

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 813

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO REAL ESTATE INVESTMENT FEES; AMENDING TITLE 50, IDAHO CODE, BY
2 THE ADDITION OF A NEW CHAPTER 32, TITLE 50, IDAHO CODE, TO PROVIDE A
3 SHORT TITLE, TO PROVIDE FOR THE PURPOSE OF THE REAL ESTATE INVESTMENT
4 FEES PROGRAM FOR RESORT CITIES, TO DEFINE TERMS, TO PROVIDE FOR A REAL
5 ESTATE INVESTMENT FEES PROGRAM ELECTION, TO PROVIDE FOR A HOUSING TRUST
6 FUND, TO PROVIDE FOR REAL ESTATE INVESTMENT FEES, RATE, AND COLLECTION;
7 TO PROVIDE FOR THE RESTRICTION OF CERTAIN DISCLOSURES, TO PROVIDE FOR
8 PENALTIES AND ENFORCEMENT, AND TO PROVIDE FOR EXEMPTIONS; AMENDING SEC-
9 TION 55-805, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE RECORDATION
10 OF INSTRUMENTS; REPEALING CHAPTER 31, TITLE 55, IDAHO CODE, RELATING TO
11 THE PROHIBITION OF TRANSFER FEE COVENANTS; AND DECLARING AN EMERGENCY
12 AND PROVIDING AN EFFECTIVE DATE.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Title 50, Idaho Code, be, and the same is hereby amended
16 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
17 ter 32, Title 50, Idaho Code, and to read as follows:

18 CHAPTER 32

19 REAL ESTATE INVESTMENT FEES

20 50-3201. SHORT TITLE. This chapter shall be known and may be cited as
21 the "Real Estate Investment Fees Act."

22 50-3202. REAL ESTATE INVESTMENT FEES PROGRAM -- RESORT CITIES -- PUR-
23 POSE. The purpose of this chapter is to grant the right to the voters of a re-
24 sort city, as defined in this section, to authorize their city government to
25 adopt and implement a real estate investment fee program for terms of up to
26 ten (10) years each. Real estate investment fees shall be deposited into a
27 housing trust fund and used to provide housing for essential workers or work-
28 ers qualifying for workforce housing.

29 50-3203. DEFINITIONS. For purposes of this chapter:

30 (1) "Consideration" means the greater of either actual cash paid or
31 contracted to be paid or fair market value of the real property transferred
32 and shall include the amount of any liens, mortgage, contract indebtedness,
33 or other encumbrance, either given to secure the purchase price or any part
34 thereof, remaining unpaid on the real property at the time of transfer, and
35 shall include the value of real property delivered or contracted to be deliv-
36 ered. Consideration does not include the amount of any outstanding lien or
37 encumbrance in favor of the United States, the state of Idaho, or a municipal
38 or quasi-municipal governmental corporation or district for taxes, special
39 benefits, or improvements.

1 (2) "Essential worker" means a local employee who works in an industry
2 that is essential to the public well-being and may include but is not limited
3 to law enforcement, fire, emergency medical care, health care, education,
4 agriculture, and food service.

5 (3) "Person" means and includes an individual, corporation, partner-
6 ship, or other business organization, trust, fiduciary, agent, or any other
7 party presenting a conveyance document for recordation pursuant to chapter
8 8, title 55, Idaho Code.

9 (4) "Real estate investment fee" means a fee calculated as a percentage
10 of the consideration paid for any real property transferred in this state,
11 payable at the time of closing.

12 (5) "Resort city" means a city that derives the major portion of its
13 economic well-being from businesses catering to recreational needs and
14 meeting needs of people traveling to that destination city for an extended
15 period of time. A resort city has a population not in excess of ten thousand
16 (10,000) according to the most recent federal census and may be organized
17 under the general laws of the state, special charter, or a general incorpora-
18 tion act.

19 (6) "Transfer" means an act of the parties, or of the law, in which title
20 to real property or an equitable interest in real property is conveyed from
21 one (1) person to another.

22 50-3204. REAL ESTATE INVESTMENT FEES PROGRAM -- ELECTION. (1) The city
23 council of a resort city that wishes to propose a real estate investment fees
24 program shall hold at least three (3) public hearings using the notice and
25 hearing procedures set forth in section 67-6509, Idaho Code, at which public
26 testimony may be taken. The city's proposal shall state the proposed real
27 estate investment fee rate to be charged, the proposed duration of the pro-
28 gram, the classes of real property to be subject to the fee, the intended ben-
29 efitaries of the program, and the intended use of the fees, as well as the
30 city's best fiscal estimate of the anticipated fee revenues to be received
31 and expenditures to be made from the housing trust fund. The class or classes
32 of real property to be subject to the fee may be residential, commercial,
33 multifamily, or such other classes as the city may define.

