

SENATE BILL NO. 464
INTRODUCED BY D. WEINBERG

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO IMPOSE A LOCAL OPTION REALTY TRANSFER TAX IF AUTHORIZED BY THE ELECTORS OF THE LOCAL GOVERNMENT; REQUIRING THAT AT LEAST 10 PERCENT OF THE PROCEEDS OF THE TAX ARE TO BE USED FOR PROPERTY TAX RELIEF; LIMITING THE TAX TO 1 PERCENT OF THE CURRENT MARKET VALUE OF THE PROPERTY TRANSFERRED; ESTABLISHING THAT A PERCENTAGE OF THE VALUE IS EXEMPTED AND ALLOWING A MAXIMUM MARKET VALUE SUBJECT TO THE EXEMPTION; PROVIDING THAT IF THE TAX IS IMPOSED BY A MUNICIPALITY, ONLY TRANSACTIONS WITHIN THE MUNICIPALITY ARE TAXED AND THAT IF IT IS IMPOSED BY A COUNTY, ONLY THE TRANSACTIONS IN THE COUNTY BUT NOT WITHIN A MUNICIPALITY ARE TAXED; AMENDING SECTIONS 7-6-4034, 15-7-302, 15-7-307, 15-7-308, AND 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Local government" means a consolidated city-county, a municipality, or a county.

(3) (a) "Market value" means:

(i) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with nominal consideration, a transfer without stated consideration, or a like-kind exchange, the amount of the full actual consideration paid or to be paid, including the amount of any lien or liens on the real property, as declared in the certificate required in 15-7-305; or

(ii) in the case of a nonarm's-length transfer, a like-kind exchange, or a transfer in which the value declared in the certificate required in 15-7-305 is different from market value, the value at which real property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The value must be determined by a licensed or certified real estate appraiser.

(b) The term does not include the consideration paid for any real property that is exempt under [section

5] or for personal or intangible property.

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

(5) "Real property" means land classified as agricultural land in 15-6-133 and residential and commercial property described in 15-6-134 and includes land and buildings, structures, fixtures, fences, and improvements affixed to land.

(6) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed, legally or equitably, from one person to another and includes transfers subject to a contract for deed and transfers of individual interests in real property.

NEW SECTION. Section 2. Local option realty transfer tax authority -- specific delegation. As required by 7-1-112, [sections 1 through 10] specifically delegate to the electors of each respective local government the power to authorize their local government to impose a 1% local option realty transfer tax within the local government.

NEW SECTION. Section 3. Local option realty transfer tax -- adoption. (1) A local option realty transfer tax may be imposed or repealed by an incorporated city or town or by a county:

- (a) by the people of the local government by initiative; or
 - (b) by the governing body of the local government by adoption of a resolution and referral to the people.
- (2) The initiative or referendum must specify:
- (a) the number of years, not to exceed 20, that the realty transfer tax may be imposed by the local government;
 - (b) the rate of the tax, not to exceed 1%;
 - (c) the property value exemption percentage, which may not be less than 50% and the maximum amount subject to the exemption, which may not be less than \$1 million;
 - (d) the percentage of collections to be used for property tax relief, which may not be less than 10%;
 - (e) the percentages of collections to be used for various local government functions, including bonded capital expenditures;
 - (f) the date when the tax becomes effective, which may not be earlier than 35 days after the election;
- and
- (g) the purposes that may be funded by the tax revenue.

NEW SECTION. Section 4. Local government realty transfer tax -- rate -- collection -- value of real property. (1) (a) The rate of the local option realty transfer tax must be established by the initiative petition or resolution for referral provided for in [section 3], but the rate may not exceed 1%.

(b) An exemption percentage for exempting a portion of the current market value of the property from the tax must be established in the initiative petition or resolution for referral provided for in [section 3], but the percentage may not be less than 50%. The value remaining after the exemption percentage is applied is the taxable value. The initiative petition or resolution may establish a maximum amount of current market value that the exemption percentage applies, but the maximum may not be less than \$1 million.

