

HOUSE BILL NO. 105

1/07 Introduced  
1/07 Referred to Taxation  
1/25 Hearing  
2/05 Committee Report-Bill Pass As Amended  
2/07 2nd Reading  
2/08 3rd Reading

Transmitted to Senate

2/09 Referred to Taxation  
3/08 Hearing  
3/18 Adverse Committee Report  
3/18 Bill Killed

1                    HOUSE BILL NO. 105  
 2    INTRODUCED BY MARKS

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 4    A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE TAX  
 5    APPEAL BOARD TO DECIDE APPEALS WITHIN 90 DAYS; PROVIDING A  
 6    PENALTY OF WITHHOLDING OF PAYMENT FOR SERVICES UNTIL APPEALS  
 7    ARE DECIDED; AMENDING SECTIONS 15-2-301 AND 15-2-302, MCA."

8  
 9    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10        Section 1. Section 15-2-301, MCA, is amended to read:

11        "15-2-301. Appeal of county tax appeal board  
 12    decisions. (1) Any person or the department of revenue in  
 13    behalf of the state or any municipal corporation aggrieved  
 14    by the action of any county tax appeal board may appeal to  
 15    the state board by filing with the county tax appeal board a  
 16    notice of appeal and a duplicate thereof with the state  
 17    board within 20 calendar days after the receipt of the  
 18    decision of the county board, which notice shall specify the  
 19    action complained of and the reasons assigned for such  
 20    complaint. The county tax appeal boards shall mail their  
 21    decisions to the property assessment division of the  
 22    department. Receipt, for purposes of appeal, by the  
 23    department is when the county tax appeal board decision is  
 24    received by the property assessment division of the  
 25    department. The state board shall set such appeal for

1    hearing either in its office in the capital or such county  
 2    seat as the board considers advisable to facilitate the  
 3    performance of its duties or to accommodate parties in  
 4    interest and shall give to the appellant and to the county  
 5    board at least 15 calendar days' notice of the time and  
 6    place of such hearing.

7        (2) At the time of giving such notice, the state board  
 8    may require the county board to certify to it the minutes of  
 9    the proceedings resulting in such action and all testimony  
 10    taken in connection therewith. The state board may, in its  
 11    discretion, determine the appeal on such record if all  
 12    parties receive a copy of the transcript and are permitted  
 13    to submit additional sworn statements, or the state board  
 14    may hear further testimony. For the purpose of expediting  
 15    its work, the state board may refer any such appeal to one  
 16    of its members and the person so designated shall have and  
 17    exercise all the powers of the board in conducting such  
 18    hearings and shall, as soon as possible thereafter, report  
 19    the proceedings, together with a transcript of the testimony  
 20    received, to the board and the state board shall determine  
 21    such appeal on the record so made.

22        (3) The state board shall issue a ruling in any appeal  
 23    brought before it within 90 days after its final hearing on  
 24    the appeal or within 90 days after receipt of the county tax  
 25    appeal board decision if no hearing is held. If any appeal

remains pending and undecided beyond the prescribed time period, the chairman of the board shall submit an affidavit on or before the 90th day to the state auditor, setting forth the appeal name and number. The state auditor may not issue a warrant for payment of services to the board members until all such overdue decisions are issued and that fact is certified to the state auditor by affidavit of the chairman of the board. There may be no interest earned on withheld payments.

{3}(4) On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received and the cost thereof may be paid out of the general appropriation for the board.

{4}(5) In connection with any appeal under this section, the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department.

The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful."

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

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board any action of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which such appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department action. The complaint shall set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint and at such time mail a copy to the complainant. The answer shall set

1 forth the department's response to each ground for and type  
2 of relief demanded in the complaint.

3 (4) The board shall thereafter hear the parties in  
4 accordance with the contested case provisions of the Montana  
5 Administrative Procedure Act.

6 (5) The board shall issue a ruling in any appeal  
7 brought before it within 90 days after its final hearing on  
8 the appeal or within 90 days after receipt of all evidence,  
9 statements, or objections under informal proceedings under  
10 the Montana Administrative Procedure Act if no hearing is  
11 held. If any appeal remains pending and undecided beyond  
12 the prescribed time period, the chairman of the board shall  
13 file an affidavit with the state auditor, who shall withhold  
14 payment to board members as provided in 15-2-301."

-End-

APPROVED BY COMMITTEE  
ON TAXATION

HOUSE BILL NO. 105  
INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE TAX  
APPEAL BOARD TO DECIDE APPEALS WITHIN 90 180 DAYS; PROVIDING  
~~A PENALTY OF WITHHOLDING OF PAYMENT FOR SERVICES UNTIL~~  
~~APPEALS ARE DECIDED~~ ALLOWING THE PARTIES INVOLVED IN THE  
APPEAL TO APPLY FOR A WRIT OF MANDAMUS WHEN THE TIME PERIOD  
EXPIRES; AMENDING SECTIONS 15-2-301 AND 15-2-302, MCA."

