

HOUSE BILL NO. 857

2/16 Introduced  
2/16 Referred to Taxation  
2/16 Fiscal Note Requested  
2/22 Fiscal Note Received  
3/07 Hearing  
3/29 Adverse Committee Report  
3/29 Objection to Adverse Committee Report  
4/01 2nd Reading Do Not pass  
4/01 Statement of Intent Attached  
4/01 Bill Killed



1 price the property would bring in an open market and under  
 2 the current prevailing market conditions in a sale between a  
 3 willing seller and a willing buyer, both conversant with the  
 4 property and prevailing current market conditions."

5 Section 4. Section 15-7-305, MCA, is amended to read:

6 "15-7-305. Certificate of county clerk and recorder.

7 (1) The county clerk and recorder shall cause to be executed  
 8 by the parties to the transaction or their agents or  
 9 representatives a certificate declaring the consideration  
 10 paid or to be paid for the real estate transferred.

11 (2) No instrument or deed evidencing a transfer of  
 12 real estate may be accepted for recordation until the  
 13 certificate has been received by the county clerk and  
 14 recorder and the tax imposed by [section 8] has been paid.

15 The validity or effectiveness of an instrument or deed as  
 16 between the parties to it shall not be affected by the  
 17 failure to comply with the provisions in this part.

18 (3) The form of certificate shall be prescribed by the  
 19 department of revenue, and the department shall provide an  
 20 adequate supply of such forms to each county clerk and  
 21 recorder in the state.

22 (4) The clerk and recorder shall prepare a like  
 23 certificate for each contract for deed filed for recording.

24 (5) The clerk and recorder shall transmit one copy of  
 25 each executed certificate to the department and one copy to

1 the county assessor."

2 Section 5. Section 15-7-306, MCA, is amended to read:

3 "15-7-306. Rules. The department of revenue may  
 4 prescribe such rules as are reasonably necessary to  
 5 facilitate and expedite the provisions and administration of  
 6 this part, including the imposition, collection, and  
 7 administration of the tax imposed in [section 8]."

8 Section 6. Section 15-7-307, MCA, is amended to read:

9 "15-7-307. Certificate -- exceptions. The certificate  
 10 and tax imposed by this part shall not apply to:

11 (1) an instrument recorded prior to July 1, 1975 1985;

12 (2) ~~the sale of agricultural land when the land is~~  
 13 used for agricultural purposes a transfer solely to provide  
 14 or release security for a debt or obligation;

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

17 (4) an instrument which (without added consideration)  
 18 confirms, corrects, modifies, or supplements a previously  
 19 recorded instrument;

20 (5) a transfer pursuant to a court decree of  
 21 partition;

22 (6) a transfer pursuant to mergers, consolidations, or  
 23 reorganizations of corporations, partnerships, or other  
 24 business entities;

25 (7) a transfer by a subsidiary corporation to its

1 parent corporation without actual consideration or in sole  
2 consideration of the cancellation or surrender of subsidiary  
3 stock;

4 ~~(8)--a-transfer-of-decedents'-estates;~~

5 ~~(9)--a-transfer-of-a-gift;~~

6 ~~(10)~~ (8) a transfer between husband and wife or parent  
7 and child with only nominal actual consideration therefor;

8 ~~(11)~~ (9) an instrument the effect of which is to  
9 transfer the property to the same party or parties;

10 ~~(12)~~ (10) a sale for delinquent taxes or assessments,  
11 sheriff sale, bankruptcy action, or mortgage foreclosure;

12 ~~(13)-a-transfer-made-in-contemplation-of-death-"~~

13 Section 7. Section 15-7-310, MCA, is amended to read:

14 "15-7-310. Penalty. (1) A Except as otherwise  
15 provided in this section, a person convicted of violating  
16 any provision of this part shall be fined not to exceed \$500  
17 or be imprisoned in the county jail for any term not to  
18 exceed 6 months, or both.

19 (2) A clerk and recorder who willfully records any  
20 deed or instrument evidencing a transfer subject to tax  
21 under [section 8] without ensuring that the proper amount of  
22 tax has been paid shall upon conviction be fined \$50 for  
23 each offense.

24 (3) A person who willfully falsifies the value of  
25 transferred real estate on the certificate required under

1 15-7-305 is upon conviction subject to a fine of not more  
2 than \$1,000 or imprisonment of not more than 1 year or both  
3 such fine and imprisonment, for each offense."

4 NEW SECTION. Section 8. Imposition of tax. A tax is  
5 imposed at the rate of \$1 for each \$1,000 of value or  
6 fraction thereof declared in the certificate required by  
7 15-7-305 upon the privilege of transferring title to real  
8 property.

9 NEW SECTION. Section 9. Collection of tax. Before any  
10 deed or instrument evidencing a transfer of title subject to  
11 the tax imposed in [section 8] may be recorded, the  
12 treasurer of the county where the property or any portion  
13 thereof is located shall calculate and collect the amount of  
14 tax due.

