

HB 826 INTRODUCED BY KEENAN, ET AL.
IMPOSING A TAX ON THE TRANSFER OF REALTY; PROVIDING
FOR DISTRIBUTION OF TAX

2/18 INTRODUCED
2/18 REFERRED TO TAXATION
2/19 FISCAL NOTE REQUESTED
2/23 FISCAL NOTE RECEIVED
3/05 HEARING
3/16 TABLED IN COMMITTEE

1 House BILL NO. 826
 2 INTRODUCED BY Keenan Long Ryan DeB...
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RESPONDING TO
 5 INITIATIVE NO. 105 BY IMPOSING A REALTY TRANSFER TAX ON
 6 CERTAIN TRANSFERS OF REAL PROPERTY; PROVIDING FOR PROPERTY
 7 TAX REDUCTION THROUGH DISTRIBUTION OF THE PROCEEDS OF THE
 8 REALTY TRANSFER TAX; AMENDING SECTIONS 7-6-304, 15-7-301
 9 THROUGH 15-7-303, 15-7-305 THROUGH 15-7-307, 15-7-310, AND
 10 17-7-502, MCA; REPEALING SECTION 15-7-311, MCA; AND
 11 PROVIDING AN EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 7-6-304, MCA, is amended to read:
 15 "7-6-304. Division of block grant funds. The division
 16 of funds within the local government block grant account is
 17 as follows:

18 (1) Except as provided in 7-6-309(1), the general
 19 purpose block grant for municipalities, counties, school
 20 districts, and other jurisdictions must be funded, before
 21 any other distributions are made from the account, in an
 22 amount sufficient to cover the reimbursements required by
 23 61-3-536, to the extent funds are available.

24 (2) (a) The general services block grant for counties
 25 must be funded from:

1 (i) a percentage of the remaining funds deposited in
 2 the account equal to the ratio of the unincorporated
 3 population to the total state population; and

4 (ii) the amount of revenue statutorily appropriated
 5 under [section 12(2)] multiplied by the ratio of the
 6 unincorporated population to the total state population.

7 (b) The general services block grant for
 8 municipalities must be funded from:

9 (i) a percentage of the remaining funds deposited in
 10 the account equal to the ratio of the incorporated
 11 population to the total state population; and

12 (ii) the amount of revenue statutorily appropriated
 13 under [section 12(2)] multiplied by the ratio of the
 14 incorporated population to the total state population."

15 Section 2. Section 15-7-301, MCA, is amended to read:
 16 "15-7-301. Short title. This part may be cited as the
 17 "Realty Transfer Tax Act"."

18 Section 3. Section 15-7-302, MCA, is amended to read:
 19 "15-7-302. Purpose -- policy. (1) The purpose of this
 20 part is to:

21 (a) obtain sales price data necessary to the
 22 determination of statewide levels and uniformity of real
 23 estate assessments by the most efficient, economical, and
 24 reliable method; and

25 (b) provide a legislative response to Initiative No.



1 105 adopted by the Montana voters on November 4, 1986, by:

2 (i) directing that a portion of the revenue generated
3 through the tax imposed under [section 10] must be used for
4 planning purposes, thereby reducing the amount of tax
5 payable on property included in the classes described in
6 Initiative No. 105;

7 (ii) allowing revenue collected from the realty
8 transfer tax to be kept by the county or incorporated area
9 collecting the tax, thereby enabling the county or
10 incorporated area to further reduce mill levies applicable
11 not only to property described in Initiative No. 105 but to
12 all property subject to taxation; and

13 (iii) providing an alternative source of revenue to
14 counties, cities, and towns, which revenue the legislature
15 anticipates will be used to reduce taxes, cumulatively on a
16 statewide basis, to all property subject to taxation,
17 including that property described in Initiative No. 105.

18 (2) Having stated the purpose of the realty transfer
19 tax, the 50th legislature declares that the realty transfer
20 tax is being enacted in response to Initiative No. 105.

