

HOUSE BILL 257

Introduced by Cohen

1/17	Introduced
1/18	Referred to Taxation
1/19	Fiscal Note Requested
1/24	Fiscal Note Received
1/25	Fiscal Note Printed
	Died in Committee

1 House BILL NO. 257
2 INTRODUCED BY Chen
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON
5 CERTAIN TRANSFERS OF REAL PROPERTY; PROVIDING FOR THE
6 DISTRIBUTION OF THE PROCEEDS OF THE TAX TO LOCAL
7 JURISDICTIONS FOR PLANNING AND SUBDIVISION REVIEW; PROVIDING
8 PENALTIES; AMENDING SECTIONS 15-7-301 THROUGH 15-7-303,
9 15-7-305 THROUGH 15-7-307, AND 15-7-310, MCA; REPEALING
10 SECTION 15-7-311, MCA; AND PROVIDING AN EFFECTIVE DATE."
11

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

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

14 "15-7-301. **Short title.** This part may be cited as the
15 "Realty Transfer Tax Act"."

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

17 "15-7-302. **Purpose.** The purpose of this part is to:

18 (1) impose a tax on the transfer of real property and
19 provide for the distribution of the proceeds from the tax to
20 the local jurisdiction where the property is located; and

21 (2) 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."

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

1 "15-7-303. **Definitions.** As used in this part, the
2 following definitions apply:

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

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

9 (3) "Real estate" includes:

10 (a) land;

11 (b) growing timber;

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

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

17 (5) "Value" means:

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

23 (b) in the case of a gift or any transfer with nominal
24 consideration, the estimated price the property would bring
25 in an open market and under the current prevailing market

LC 0479/01

conditions in a sale between a willing seller and a willing buyer, both conversant with the property and prevailing current market conditions."

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

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

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

(2) No instrument or deed evidencing a transfer of real estate may be accepted for recordation until the certificate has been received by the county clerk and recorder and the tax imposed by [section 8] has been paid. The validity or effectiveness of an instrument or deed as between the parties to it shall not be affected by the failure to comply with the provisions in this part.

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

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

(5) The clerk and recorder shall transmit one copy of each executed certificate to the department and one copy to the county assessor."

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

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

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

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

(1) an instrument recorded prior to July 1, 1975 1989;

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

(3) the sale of timberland when the land is used for producing timber;

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

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

(6) a transfer pursuant to a court decree of partition;

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

(8) 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) a transfer of decedent's estate;~~

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

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

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

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

~~(14) a transfer made in contemplation of death.~~
(Subsection (3) terminates January 1, 1991--sec. 10, Ch. 681, L. 1985.)"

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

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

(2) A clerk and recorder convicted of willfully recording any deed or instrument evidencing a transfer subject to tax under [section 8] without ensuring that the proper amount of tax has been paid shall be fined \$50 for

each offense.

(3) A person convicted of willfully falsifying the value of transferred real estate on the certificate required under 15-7-305 shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both, for each offense."

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

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

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

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

(2) 80% to the:

(a) incorporated area to fund planning and subdivision review functions that were, on [the effective date of this act], funded from the incorporated area's general fund or from a levy within the incorporated area if the property is

1 located within an incorporated area; or

2 (b) county to fund planning and subdivision review
3 functions that were, on [the effective date of this act],
4 funded from the county general fund or from a county levy if
5 the property is located outside an incorporated area.

6 NEW SECTION. **Section 11.** Extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

10 NEW SECTION. **Section 12.** Repealer. Section 15-7-311,
11 MCA, is repealed.

12 NEW SECTION. **Section 13.** Codification instruction.
13 [Sections 8 through 10] are intended to be codified as an
14 integral part of Title 15, chapter 7, part 3, and the
15 provisions of Title 15, chapter 7, part 3, apply to
16 [sections 8 through 10].

17 NEW SECTION. **Section 14.** Effective date. [This act]
18 is effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB257, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act to impose a tax on certain transfers of real property; providing for the distribution of the proceeds of the tax to local jurisdictions for planning and subdivision review; providing penalties; and providing an effective date.

ASSUMPTIONS:


1. It is estimated that 29,514 non-agricultural realty transfer certificates will be filed with the state in 1988 at an appraised value of \$1,257,254,747. The average appraised value for each parcel is approximately \$42,600. This value is assumed constant over the next biennium. (Based on realty transfer sales data tape).
2. Under current law, certain transfers, including agricultural and timberland transfers, are exempt from certificate filing requirements. It is assumed that the average value of these transfers is at least \$42,000. When these certificates are included, it is estimated that the total number of transfers are 66,174 in each year of the biennium.
3. The tax rate proposed is \$1 per \$1,000 of property value.
4. Revenue collected by the counties under this proposal will be distributed as follows: 20% to the counties, and 80% to incorporated cities and towns to fund planning and subdivision review or to a county fund for planning and subdivision review if the property is outside an incorporated area.

FISCAL IMPACT:


	FY '90			FY '91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenue Impact:						
Realty Transfer Tax	\$ -0-	\$ 2,819,012	\$2,819,012	\$ -0-	\$ 2,819,012	\$2,819,012

Expenditure Impact:

This proposal is not expected to impact expenditures.


 RAY SHACKLEFORD, BUDGET DIRECTOR
 Office of Budget and Program Planning

1/24/89
 DATE


 BEN COHEN, PRIMARY SPONSOR
 DATE

Fiscal Note for HB 257, Introduced

HB 257

Fiscal Note Request HB257 as introduced

Form BD-15

Page 2

Effect On County Or Local Revenue Or Expenditures:

	FY '90		
	Current Law	Proposed Law	Difference
County General Fund	\$ 0	\$ 563,802	\$ 563,802
Incorporated/County Planning Fund	\$ 0	\$ 2,255,210	\$ 2,255,210

	FY '91		
	Current Law	Proposed Law	Difference
	\$ 0	\$ 563,802	\$ 563,802
	\$ 0	\$ 2,255,210	\$ 2,255,210

HB 257