option sales tax consistent with [section 3];

(b) authorization for business administration and prepayment discounts. The discount authorization must allow each vendor and commercial establishment to withhold 5% of the local option sales tax collected to defray its costs for the administration of the tax collection.

(c) other administrative details necessary for the efficient and effective administration of the tax.

NEW SECTION. Section 6. Use of local option sales tax revenue -- bond issue -- pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in [section 4], a municipality or county may appropriate and expend revenues derived from a local option 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 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 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 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 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 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 sales tax.

NEW SECTION. Section 7. Local option sales tax -- property tax relief. At least 30% of the annually anticipated receipts from the local option sales tax received by a municipality or by a county must be applied to reduce the municipal or county property taxes.

NEW SECTION. Section 8. Distribution of local option sales tax proceeds. (1)(a) Local option sales tax revenue must be allocated as follows:

- (i) 70% must be allocated to the entity imposing the tax;
- (ii) 20% must be allocated to the region in which the entity imposing the tax is located; and
- (iii) 10% must be allocated to the subregion in which the entity imposing the tax is located.

(b) Local option sales tax revenue received by region or subregion must be distributed, at least quarterly, to the eligible municipalities and counties and within the region or subregion on a per capita basis. For purposes of distributing the revenue, individuals residing within a municipality are not considered county residents.

(2) A local option sales tax imposed by the county must be levied countywide. Unless otherwise provided by agreement with municipalities, the county shall, at least quarterly, distribute local option sales tax revenue to the municipalities in the following manner:

(a) 50% of the amount of local option sales tax revenue retained by the county must be distributed based on population by calculating the ratio of the population of each municipality in the county to the population of the county as derived 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; and

(b) the remaining 50% of the amount retained by the county is distributed based on the point of origin of the local option sales tax revenue.

(3) 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.

(4) For the purposes of this section:

(a) Region 1 consists of the following subregions:

(i) Flathead and Lincoln Counties; and

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

(b) Region 2 consists of the following 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 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 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.

NEW SECTION. Section 9. Double taxation prohibited. (1) Except as provided in subsection (2), a local option sales tax may not be imposed on the same goods or services by more than one local government, including a resort community, resort area, or resort area district imposing a tax under Title 7, chapter 6, part 15.

(2) (a) If both a county and a municipality adopt a local option sales tax, the combined rate may not exceed 4%. The second entity to adopt the tax is limited to imposing a tax rate that is equal to or less than the difference between the amount of the existing rate and 4%. If a county adopts a 4% sales tax, no municipality within the county may impose a local option sales tax and any municipality that imposes a local option sales tax shall repeal the tax without a vote of the electorate.

(b) A county or a municipality that adopts a local option sales tax in an area where a local option sales tax has already been adopted is limited to taxing the same goods and services as are taxed by the first entity to adopt a local option sales tax.

(c) To coordinate two local option taxes imposed within the same area, the rate of the local option tax, the goods and services to be taxed, the duration of the tax, if any, and restrictions on the use of tax revenue may be changed by submitting the question to the electorate of the local government that has an existing local option tax. The ballot question may be submitted contingent upon adoption of a local option tax by another entity. The governing bodies of the municipality and county may, by agreement, establish common administrative procedures for the administration and collection of the tax.

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

(4) IF A STATEWIDE GENERAL SALES TAX AND USE TAX IS ENACTED, A MUNICIPALITY OR COUNTY IMPOSING THE LOCAL OPTION SALES TAX SHALL CEASE IMPOSING THE TAX BEFORE THE APPLICABILITY DATE OF THE SALES TAX AND USE TAX UNLESS BONDING OBLIGATIONS REQUIRE THE TAX TO CONTINUE TO BE COLLECTED. ANY LOCAL OPTION SALES TAX COLLECTIONS OWED TO THE MUNICIPALITY OR COUNTY CONTINUE TO BE A DEBT TO THE MUNICIPALITY OR COUNTY, AND ANY ACTIONS TO ENFORCE THE TAX OR COLLECT THE TAX ARE UNAFFECTED BY THE CESSATION OF THE LOCAL OPTION SALES TAX. THE LOCAL OPTION SALES TAX MAY BE REINSTATED UPON APPROVAL OF THE ELECTORATE SUBJECT TO THE LOCAL OPTION SALES TAX. THE MAXIMUM TAX RATE OF A LOCAL OPTION SALES TAX IF A STATEWIDE GENERAL SALES TAX AND USE TAX IS IN EFFECT IS 2%.

Section 10. Section 7-6-1508, MCA, is amended to read:

"7-6-1508. Establishment of a resort area -- taxing authority -- approval by electorate. (1) (a) The Subject to subsection (1)(b), the establishment of a resort area for the purpose of imposing a resort tax may be

initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the electors residing in the proposed area.

(b) A NEW resort area may not be created in a county that has imposed a local option sales tax as provided in [sections 1 through 9].

(2) The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-1504.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the electors residing in the proposed resort area as provided in 7-6-1504."

Section 11. Section 7-6-1532, MCA, is amended to read:

"7-6-1532. Resort area district authorized. (1) Electors Except as provided in subsection (2), the electors residing within the boundaries of a resort area may create a resort area district by proceeding under the provisions of 7-6-1531 through 7-6-1550.

(2) A NEW resort area district may not be created in a county if the county has imposed a local option sales tax as provided in [sections 1 through 9]."

Section 12. 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 local option sales taxes approved, levied, and appropriated to an undertaking in compliance with [sections 1 through 9] 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 13. 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 and resort tax revenue referred to in 7-7-4424 or local option sales tax revenue referred to in [section 6];

(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."

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 9] 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 9].

NEW SECTION. **Section 15. 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 16. Effective date.** [This act] is effective on passage and approval.

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