34 (2) Following such public hearings and notice, a resort city may make a
35 finding and pass a resolution to put the question to its voters at an elec-
36 tion held pursuant to chapter 4, title 50, Idaho Code, of whether to estab-
37 lish a real estate investments fees program authorized under this chapter. A
38 sixty percent (60%) majority of the voters of the resort city voting on the
39 question may approve the program proposed by the city, and if so approved,
40 the city may adopt and implement the real estate investment fees program. If
41 the proposal is not approved by at least sixty percent (60%) of the voters,
42 the city may not put the question to the voters again for at least eleven (11)
43 months. A resort city may not extend the duration of a real estate investment
44 fees program or increase the fee rate originally approved by the voters with-
45 out obtaining voter approval.

46 50-3205. HOUSING TRUST FUND. A resort city implementing a real estate
47 investment fees program shall establish a housing trust fund into which
48 shall be placed the revenues received from real estate investment fees au-

1 thorized and collected pursuant to the provisions of this chapter. The
2 moneys in the housing trust fund shall be designated and used for essential
3 worker housing purposes in a manner to be determined by the city council mem-
4 bers that includes but is not limited to acquiring and building housing, as
5 specified in the ballot language approved by the voters.

6 50-3206. REAL ESTATE INVESTMENT FEES -- RATE -- COLLECTION. (1) If ap-
7 proved by the voters, a real estate investment fee shall be charged upon the
8 transfer of fee title to real estate situated within the resort city. The
9 fee shall be a percentage of the consideration paid for the real estate in the
10 amount approved by the voters, but in no case shall exceed one percent (1%) of
11 the consideration paid.

12 (2) The fee shall be calculated, shall be split evenly between the
13 seller and the buyer, and shall be paid from the proceeds of the sale at the
14 time of closing the real estate transaction. The fee shall be submitted by
15 the title officer to the city clerk for deposit in the housing trust fund.

16 (3) Each deed, instrument, or writing evidencing a transfer of title to
17 real estate must be accompanied by a declaration by such title officer that
18 the real estate is not subject to the real estate investment fees program or
19 that the real estate investment fee has been paid before the title document
20 may be accepted for recording by the county recorder.

21 50-3207. DISCLOSURE OF INFORMATION RESTRICTED. Information regarding
22 a specific real estate investment fee is not a public record and shall be held
23 confidential by the title officer and county recorder. The information may
24 be used only for the purpose of implementing this chapter and for purposes of
25 property appraisal and taxation. Confidentiality shall not apply to compi-
26 lations, summaries, analyses, or evaluations of real estate investment fee
27 data that are nonpersonal in nature, designed to disclose raw data, and nec-
28 essary for property tax administration.

29 50-3208. PENALTIES AND ENFORCEMENT. (1) Any person who has real
30 property transferred to him must offer the deed, instrument, or writing ev-
31 idencing the title for recordation with the county recorder of the county in
32 which the real property is located within five (5) days after the transfer
33 occurred. Any person who is required to record such a transfer pursuant to
34 this subsection and does not do so shall be guilty of a misdemeanor.

35 (2) Any person who willfully and falsely declares the amount of consid-
36 eration made for the transfer of real property, or who willfully and falsely
37 declares that the transferred real property is exempt from the provisions
38 of this chapter, is guilty of a misdemeanor. In addition to the penalties
39 for this misdemeanor, any such person shall pay the corrected fee amount and
40 a civil penalty of five hundred dollars (\$500) for each falsification or
41 false declaration of exemption. The corrected fee and civil penalty shall
42 be payable to the housing trust fund.

43 (3) The real estate investment fee and any associated civil penalties
44 shall be a specific lien upon the real property transferred from the time of
45 the sale until the fee has been paid. The lien may be enforced in the manner
46 prescribed for the foreclosure of mortgages.

