

SENATE BILL 437

Introduced by Bianchi, et al.

3/23	Fiscal Note Requested
3/24	Introduced
3/24	Referred to Taxation
3/24	First Reading
3/26	Hearing
3/26	Fiscal Note Received
3/26	Fiscal Note Printed
3/27	Tabled in Committee

1 Serna BILL NO. 437
 2 INTRODUCED BY Branch, Euer
 3 Am
 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 TO COUNTIES AND TO INCORPORATED
 7 AREAS TO FUND LAND USE PLANNING, ZONING, AND SUBDIVISION
 8 REVIEW FUNCTIONS OF LOCAL GOVERNMENTS AND TO THE DEPARTMENT
 9 OF COMMERCE FOR THE PROMOTION OF THE STATE AS A PLACE TO
 10 RETIRE; AMENDING SECTIONS 15-7-301, 15-7-302, 15-7-303,
 11 15-7-305, 15-7-306, 15-7-307, AND 15-7-310, MCA; REPEALING
 12 SECTION 15-7-311, MCA; AND PROVIDING AN EFFECTIVE DATE."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 **Section 1.** 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 and Retirement Promotion Act."
 18 **Section 2.** Section 15-7-302, MCA, is amended to read:
 19 "15-7-302. Purpose. The purpose of this part is to:
 20 (1) impose a tax on the transfer of real property and
 21 to provide for the distribution of the proceeds from the tax
 22 to the local jurisdiction where the property is located and
 23 to the department of commerce for the promotion of Montana
 24 as a place to retire; and
 25 (2) obtain sales price data necessary to the

1 determination of statewide levels and uniformity of real
 2 estate assessments by the most efficient, economical, and
 3 reliable method."

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

5 "15-7-303. Definitions. As used in this part, the
 6 following definitions apply:

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

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

13 (3) "Real estate" ~~includes~~ and "real property" include:

14 (a) land;
 15 (b) growing timber;
 16 (c) buildings, structures, fixtures, fences, and
 17 improvements affixed to land.

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

21 (5) "Value" means:
 22 (a) in the case of a transfer of interest in real
 23 property, other than a gift or a transfer with nominal
 24 consideration or without stated consideration, the amount of
 25 the full actual consideration therefor paid or to be paid,

including the amount of any lien or liens thereon on the real property; or

(b) in the case of a gift or a transfer with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the current prevailing market conditions in a sale between a willing seller and a willing buyer, both of whom are conversant with the property and prevailing current market conditions."

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

"15-7-305. Realty transfer certificate required. (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 An instrument or deed evidencing a transfer of real estate may not 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~~ is not be affected by the failure to comply with the provisions in this part.

(3) The form of the certificate ~~shall~~ must 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~~ do not apply to:

(1) an instrument recorded prior to July 1, ~~1975~~ 1993;

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

~~(5)~~ (4) an instrument which that (without added

consideration) confirms, corrects, modifies, or supplements
a previously recorded instrument;

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

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

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

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

~~(11)~~(8) a transfer between husband and wife or parent
and child with only nominal actual consideration therefor
for the transfer;

~~(12)~~(9) an instrument the effect of which is to
transfer the property to the same party or parties;

~~(13)~~(10) a sale for delinquent taxes or assessments,
sheriff sale, bankruptcy action, or mortgage foreclosure;

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

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

"15-7-310. Penalty. (1) A Except as provided in
subsection (2), 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 a
term not to exceed 6 months, or both.

(2) A person convicted of 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 of \$1,000 declared in the certificate required
under 15-7-305 upon the transfer of title to real property.

NEW SECTION. Section 9. Collection of tax. Before a
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 of
the property 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 general fund of the county in which the
certificate required under 15-7-305 is executed;

(2) 52.5% to the:

(a) incorporated area to fund land use planning,
zoning, and subdivision review functions that were, on July

1 1, 1993, funded from the incorporated area's general fund or
 2 from a levy within the incorporated area if the property for
 3 which the certificate required under 15-7-305 is executed is
 4 located within an incorporated area; or

5 (b) county to fund land use planning, zoning, and
 6 subdivision review functions that were, on July 1, 1993,
 7 funded from the county general fund or from a county levy if
 8 the property for which the certificate required under
 9 15-7-305 is executed is located outside an incorporated
 10 area; and

11 (3) 27.5% to the department of commerce, as provided in
 12 [section 11], for the promotion of the state as a place to
 13 retire.

