

**** Bill No. ****

Introduced By *****

By Request of the *****

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING ALL MUNICIPALITIES AND COUNTIES, BY A VOTE OF THE ELECTORATE, TO ADOPT A LOCAL OPTION INFRASTRUCTURE TAX ON LUXURY GOODS AND SERVICES; PROVIDING THAT LOCAL OPTION INFRASTRUCTURE TAX REVENUE MAY BE USED FOR CRITICAL INFRASTRUCTURE PROJECTS; PROVIDING THAT AN EXISTING RESORT TAX IMPOSED BY A RESORT COMMUNITY, RESORT AREA, OR RESORT AREA DISTRICT MAY REMAIN IN EFFECT OR MAY BE DISCONTINUED; CLARIFYING THAT A MILL LEVY REDUCTION RESULTING FROM TAX RELIEF DUE TO IMPOSITION OF A LOCAL OPTION INFRASTRUCTURE TAX MAY NOT BE REINSTATED WHILE THE TAX IS IN EFFECT WITHOUT AN ELECTION; AMENDING SECTIONS 7-6-1501, 7-7-4424, 7-7-4428, AND 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the State of Montana faces over \$27 billion in critical infrastructure investment needs;

WHEREAS, the cities, towns, and counties in Montana bear the responsibility for the construction, improvement, maintenance and operation of most drinking water, wastewater treatment, sewer systems, streets, roads, and bridges;

WHEREAS, local governments in Montana have limited tools for generating the necessary funding to adequately construct, improve, maintain, and operate these critical infrastructure systems;

WHEREAS, the Legislature seeks to address these critical infrastructure improvements through public-private coordination and collaboration to construct, improve, maintain, and operate these systems in the most cost-effective, experienced, and efficient manner possible to achieve the greatest benefit from increased revenues targeted at critical infrastructure needs;

WHEREAS, the Legislature acknowledges the value of private sector construction contractors, engineering firms, land surveying firms, and architectural firms to Montana's state and local economies through the contribution of knowledge and innovation, competitive bidding, tax revenue, and job creation.

WHEREAS, the Legislature further acknowledges that many other Montana businesses, such as suppliers, hotels, fuel dealers, and (others?) depend upon private sector contractors and professional services firms.

WHEREAS, the Legislature acknowledges that these private sector businesses provide the technical expertise, and local knowledge to efficiently deliver infrastructure projects.

WHEREAS, the Legislature encourages municipalities and counties to take full advantage of private sector design and construction capabilities to create jobs and efficiently deliver critical infrastructure projects funded in whole or in part with the revenues generated with local option infrastructure taxes.

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

NEW SECTION. **Section 1. Local option infrastructure tax - definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Critical infrastructure project" means local capital improvement and development that drives continued economic growth, including streets, roads, bridges, water supply, wastewater treatment, sewer and other locally-prioritized public facilities identified in accordance with [subsection 4(3)(b)(iii)].

(2) "Luxury goods and services" means any gift item, luxury item, or other item or any service normally sold to the public or to transient visitors or tourists. 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.

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

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

NEW SECTION. **Section 2. Local option taxing authority -- specific delegation.** As required by 7-1-112, [sections 1 through 8] specifically delegate to the electors of each respective municipality or county the power to authorize their municipality or county to impose a local option infrastructure tax within the county or within the corporate boundary of the municipality.

NEW SECTION. **Section 3. Limit on local option infrastructure tax rate -- goods and services subject to tax.**

(1) The rate of the local option infrastructure tax must be established by the election petition or resolution provided for in [section 4], but the rate may not exceed 4%.

(2) (a) The local option infrastructure tax is a tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the municipality or county 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; and

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

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

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

(2) The local option infrastructure tax question may be presented to the electors of:

(a) a municipality by a petition of the electors, as provided by 7-1-4130 and 7-5-131 through 7-5-137, or by a resolution of the governing body of the municipality; or

(b) a county by a petition of electors, as provided in 7-5-131 through 7-5-137, or by a resolution of the board of county commissioners.

(3) The petition or resolution referring the local option infrastructure tax question must state:

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

(b) the duration of the local option infrastructure tax, either:

i) By establishing an automatic sunset date,

ii) By reference to a bond payoff schedule, or

iii) By reference to completion of a specified project(s).

(c) the date when the local option infrastructure tax becomes effective, which date may not be earlier than 90 days after the election; and

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

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

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

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

(5) Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in (subsection 3) of (this section).

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

NEW SECTION. Section 5. Local option infrastructure tax administration. (1) In this section, "governing body" means:

(a) if the local option infrastructure tax has been approved by the electors of a municipality, the governing body of the municipality; or

(b) if the local option infrastructure tax has been approved by the electors of a county, the board of county commissioners.

(2) Not less than 30 days prior to the date that the local option infrastructure tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the local option infrastructure taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the local option infrastructure tax.