15 NEW SECTION. Section 10. Distribution of proceeds.  
16 The proceeds of the tax collected under [section 9] must be  
17 deposited as follows:

- 18 (1) 33 1/3% in the state general fund;  
19 (2) 10% in the county general fund;  
20 (3) 56 2/3% in the county general fund if the property  
21 is located outside an incorporated area or in the general  
22 fund of the incorporated area if the property is located  
23 within an incorporated area.

24 NEW SECTION. Section 11. Codification instruction.  
25 Sections 8 through 10 are intended to be codified as an

1 integral part of Title 15, chapter 7, part 3.

2 NEW SECTION. Section 12. Extension of authority. Any  
3 existing authority of the department of revenue to make  
4 rules on the subject of the provisions of this act is  
5 extended to the provisions of this act.

6 NEW SECTION. Section 13. Repealer. Section 15-7-311,  
7 MCA, is repealed.

8 NEW SECTION. Section 14. Effective date. This act is  
9 effective July 1, 1985.

-End-

## STATE OF MONTANA

## FISCAL NOTE

REQUEST NO. FNN 457-85Form BD-15

In compliance with a written request received February 19, 19 85, there is hereby submitted a Fiscal Note for H.B. 857 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

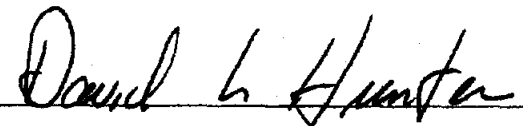
An act imposing a tax on certain transfers of real property; providing for distribution of the proceeds of the tax to the state and local jurisdictions; providing penalties.

ASSUMPTIONS:

1. Approximately 63,000 realty transfer certificates are filed each year. This volume is assumed constant for each year of the biennium. The average selling price for each parcel is \$42,000. (Based on statistics on Washington's realty sales tax in FY 84.)

FISCAL IMPACT:

	<u>FY 1986</u>			<u>FY 1987</u>		
	<u>Current Law</u>	<u>Under Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Under Proposed Law</u>	<u>Difference</u>
Realty Transfer Tax	\$ -0-	\$ 2,646,000	\$ 2,646,000	\$ -0-	\$ 2,646,000	\$ 2,646,000
General Fund	-0-	881,118	881,118	-0-	881,118	881,118
Local Governments	-0-	1,764,882	1,764,882	-0-	1,764,882	1,764,882



BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Feb 22, 1985

**HB 857**

OBJECTION RAISED TO  
ADVERSE COMMITTEE REPORT

HOUSE BILL NO. 857

INTRODUCED BY KEENAN, COHEN, HOLLIDAY, PECK,  
WALDRON, DARKO, DRISCOLL, BRADLEY, REAM, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON  
CERTAIN TRANSFERS OF REAL PROPERTY; PROVIDING FOR  
DISTRIBUTION OF THE PROCEEDS OF THE TAX TO ~~THE--STATE--AND~~  
LOCAL JURISDICTIONS; PROVIDING PENALTIES; AMENDING SECTIONS  
15-7-301 THROUGH 15-7-303, 15-7-305 THROUGH 15-7-307, AND  
15-7-310, MCA; REPEALING SECTION 15-7-311, MCA; AND  
PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 15-7-301, MCA, is amended to read:

"15-7-301. Short title. This part may be cited as the  
"Realty Transfer Tax Act."

Section 2. Section 15-7-302, MCA, is amended to read:

"15-7-302. Purpose. The purpose of this part is to:

(1) impose a tax on ~~the privilege of transferring~~ THE  
TRANSFER OF real property and provide for distribution of  
the proceeds of the tax to ~~the--state--and-to~~ the local  
jurisdiction where the property is located; and

(2) 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."

Section 3. Section 15-7-303, MCA, is amended to read:

"15-7-303. Definitions. As used in this part, the  
following definitions apply:

(1) "Partial interest" means a percentage interest in  
property when less than 100%.

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

(3) "Real estate" includes:

(a) land;

(b) growing timber;

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

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

(5) "Value" means:

(a) in the case of any transfer of interest in real  
property, other than a gift or a transfer with nominal  
consideration or without stated consideration, the amount of  
the full actual consideration therefor paid or to be paid,  
including the amount of any lien or liens thereon;

(b) in the case of a gift or any transfer with nominal



1 consideration or without stated consideration, the estimated  
 2 price the property would bring in an open market and under  
 3 the current prevailing market conditions in a sale between a  
 4 willing seller and a willing buyer, both conversant with the  
 5 property and prevailing current market conditions."

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13 (2) ~~the--sale--of--agricultural--land--when--the--land--is~~  
 14 used--for--agricultural--purposes a transfer solely to provide  
 15 or release security for a debt or obligation;

16 (3) the United States of America, this state, or any  
 17 instrumentality, agency, or subdivision thereof;

18 (4) an instrument which (without added consideration)  
 19 confirms, corrects, modifies, or supplements a previously  
 20 recorded instrument;

21 (5) a transfer pursuant to a court decree of  
 22 partition;

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 25 business entities;



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 2 parent corporation without actual consideration or in sole  
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 4 stock;

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 9 title to real property.

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21 ~~(3) 2) 56-2/3% 80%~~ in the county general fund if the  
 22 property is located outside an incorporated area or in the  
 23 general fund of the incorporated area if the property is  
 24 located within an incorporated area.

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