(2) The tax is imposed on the seller, at the time that a transfer of ownership of property is recorded, on the taxable market value of property located within the:

(a) municipality, if the tax is imposed by a municipality; or

(b) county area not within the boundaries of a municipality, if the tax is imposed by a county.

(3) The tax is due upon the recording of a transfer of title on real property. The county treasurer of the county in which the transfer of title is recorded shall collect the tax. The county treasurer shall deposit proceeds of a county local option realty transfer taxes and any penalties and interest collected in the county general fund. If the tax is imposed by a municipality, the county treasurer shall transmit the collections to the municipal treasurer. The transfer must be made monthly unless otherwise agreed to by the county treasurer and the municipality. The county treasurer may impose a fee, not to exceed 3% of the amount collected, for administering the tax for the municipality.

(4) The tax is payable by the transferee and must be paid by the transferee or by the person seeking to record the transfer of title to the real property.

(5) (a) If the person seeking to record the transfer of title claims an exemption to the tax provided for in [section 5], the county treasurer shall presume that the claim of exemption is valid.

(b) If the county treasurer determines that the real property transfer is exempt, the treasurer shall issue a certificate of exemption and no other action is necessary.

(c) If within 30 days the county treasurer determines that the real property transfer is not exempt, the county treasurer shall:

(i) notify the taxpayer that the county treasurer has determined that the real property transfer is not exempt and inform the taxpayer of the amount of the tax due; and

(ii) direct the taxpayer to remit the amount of the tax due to the county treasurer.

(6) If the value declared in the certificate required under 15-7-305 is known or believed by the person

seeking to file the transfer of title or by the county treasurer to be something other than the market value of the real property on which the tax is imposed, including any value of nontaxable property, the market value must be set by a certified or licensed real estate appraiser. The value may be established by an appraisal conducted for the purposes of the sale, or if none is available, it may be established by an appraiser chosen by the county, who must be paid from the proceeds of the tax. If the taxpayer is dissatisfied with the valuation, the taxpayer may pay to have a second valuation performed by a certified or licensed real estate appraiser of the taxpayer's choice. If the county and the taxpayer are dissatisfied with the second valuation, the two real estate appraisers shall choose an independent appraiser, to be paid one-half from the tax proceeds and one-half by the taxpayer, to review the previous valuations and establish a taxable valuation.

(7) Whenever real property subject to the tax is located in more than one local government, the treasurer of the county in which the transfer of title is sought to be registered shall collect the amount of tax due on property located within the local government imposing the tax. If the value is not ascertainable, the value of the whole property must be apportioned between the local governments in the same ratio of taxable value of the property within each local government as shown by department records.

(8) If a municipality imposes a local option realty transfer tax in a county that also imposes the tax or if adjacent local governments impose the tax, the local governments may, by interlocal agreement, provide for coordination of taxation and administration of the tax.

NEW SECTION. Section 5. Exempt transactions. (1) Except as provided in subsection (2), the local option realty transfer tax imposed in [section 4] does not apply to:

- (a) an instrument recorded prior to [the effective date of this act];
- (b) a transfer solely to provide or release security for a debt or obligation;
- (c) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;
- (d) an instrument that, without added consideration, confirms, corrects, modifies, or supplements a previously recorded instrument;
- (e) a transfer pursuant to a court decree of partition;
- (f) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities and includes a transfer by co-owners to a business entity solely owned by them;
- (g) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

- (h) a transfer of decedents' estates;
- (i) a transfer of a gift;
- (j) a transfer between husband and wife;
- (k) a transfer between parent and child;
- (l) an instrument the effect of which is to transfer the real property to the same party or parties;
- (m) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage foreclosure; or
- (n) a transfer made in contemplation of death.

