House BILL NO. 606

INTRODUCED BY Somerville Swanson Fuchs Mike Murdock Tom Nelson Hibbard

BY REQUEST OF THE HOUSE TAXATION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AN OPTIONAL LOCAL GOVERNMENT TAX ON THE SALE OF LUXURIES; PROVIDING A DEFINITION OF LUXURIES; PROVIDING THAT THE TAX RATE MAY NOT EXCEED 3 PERCENT; PROVIDING THAT THE TAX MAY NOT BE IMPOSED WITHOUT THE APPROVAL OF THE ELECTORATE OF THE LOCAL GOVERNMENT IMPOSING THE TAX; PROVIDING FOR COORDINATION AND DISTRIBUTION OF REVENUE OF THE TAX WHEN A COUNTY AND MUNICIPALITIES IN THE COUNTY BOTH LEVY THE TAX; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, law now limits the kinds of taxes that local communities may impose; and

WHEREAS, a one-size-fits-all system of taxation ignores the different needs and resources of Montana communities; and

WHEREAS, local taxpayers desire greater control as determined by a vote; and

WHEREAS, a "luxury" sales tax, as defined by law, has been enacted in several resort communities and areas; and

WHEREAS, property tax relief is desired by many Montanans.

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

<u>NEW SECTION.</u> **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Governing body" means the governing body of a local government.

(2) (a) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists.

(b) The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(3) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(4) "Medicine" means substances sold for curative or remedial properties, including both physician-prescribed and over-the-counter medications.

NEW SECTION. **Section 2. Local option luxuries tax authority -- specific delegation.** As required by 7-1-112, [sections 1 through 7] specifically delegate to the electors of each respective county, consolidated city-county government, incorporated city, and incorporated town the power to authorize their local government, within its boundaries, to impose a local option luxuries tax as provided in [sections 1 through 7].

NEW SECTION. **Section 3. Limit on local option luxuries tax rate -- goods and services subject to tax.** (1) The rate of the local option luxuries tax must be established by the election petition or resolution provided for in [section 4], but the rate may not exceed 3%.

(2) (a) The local option luxuries tax is a tax on the retail value of all goods and services sold within the local government jurisdiction by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast-food stores, and other food service establishments;

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink;

[(iv) agency liquor stores, except when sold to a retail licensee for the purpose of resale;] and

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries shall collect a tax on the luxuries.

NEW SECTION. **Section 4. Local option luxuries tax -- election required -- procedure.** (1) A local government may not impose or, except as provided in [section 5 or 6], amend or repeal a local option luxuries tax unless the local option luxuries tax question has been submitted to the electorate of the local government and approved by a majority of the electors voting on the question.

(2) The local option luxuries tax question may be presented to the electors by a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137 or by a resolution of the governing body of the local government.

(3) The petition or resolution referring the taxing question must state:

(a) the rate of the local option luxuries tax;

(b) the duration of the local option luxuries tax;

(c) the date when the local option luxuries tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the local option luxuries tax revenue.

(4) Upon receipt of an adequate petition or upon adoption of a resolution, the governing body may:

(a) call a special election on the local option luxuries tax question; or

(b) have the local option luxuries tax question placed on the ballot at the next regularly scheduled election.

(5) The question of the imposition of a local option luxuries tax may not be placed before the electors more than once in any fiscal year.

NEW SECTION. **Section 5. Local option luxuries tax administration.** (1) Not less than 30 days prior to the date on which the local option luxuries tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the local option luxuries taxes. This administrative ordinance may be amended at any time that is necessary to effectively administer the local option luxuries tax.

(2) The administrative ordinance must specify:

(a) the times that local option luxuries taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the local option luxuries tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of local option luxuries taxes and the methods and procedures to be used in enforcing the collection of local option luxuries taxes due; and

(d) the penalties for failure to report local option luxuries taxes due, failure to remit those taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of local option luxuries taxes, not to exceed 50% of the local option luxuries taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(3) The administrative ordinance may include:

(a) further clarification and specificity in what constitutes the retail sale of goods and services that are subject to the local option luxuries tax consistent with [section 3];

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to withhold a percentage of the local option luxuries taxes collected to defray its costs for the administration of the tax collection. The percentage rate must be set in the ordinance but may not exceed 5%.

(c) other administrative details necessary for the efficient and effective administration of the local option luxuries tax.

NEW SECTION. **Section 6. Local option luxuries tax -- distribution of proceeds by countywide tax -- double taxation prohibited.** (1) A local option luxuries tax imposed by a county must be levied countywide, and unless otherwise provided by agreement with municipalities, the county shall distribute local option luxuries tax revenue in the following manner:

(a) Fifty percent of the amount collected must be distributed to the municipalities and the county based on the ratio of the population of the municipalities to the population of the county as derived from the most recent population estimates provided by the U.S. bureau of the census or, if estimates are not available, as derived from the 1990 census.

(b) Fifty percent of the amount collected must be distributed to the municipalities and the county based on the point of origin of the local option luxuries tax revenue.

(2) Before making a distribution under subsection (1), a county shall make a pro rata deduction for its administrative expenses.

(3) A local option luxuries tax may not be levied on the same person or transaction by more than one local government. If the electorate of a county approves a local option luxuries tax after the electorate of a municipality in the county has approved a local option luxuries tax on the same transaction at the same or a higher rate, transactions in the municipality are exempt from the county tax as long as the municipal tax is in effect. If the municipal tax is at a lower rate than the county tax, the governing body of the

municipality shall repeal its tax without a vote of the electorate.

(4) A local option luxuries tax may not be adopted by a jurisdiction that levies a resort tax under the provisions of 7-6-4461 through 7-6-4469. If a local option luxuries tax is imposed in a county, the transactions in a resort area or resort community that imposes a resort tax are exempt from the local option luxuries tax.

NEW SECTION. **Section 7. Local government tax -- property tax relief.** (1) Annually anticipated receipts from the local option luxuries tax must be applied to reduce the local government property tax levy for the fiscal year in an amount not less than 50% of the local option luxuries tax revenue derived during the preceding fiscal year. The property tax reduction may be implemented only by a reduction in the number of mills levied.

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

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 7].

NEW SECTION. **Section 9. Coordination instruction.** If House Bill No. 574 is not passed and approved, then the bracketed material in [section 3(2)(a)] is void.

NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0606, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for an optional local government tax on the sale of luxuries; providing a definition of luxuries; providing that the tax rate may not exceed 3 percent; providing that the tax may not be imposed without the approval of the electorate of the local government imposing the tax; providing for coordination and distribution of revenue of the tax when a county and municipalities in the county both levy the tax; and providing an effective date.

FISCAL IMPACT:

This bill would have no direct impact on administrative expenses or revenue sources administered by the Department of Revenue.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If passed, this proposal would provide local governments with an additional source of revenue. The amount of revenue collected would depend on the number and size of jurisdictions passing the luxury tax, and the rate implemented when passed. If all county governments instituted the tax at the maximum rate of 3 percent; local government revenues are estimated to increase by about $30 million annually.

Also, to the extent that these revenues are used to reduced property tax mill levies, local property taxes would decrease.

Dave Lewis 3-23-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Roger Somerville 24 March 1995

ROGER SOMERVILLE, PRIMARY SPONSOR DATE
Fiscal Note for HB0606, as introduced

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