21 (3) It is the policy of the 50th legislature that,
22 upon passage and approval of the realty transfer tax, the
23 requirements of Initiative No. 105 have been met and, as a
24 consequence, the provisions of Initiative No. 105 are
25 repealed."

1 Section 4. Section 15-7-303, MCA, is amended to read:

2 "15-7-303. Definitions. As used in this part, the
3 following definitions apply:

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

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

10 (3) "Real estate" includes:

11 (a) land;

12 (b) growing timber;

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

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

18 (5) "Value" means:

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

24 (b) in the case of a gift or any transfer with nominal
25 consideration or without stated consideration, the estimated

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 of whom are
 4 conversant with the property and prevailing current market
 5 conditions."

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

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

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

12 (2) No instrument or deed evidencing a transfer of
 13 real estate may be accepted for recordation until the
 14 certificate has been received by the county clerk and
 15 recorder and the tax imposed by [section 10] has been paid.

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

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

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

25 (5) The clerk and recorder shall transmit one copy of

1 each executed certificate to the department."

2 Section 6. 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 10]."

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

9 "15-7-307. (Effective January 1, 1986) Certificate --
 10 exceptions. The certificate imposed by this part shall not
 11 apply to:

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

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--sale--of--timberland--when--the--land--is--used--for~~
 17 ~~producing--timber;~~

18 ~~(4)~~(3) the United States of America, this state, or
 19 any instrumentality, agency, or subdivision thereof;

20 ~~(5)~~(4) an instrument which (without added
 21 consideration) confirms, corrects, modifies, or supplements
 22 a previously recorded instrument;

23 ~~(6)~~(5) a transfer pursuant to a court decree of
 24 partition;

25 ~~(7)~~(6) a transfer pursuant to mergers, consolidations,

1 or reorganizations of corporations, partnerships, or other
2 business entities;

3 ~~{8}~~{7} a transfer by a subsidiary corporation to its
4 parent corporation without actual consideration or in sole
5 consideration of the cancellation or surrender of subsidiary
6 stock;

7 ~~{9}--a-transfer-of-decedents'-estates;~~

8 ~~{10}-a-transfer-of-a-gift;~~

9 ~~{11}~~{8} a transfer between husband and wife or parent
10 and child with only nominal actual consideration therefor;

11 ~~{12}~~{9} an instrument the effect of which is to
12 transfer the property to the same party or parties;

13 ~~{13}~~{10} a sale for delinquent taxes or assessments,
14 sheriff sale, bankruptcy action, or mortgage foreclosure;

15 ~~{14}-a-transfer-made-in-contemplation-of-death.~~

16 15-7-307. (Effective January 1, 1991) Certificate --
17 exceptions. The certificate imposed by this part shall not
18 apply to:

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

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

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

25 (4) an instrument which (without added consideration)

1 confirms, corrects, modifies, or supplements a previously
2 recorded instrument;

3 (5) a transfer pursuant to a court decree of
4 partition;

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

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

12 ~~{8}--a-transfer-of-decedents'-estates;~~

13 ~~{9}--a-transfer-of-a-gift;~~

14 ~~{10}~~{8} a transfer between husband and wife or parent
15 and child with only nominal actual consideration therefor;

16 ~~{11}~~{9} an instrument the effect of which is to
17 transfer the property to the same party or parties;

18 ~~{12}~~{10} a sale for delinquent taxes or assessments,
19 sheriff sale, bankruptcy action, or mortgage foreclosure;

20 ~~{13}-a-transfer-made-in-contemplation-of-death."~~

21 Section 8. Section 15-7-310, MCA, is amended to read:

22 "15-7-310. Penalty. (1) A Except as otherwise provided
23 in this section, a person convicted of violating any
24 provision of this part shall be fined not to exceed \$500 or
25 be imprisoned in the county jail for any term not to exceed

1 6 months, or both.