(2) (a) A transfer of real property made under the exemption in subsection (1)(f) by co-owners to a business entity, subsection (1)(j) between a husband and wife, or subsection (1)(k) between a parent and child is subject to the tax imposed under [section 4] if the real property is subsequently transferred within 3 years to another person or entity. The tax, plus interest from the date of the exempt transaction, is payable by the transferor at the time of payment of the tax on the second transfer.

(b) The county clerk and recorder in a county in which a local option realty transfer tax is imposed shall establish a system to track transactions described in subsection (2)(a).

NEW SECTION. Section 6. Collection of local option realty transfer tax -- appeals -- penalty and interest -- statute of limitations -- lien on transferred real property. (1) Before a deed or instrument evidencing a transfer of title subject to the local option realty transfer tax imposed by [section 4] may be recorded, the treasurer of the county where the real property or any portion of the real property is located shall, unless a certificate of exemption is presented, collect the amount of tax due as provided in [section 4].

(2) If the taxpayer contests the tax assessment or the denial of an exemption from the tax, the taxpayer may, before payment of any tax, appeal the tax assessment or the denial of the exemption to district court.

(3) (a) If the district court determines that the amount of tax due is greater than the amount collected, the county treasurer shall mail a notice to the taxpayer of the additional tax assessed and demand that the additional tax be paid to the county treasurer.

(b) In addition to the unpaid tax, there is imposed:

- (i) a penalty of 10% of the unpaid tax if not paid within 10 days of the payment date set by the court; and
- (ii) interest on the unpaid tax, until paid in full, at the rate of 1% a month or fraction of a month, computed from the date on which the transfer was recorded.

(4) Pursuant to 15-16-102, the treasurer may collect any additional tax, penalty, and interest due under

this section. The collection must be deposited in the county general fund or transmitted to the municipal treasurer as applicable.

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

(6) (a) It is unlawful for a county treasurer or employee of the county treasurer or any other public official or public employee to divulge or otherwise make known taxpayer information that is disclosed under [sections 1 through 10] or information that concerns the affairs of the person and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This subsection (6) does not prohibit the county treasurer from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular person.

NEW SECTION. Section 7. Penalty for falsifying value -- evasion. (1) A person who seeks to record a transfer of title to real property subject to the local option realty transfer tax under [sections 1 through 10] is guilty of unsworn falsification to authorities under 45-7-203 if:

(a) the person at the time of initially seeking to file a transfer of title knew or had reason to believe that the value declared in the certificate required under 15-7-305 is less than the market value of the real property; and

(b) the value declared on the certificate is used to determine the amount of tax due under [section 4].

(2) A person who uses multiple sales, unsupportable asset allocation, or other transactions for the purpose of evading [sections 1 through 10] is, upon a finding by a district court that the evasive transactions constitute a taxable transfer under [sections 1 through 10], subject to the penalty and interest provisions of [section 6(3)(b)].

NEW SECTION. Section 8. Use of proceeds -- local government services. In the proportions specified in the voter-approved tax authorization provided for in [section 3], after deducting the amount required for property tax relief under [section 9], a local government may appropriate and expend revenue derived from a local option realty transfer tax for any activity, undertaking, or administrative service that the local government is authorized by law to perform, including payment of costs resulting from the imposition and administration of the tax.

NEW SECTION. Section 9. Use of proceeds -- property tax relief. (1) The percentage of collections of a local option realty transfer tax to be used to reduce local government property tax levies must be established by the initiative petition or resolution for referral provided for in [section 3], but may not be less than 10%. Annually anticipated receipts from the tax must be applied to reduce the local government property tax levy for the fiscal year in an amount equal to at least 10% of the tax revenue derived during the preceding fiscal year.

(2) A local government that received more local option realty transfer tax revenue than had been included in the annual budget shall establish a local option realty transfer tax relief account. All local option realty transfer tax revenue received in excess of the budget amount must be placed in the account. The entire account must be used to replace local government property taxes in the ensuing fiscal year.