14 NEW SECTION. Section 11. Remittance and deposit of
 15 state share of tax. By the last day of the month, the county
 16 treasurer shall remit to the state treasurer 27.5% of the
 17 tax collected under [section 9]. The state treasurer shall
 18 deposit the amounts received to an account in the state
 19 special revenue fund to the credit of the department of
 20 commerce for promotion of the state as a place to retire.

21 NEW SECTION. Section 12. Repealer. Section 15-7-311,
 22 MCA, is repealed.

23 NEW SECTION. Section 13. Codification instruction.
 24 [Sections 8 through 11] are intended to be codified as an
 25 integral part of Title 15, chapter 7, part 3, and the

1 provisions of Title 15, chapter 7, part 3, apply to
 2 [sections 8 through 11].

3 NEW SECTION. Section 14. Effective date. [This act] is
 4 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0437, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on certain transfers of real property; providing for the distribution of the proceeds to counties and to incorporated areas to fund land use planning, zoning, and subdivision review functions of local governments and to the department of commerce for the promotion of the state as a place to retire; and providing an effective date.

ASSUMPTIONS:

Department of Revenue

1. In a calendar year the value of all non-agricultural real property transferred in the state is estimated to be \$1.7 billion. The estimates included in this fiscal note will pertain to the transfer of non-agricultural property only. Data on the value of agricultural and timber property does not exist since these transactions are exempt from listing a sale value on the realty transfer certificate.
2. The distribution of the proceeds of the tax are:
 - (a) 20% to the general fund of the county;
 - (b) 52.5% to local governments to fund planning, zoning and subdivision boards;
 - (c) 27.5% to the department of commerce.

Department of Commerce

1. The retirement promotion program would be similar to the Alabama model; requiring direct coordination between the Commerce Department and local development organizations.
2. Staff would train communities on attracting retirees; develop response packets; conduct advertising; handle toll-free calls; track inquiries; and coordinate with local development organizations.
3. Local assistance funds would be distributed to approximately 50 participating local development organizations for: cooperative advertising; development of promotional materials; postage and telephone expenses.

FISCAL IMPACT:

Revenues:

It is estimated that each fiscal year the realty transfer tax will generate \$1.7 million to be distributed as the following table shows:

(Over)

David Lewis 3-29-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Don Bianchi 3/26/93
DON BIANCHI, PRIMARY SPONSOR DATE

Fiscal Note for SB0437, as introduced

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FISCAL IMPACT: (continued)

Distribution of Realty Transfer Tax Proceeds:

	<u>FY94</u>	<u>FY95</u>
County General Fund	\$ 340,000	\$ 340,000
Local planning/zoning/subdivision boards	892,500	892,500
Department of Commerce	<u>467,500</u>	<u>467,500</u>
Total	\$ 1,700,000	\$ 1,700,000

Expenditures:

Department of Revenue - Property Valuation

Implementation of this proposal would require additional total administrative expenses of \$4,500 in each fiscal year.

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	398.66	398.66	0.00	398.66	398.66	0.00
Personal Services	\$ 11,885,655	\$ 11,885,655	\$ 0	\$ 11,913,545	\$ 11,913,545	\$ 0
Operating Expenses	2,180,406	2,184,906	4,500	2,192,109	2,196,609	4,500
Equipment	222,278	222,278	0	205,648	205,648	0
Debt Service	<u>269,800</u>	<u>269,800</u>	<u>0</u>	<u>269,800</u>	<u>269,800</u>	<u>0</u>
Total	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,102	\$ 14,585,602	\$ 4,500
General Fund	\$ 14,558,139	\$ 14,562,639	\$ 4,500	\$ 14,581,102	\$ 14,585,602	\$ 4,500

Department of Commerce

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0	2.50	2.50	0	2.50	2.50
Personal Services	0	75,000	75,000	0	75,000	75,000
Operating Expenses	0	100,000	100,000	0	100,000	100,000
<u>Local Assistance</u>	<u>0</u>	<u>292,500</u>	<u>292,500</u>	<u>0</u>	<u>292,500</u>	<u>292,500</u>
Total	0	467,500	467,500	0	467,500	467,500

Funding:

State Special (Realty Transfer)	0	467,500	467,500	0	467,500	467,500
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
County General Fund	0	340,000	340,000	0	340,000	340,000
<u>Local Planning Funds</u>	<u>0</u>	<u>892,500</u>	<u>892,500</u>	<u>0</u>	<u>892,500</u>	<u>892,500</u>
Total	0	1,232,500	1,232,500	0	1,232,500	1,232,500

TECHNICAL NOTES:

The proposal does not expressly say who must pay the tax. The tax appears to be on the person presenting the RTC for recordation. This could be the seller, buyer, the bank or their agents.

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