(3) The administrative ordinance must specify:

(a) the times that local option infrastructure 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 infrastructure tax receipts;

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

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

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

(ii) civil penalties if the governing body prevails in a suit for the collection of local option infrastructure taxes, not to exceed 50% of the local option infrastructure 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.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the local option infrastructure tax consistent with [section 3];

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the local option infrastructure taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the local option infrastructure tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

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

NEW SECTION. **Section 6. Use of local option**

infrastructure tax revenue -- bond issue -- pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in [section 4], a municipality or county may appropriate and expend revenue derived from a local option infrastructure tax for any critical infrastructure project and any costs resulting from the imposition of the tax. The municipality or county may share local option infrastructure tax revenue with other municipalities or counties through interlocal agreement.

(2) A municipality or county may issue bonds to provide, install, or construct any of the critical infrastructure projects authorized under (subsection 1) as provided for under 7-7-4101, 7-7-4404, and 7-12-4102.

(3) Bonds issued under this section must be authorized by a resolution of the governing body, stating the purposes, amounts, terms, conditions, and covenants of the municipality, consolidated local government, or county that the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A municipality or county may pledge for repayment of bonds issued under this section the revenue derived from a local option infrastructure tax, special assessments levied for and revenue collected from the critical infrastructure projects for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the

municipality or county. The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds, the municipality or county determines that the local option infrastructure tax revenue, special assessments levied for and revenue from the critical infrastructure projects, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal and interest of the bonds when due.

(4) Bonds may not be issued pledging proceeds of the local option infrastructure tax for repayment unless the municipality or county in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenue expected to be derived from the local option infrastructure tax, less the amount required to reduce property taxes pursuant to [section 7], equals at least 125% of the average amount of the principal and interest payable from the local option infrastructure tax on the bonds and any other outstanding bonds payable from the local option infrastructure tax except any bonds to be refunded upon the issuance of the proposed bonds.

NEW SECTION. **Section 7. Property tax relief.** (1) Annually anticipated receipts from the local option infrastructure tax adopted by a municipality or county must be applied to reduce that municipality's or county's property tax levy for the fiscal year in an amount equal to at least 10% of the local option

infrastructure tax revenues derived during the preceding fiscal year.

(2) A municipality or county that received more local option infrastructure tax revenues than had been included in the annual municipal budget shall establish a property tax relief fund. All local option infrastructure tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace property taxes in the ensuing fiscal year.

NEW SECTION. Section 8. Coordination with other local option taxes. (1) To coordinate two local option infrastructure taxes imposed within the same area, the rate of the local option infrastructure tax, the goods and services to be taxed, the duration of the tax, and restrictions on the use of tax revenue may be changed by submitting the question to the electorate of the local government that has an existing local option infrastructure tax. The ballot question may be submitted contingent upon adoption of a local option infrastructure tax by another entity. The governing bodies of the municipality and county may, by agreement, establish common administrative procedures for the administration and collection of the tax.

(2) A municipal or county local option infrastructure tax may not be imposed in an existing resort community, resort area, or resort area district. However, an existing resort community, resort area, or resort area district may elect to terminate its

tax and be subject to a municipal or county local option infrastructure tax.

Section 9. Section 7-7-4424, MCA, is amended to read:

"7-7-4424. Undertakings to be self-supporting. (1) (a) Except as provided in subsections (1) (b) and (1) (c), the governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting.

(b) The property taxes specifically authorized to be levied for the general purpose served by an undertaking ~~or~~ any resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509, and any local option infrastructure taxes approved, levied, and appropriated to an undertaking in compliance with [sections 1 through 8], constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property, infrastructure, or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds for

the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves."

Section 10. Section 7-7-4428, MCA, is amended to read:

"7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424 or local option infrastructure tax revenue referred to in [section 6];

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other or additional bonds payable from the revenue of the undertaking;

- (5) the operation and maintenance of the undertaking;
- (6) the insurance to be carried on the undertaking and the use and disposition of insurance money;
- (7) books of account and the inspection and audit of the books; and
- (8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:
 - (a) enter and take possession of the undertaking;
 - (b) operate and maintain the undertaking;
 - (c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and
 - (d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner as the municipality itself might do."

Section 11. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The Subject to (subsection 10), the maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the

governmental unit in the prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3)(a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;

- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3) (a) (ii), the value of newly taxable class four property that was constructed,

expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy

limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary.

(b) A levy authorized under subsection (9) (a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A mill levy that has been reduced because of tax relief resulting from imposition of a local option

infrastructure tax as provided in [sections 1 through 8] may not be reinstated while the local option infrastructure tax is in effect unless the levy increase is approved at an election pursuant to 15-10-425.

~~(10)~~(11) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

~~(11)~~(12) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

NEW SECTION. Section 12. Codification instruction.

[Sections 1 through 8] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 8].

NEW SECTION. Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

- END -