NEW SECTION. Section 10. Use of proceeds -- bonding authority. (1) A local government may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-2501, 7-7-4101, 7-7-4404, 7-12-2102, and 7-12-4102 to be repaid from revenue derived from a local option realty transfer tax. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the local government as the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(2) A local government may pledge for repayment of bonds issued under this section the revenue derived from a local option realty transfer 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 local government. The bonds do not constitute debt for purposes of any statutory debt limitation if in the resolution authorizing the issuance of the bonds the local government determines that revenue from the local option realty transfer tax, 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 on the bonds when due. Bonds may not be issued pledging proceeds of the local option realty transfer tax for repayment unless the local government 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 realty transfer tax, less the amount required to reduce property taxes pursuant to [section 9], equals at least 125% of the average amount of the principal and interest payable from the local option realty transfer tax revenue on the bonds and any other outstanding bonds payable from the local option realty transfer tax except any bonds to be refunded upon the issuance of the proposed bonds.

Section 11. Section 7-6-4034, MCA, is amended to read:

"7-6-4034. Determination of fund requirements -- property tax levy. (1) After determining the final budget, the governing body shall determine the property tax levy needed for each fund by:

- (a) adding the total amount of the appropriations and authorized expenditures for the budget year;
- (b) adding an additional amount, subject to the provisions of subsection (2), as a reserve to meet expenditures made from the fund during the months of July to November of the next fiscal year;
- (c) subtracting the working capital; ~~and~~
- (d) subtracting the total estimated revenue, other than the property tax levy, for the budget year; and
- (e) subtracting the amount in the local option realty transfer tax relief account established in [section 9] in an amount necessary to offset property tax levies.

(2) After deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants, the amount that may be added as a reserve, as provided in subsection (1)(b), to:

- (a) a county's fund may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year; and
- (b) a city's or town's fund may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year."

Section 12. Section 15-7-302, MCA, is amended to read:

"15-7-302. Purpose. The purpose of this part is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method and to provide for the administration of the local option realty transfer tax provided for in [sections 1 through 10]."

Section 13. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate -- exceptions. The certificate required by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

- (1) an instrument recorded prior to July 1, 1975;
- ~~(2) the sale of agricultural land when the land is used for agricultural purposes;~~
- ~~(3)(2)~~ the sale of timberland when the land is used for producing timber;

~~(4)~~(3) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;

~~(5)~~(4) an instrument that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

~~(6)~~(5) a transfer pursuant to a court decree;

~~(7)~~(6) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities, including a transfer by co-owners to a business entity solely owned by them;

~~(8)~~(7) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

~~(9)~~(8) a transfer of decedents' estates;

~~(10)~~(9) a transfer of a gift;

~~(11)~~(10) a transfer between husband and wife or parent and child with only nominal actual consideration for the transfer;

~~(12)~~(11) an instrument the effect of which is to transfer the property to the same party or parties;

~~(13)~~(12) a sale for delinquent taxes or assessments, sheriff's sale, bankruptcy action, or mortgage foreclosure;

~~(14)~~(13) a transfer made in contemplation of death."

Section 14. Section 15-7-308, MCA, is amended to read:

"15-7-308. Disclosure of information restricted -- water right ownership update form exception.

(1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder, the county treasurer, and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information contained in the water right ownership update form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of

85-2-112(3)."

Section 15. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. ~~The~~ Subject to subsection (10), the maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;

- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A mill levy that has been reduced because of tax relief resulting from imposition of a local option realty transfer tax as provided in [sections 1 through 10] may not be reinstated while the local option realty transfer tax is in effect unless the levy increase is approved at an election pursuant to 15-10-425.

~~(10)~~(11) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

~~(11)~~(12) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 10] 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 10].

NEW SECTION. **Section 17. Effective date.** [This act] is effective on passage and approval.

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