2 (2) A clerk and recorder who willfully records any
 3 deed or instrument evidencing a transfer subject to tax
 4 under [section 10] without ensuring that the proper amount
 5 of tax has been paid shall upon conviction be fined \$50 for
 6 each offense.

7 (3) A person who willfully falsifies the value of
 8 transferred real estate on the certificate required under
 9 15-7-305 is upon conviction subject to a fine of not more
 10 than \$1,000 or imprisonment of not more than 1 year, or both
 11 such fine and imprisonment, for each offense."

12 Section 9. Section 17-7-502, MCA, is amended to read:

13 "17-7-502. Statutory appropriations -- definition --
 14 requisites for validity. (1) A statutory appropriation is an
 15 appropriation made by permanent law that authorizes spending
 16 by a state agency without the need for a biennial
 17 legislative appropriation or budget amendment.

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

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

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

1 (3) The following laws are the only laws containing
 2 statutory appropriations:

- 3 (a) 2-9-202;
 4 (b) 2-17-105;
 5 (c) 2-18-812;
 6 (d) 10-3-203;
 7 (e) 10-3-312;
 8 (f) 10-3-314;
 9 (g) 10-4-301;
 10 (h) 13-37-304;
 11 (i) [section 12];
 12 (j) 15-31-702;
 13 (k) 15-36-112;
 14 (l) 15-70-101;
 15 (m) 16-1-404;
 16 (n) 16-1-410;
 17 (o) 16-1-411;
 18 (p) 17-3-212;
 19 (q) 17-5-404;
 20 (r) 17-5-424;
 21 (s) 17-5-804;
 22 (t) 19-8-504;
 23 (u) 19-9-702;
 24 (v) 19-9-1007;
 25 (w) 19-10-205;

1 {w}{x} 19-10-305;
 2 {x}{y} 19-10-506;
 3 {y}{z} 19-11-512;
 4 {z}{aa} 19-11-513;
 5 {aa}{bb} 19-11-606;
 6 {bb}{cc} 19-12-301;
 7 {cc}{dd} 19-13-604;
 8 {dd}{ee} 20-6-406;
 9 {ee}{ff} 20-8-111;
 10 {ff}{gg} 23-5-612;
 11 {gg}{hh} 37-51-501;
 12 {hh}{ii} 53-24-206;
 13 {ii}{jj} 75-1-1101;
 14 {jj}{kk} 75-7-305;
 15 {kk}{ll} 80-2-103;
 16 {ll}{mm} 80-2-228;
 17 {mm}{nn} 90-3-301;
 18 {nn}{oo} 90-3-302;
 19 {oo}{pp} 90-15-103; and
 20 {pp}{qq} Sec. 13, HB 861, L. 1985.
 21 (4) There is a statutory appropriation to pay the
 22 principal, interest, premiums, and costs of issuing, paying,
 23 and securing all bonds, notes, or other obligations, as due,
 24 that have been authorized and issued pursuant to the laws of
 25 Montana. Agencies that have entered into agreements

1 authorized by the laws of Montana to pay the state
 2 treasurer, for deposit in accordance with 17-2-101 through
 3 17-2-107, as determined by the state treasurer, an amount
 4 sufficient to pay the principal and interest as due on the
 5 bonds or notes have statutory appropriation authority for
 6 such payments."

7 NEW SECTION. Section 10. Imposition of tax. A tax is
 8 imposed at the rate of \$1 for each \$1,000 of value or
 9 fraction thereof declared in the certificate required by
 10 15-7-305 upon the transfer of title to real property.