1 50-3209. EXEMPTIONS. A real estate investment fee imposed pursuant to
2 the provisions of this chapter does not apply to:

3 (1) Any class of real property exempted in the city's proposal and ap-
4 proved by the voters;

5 (2) A mortgage or other transfer of interest in real property merely to
6 secure a debt or the assignment thereof;

7 (3) A transfer of title to or from the United States, any territory or
8 state, or any agency, department, instrumentality or political subdivision
9 thereof;

10 (4) A transfer of title from a trust to the beneficiary or beneficiaries
11 of the trust;

12 (5) A transfer of title between spouses, including gifts;

13 (6) A transfer of title between former spouses in compliance with a de-
14 cree of divorce;

15 (7) Transfers, assignments, or conveyances of unpatented mines or min-
16 ing claims;

17 (8) A transfer, assignment, or other conveyance of real property to a
18 corporation or other business organization if the person conveying the real
19 property owns one hundred percent (100%) of the corporation or organization
20 to which the conveyance is made;

21 (9) A gift, devise, or inheritance of real property;

22 (10) The making, delivering, or filing of conveyances of real property
23 to make effective any plan of reorganization or adjustment:

24 (a) Confirmed under the United States bankruptcy act, as amended, title
25 11 U.S.C.;

26 (b) Approved in an equity receivership proceeding involving a corpora-
27 tion, as defined in 11 U.S.C. 101; or

28 (c) Whereby a mere change in identity, form, place, or organization is
29 effected, such as a transfer between a corporation and its parent cor-
30 poration, a subsidiary, or an affiliated corporation, if the making,
31 delivering, or filing of instruments of transfer or conveyance occurs
32 within five (5) years after the date of the confirmation, approval, or
33 change;

34 (11) Any transfer granting title to cemetery lots;

35 (12) The exchange of real property held for productive use in a trade or
36 business or for investment if such property is exchanged solely for property
37 of like kind that is to be held either for productive use in a trade or busi-
38 ness or for investing and if such exchange qualifies as a nontaxable exchange
39 pursuant to 26 U.S.C. 1031; or

40 (13) A portion of the value of a single-family dwelling in an amount
41 equal to the maximum amount of the homestead exemption authorized pursuant
42 to section 63-602G, Idaho Code.

43 SECTION 2. That Section 55-805, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 55-805. ACKNOWLEDGMENT NECESSARY TO AUTHORIZE RECORDING. (1) Before
46 an instrument may be recorded, unless it is otherwise expressly provided,
47 its execution must be acknowledged by the person executing it, or if executed
48 by a corporation, by its president or vice president, or secretary or assis-
49 tant secretary, or other person executing the same on behalf of the corpora-

1 tion, or if executed in the name of the state of Idaho or any county, politi-
 2 cal subdivision, municipal, quasi-municipal, or public corporation, by one
 3 (1) or more of the officers of such state, county, political subdivision, mu-
 4 nicipal, quasi-municipal, or public corporation executing the same, or if
 5 executed in a partnership name, by one (1) or more of the partners who sub-
 6 scribed the partnership name thereto, or if executed by a limited liability
 7 company, by the manager, member or other person executing the same on behalf
 8 of the limited liability company, or the execution must be proved and the ac-
 9 knowledgment or proof, certified in substantially the manner prescribed by
 10 chapter 1, title 51, Idaho Code; provided, that if such instrument shall have
 11 been executed and acknowledged in any other state or territory of the United
 12 States, or in any foreign country, according to the laws of the state, terri-
 13 tory or country wherein such acknowledgment was taken, the same shall be en-
 14 titled to record, and a certificate of acknowledgment ~~indorsed~~ endorsed upon
 15 or attached to any such instrument purporting to have been made in any such
 16 state, territory or foreign country, shall be prima facie sufficient to en-
 17 title the same to such record. No instrument may be recorded without payment
 18 of any applicable real estate investment fee to the resort city or declara-
 19 tion of exemption, pursuant to the provisions of chapter 32, title 50, Idaho
 20 Code.

21 (2) (a) The validity of an instrument recorded prior to July 1, 2017,
 22 shall not be affected by the failure of a notary public to perform a duty
 23 or meet a requirement specified in chapter 1, title 51, Idaho Code. Such
 24 a failure does not invalidate a notarial act performed by the notary
 25 public.

26 (b) The validity of a notarial act complying with the provisions of
 27 chapter 1, title 51, Idaho Code, does not prevent an aggrieved person
 28 from seeking to invalidate the record or transaction that is the subject
 29 of the notarial act or from seeking remedies authorized by federal or
 30 state law other than the provisions of chapter 1, title 51, Idaho Code.

31 (c) This subsection does not validate a purported notarial act per-
 32 formed by an individual who does not have the authority to perform
 33 notarial acts.

34 SECTION 3. That Chapter 31, Title 55, Idaho Code, be, and the same is
 35 hereby repealed.

36 SECTION 4. An emergency existing therefor, which emergency is hereby
 37 declared to exist, this act shall be in full force and effect on and after
 38 July 1, 2022.