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

17 NEW SECTION. Section 12. Distribution of proceeds.
 18 (1) The proceeds of the tax collected under [section 11]
 19 must be distributed by the county treasurer as follows:

20 (a) 8% of the tax collected must be transmitted to the
 21 state treasurer, who shall credit the money, subject to
 22 subsection (2), in equal proportions to the natural resource
 23 information system created in 90-15-301 and the Montana
 24 natural heritage program created in 90-15-302; and
 25 (b) of the remainder:

1 (i) 20% to the county general fund; and

2 (ii) 80% to the:

3 (A) incorporated area to fund planning and subdivision
4 review functions that were, on [the effective date of this
5 act], funded from the incorporated area's general fund or
6 from a levy within the incorporated area for planning if the
7 property is located within an incorporated area; or

8 (B) county to fund planning and subdivision review
9 functions that were, on [the effective date of this act],
10 funded from the county general fund or from a county levy
11 for planning if the property is located outside an
12 incorporated area.

13 (2) When the amount credited by the state treasurer
14 under subsection (1)(a) reaches \$300,000 in any one year,
15 all additional receipts must be credited to the general
16 services block grant portion of the local government block
17 grant program described in Title 7, chapter 6, part 3.

18 (3) The distributions provided in subsections (1) and
19 (2) are statutory appropriations as defined in 17-7-502.

20 NEW SECTION. Section 13. Codification instruction.
21 Sections 10 through 12 are intended to be codified as an
22 integral part of Title 15, chapter 7, part 3, and the
23 provisions of Title 15, chapter 7, apply to sections 10
24 through 12.

25 NEW SECTION. Section 14. Extension of authority. Any

1 existing authority of the department of revenue to make
2 rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

4 NEW SECTION. Section 15. Repealer. Section 15-7-311,
5 MCA, is repealed.

6 NEW SECTION. Section 16. Coordination instruction. If
7 this bill and Senate Bill No. 200, including the provisions
8 for the repeal of sections 7-6-301 through 7-6-309, MCA, in
9 Senate Bill No. 200, are both passed and approved, the
10 provisions of Senate Bill No. 200 repealing sections 7-6-301
11 through 7-6-309, MCA, are void.

12 NEW SECTION. Section 17. Effective date. This act is
13 effective July 1, 1987.

--End--

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB826, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act responding to Initiative 105 by imposing a realty transfer tax on certain transfers of real property; providing for property tax reduction through distribution of the proceeds of the realty transfer tax; and providing an effective date.

ASSUMPTIONS:

1. Approximately 80,000 realty transfer certificates are filed each year. The average selling price for each parcel is \$46,200 (based on Property Assessment Division Estimates).
2. Revenue collected by counties under this proposal will be allocated as follows: 8% (when the amount reaches \$300,000 in any one year, additional receipts must be credited to the local government block grant program) in equal portions, to the natural resource information system and the Montana Natural Heritage Program; 92% to local governments.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenue Impact:</u>						
Realty Transfer Tax	\$ 0	\$ 3,696,000	\$3,696,000	\$ 0	\$ 3,696,000	\$3,696,000

Fund Information:

<u>Natural Resource</u>							
Information Service	\$ 0	\$ 147,840	\$ 147,840	\$ 0	\$ 147,840	\$ 147,840	\$ 147,840
Natural Heritage Program	\$ 0	\$ 147,840	\$ 147,840	\$ 0	\$ 147,840	\$ 147,840	\$ 147,840
Block Grant Program	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<u>Local Governments for</u>							
Property Tax Relief	\$ 0	\$ 3,400,320	\$3,400,320	\$ 0	\$ 3,400,320	\$3,400,320	\$3,400,320

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Under the proposed law, local governments would receive approximately \$3,400,320 in revenues each year from the realty transfer tax. Local revenue from the realty transfer tax would be used for planning purposes and to reduce taxes applicable to property described in Initiative 105 and all other property subject to taxation.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

The bill contains no distribution instructions for amounts due counties and cities under Section 12(1)(a) and 12(1)(b). County treasurers will not have any basis for distributing this money.

David L. Hunter DATE 2/23/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Keenan DATE _____
NANCY KEENAN, PRIMARY SPONSOR

Fiscal Note for HB826, as introduced.

HB 826