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

Section 1. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board  
decisions. (1) Any person or the department of revenue in  
behalf of the state or any municipal corporation aggrieved  
by the action of any county tax appeal board may appeal to  
the state board by filing with the county tax appeal board a  
notice of appeal and a duplicate thereof with the state  
board within 20 calendar days after the receipt of the  
decision of the county board, which notice shall specify the  
action complained of and the reasons assigned for such  
complaint. The county tax appeal boards shall mail their  
decisions to the property assessment division of the  
department. Receipt, for purposes of appeal, by the  
department is when the county tax appeal board decision is

received by the property assessment division of the  
department. The state board shall set such appeal for  
hearing either in its office in the capital or such county  
seat as the board considers advisable to facilitate the  
performance of its duties or to accommodate parties in  
interest and shall give to the appellant and to the county  
board at least 15 calendar days' notice of the time and  
place of such hearing.

(2) At the time of giving such notice, the state board  
may require the county board to certify to it the minutes of  
the proceedings resulting in such action and all testimony  
taken in connection therewith. The state board may, in its  
discretion, determine the appeal on such record if all  
parties receive a copy of the transcript and are permitted  
to submit additional sworn statements, or the state board  
may hear further testimony. For the purpose of expediting  
its work, the state board may refer any such appeal to one  
of its members and the person so designated shall have and  
exercise all the powers of the board in conducting such  
hearings and shall, as soon as possible thereafter, report  
the proceedings, together with a transcript of the testimony  
received, to the board and the state board shall determine  
such appeal on the record so made.

(3) The state board shall issue a ruling in any appeal  
brought before it within 90 180 days after its final hearing

1 on the appeal or within 90 180 days after receipt of the  
 2 county tax appeal board decision if no hearing is held.

3 (4) (A) If any appeal remains pending and undecided  
 4 beyond the prescribed time period, the chairman of the board  
 5 shall submit an affidavit on or before the 90th day to the  
 6 state auditor, setting forth the appeal name and number. The  
 7 state auditor may not issue a warrant for payment of  
 8 services to the board members until all such overdue  
 9 decisions are issued and that fact is certified to the state  
 10 auditor by affidavit of the chairman of the board; --- There  
 11 may be no interest earned on withheld payments. ANY PARTY TO  
 12 THE PETITION MAY FILE FOR A WRIT OF MANDAMUS PURSUANT TO  
 13 TITLE 27, CHAPTER 26.

14 (B) NO PERSON OTHER THAN A PARTY TO THE PETITION MAY  
 15 PETITION FOR A WRIT OF MANDAMUS UNDER THIS SECTION.

16 (3)(4)(5) On all hearings at county seats throughout  
 17 the state, the state board or the member designated to  
 18 conduct a hearing may employ the local court reporter or  
 19 other competent stenographer to take and transcribe the  
 20 testimony received and the cost thereof may be paid out of  
 21 the general appropriation for the board.

22 (4)(5)(6) In connection with any appeal under this  
 23 section, the state board shall not be bound by common law  
 24 and statutory rules of evidence or rules of discovery and  
 25 may affirm, reverse, or modify any decision. The decision

1 of the state tax appeal board shall be final and binding  
 2 upon all interested parties unless reversed or modified by  
 3 judicial review. To the extent this section is in conflict  
 4 with the Montana Administrative Procedure Act, this section  
 5 shall supersede that act. The state tax appeal board may not  
 6 amend or repeal any administrative rule of the department.  
 7 The state tax appeal board must give an administrative rule  
 8 full effect unless the board finds any such rule arbitrary,  
 9 capricious, or otherwise unlawful."

10 Section 2. Section 15-2-302, MCA, is amended to read:

11 "15-2-302. Direct appeal from department decision to  
 12 state tax appeal board -- hearing. (1) A person may appeal  
 13 to the state tax appeal board any action of the department  
 14 of revenue involving:

15 (a) property centrally assessed under chapter 23 of  
 16 this title;

17 (b) classification of property as new industrial  
 18 property;

19 (c) any other tax (other than the property tax)  
 20 imposed under this title; or

21 (d) any other matter in which such appeal is provided  
 22 by law.

23 (2) The appeal is made by filing a complaint with the  
 24 board within 30 days following receipt of notice of the  
 25 department action. The complaint shall set forth the grounds

1 for relief and nature of relief demanded. The board shall  
 2 immediately transmit a copy of the complaint to the  
 3 department.

4 (3) The department shall file with the board an answer  
 5 within 30 days following filing of a complaint and at such  
 6 time mail a copy to the complainant. The answer shall set  
 7 forth the department's response to each ground for and type  
 8 of relief demanded in the complaint.

9 (4) The board shall thereafter hear the parties in  
 10 accordance with the contested case provisions of the Montana  
 11 Administrative Procedure Act.

12 ~~(5) The board shall issue a ruling in any appeal~~  
 13 ~~brought before it within 90 180 days after its final hearing~~  
 14 ~~on the appeal or within 90 180 days after receipt of all~~  
 15 ~~evidence, statements, or objections under informal~~  
 16 ~~proceedings under the Montana Administrative Procedure Act~~  
 17 ~~if no hearing is held. If any appeal remains pending and~~  
 18 ~~undecided beyond the prescribed time period, the chairman of~~  
 19 ~~the board shall file an affidavit with the state auditor,~~  
 20 ~~who shall withhold payment to board members as provided in~~  
 21 ~~15-2-301.~~

22 (6) (A) IF ANY APPEAL REMAINS PENDING AND UNDECIDED  
 23 BEYOND THE PRESCRIBED TIME LIMIT, ANY PARTY TO THE PETITION  
 24 MAY FILE FOR A WRIT OF MANDAMUS PURSUANT TO TITLE 27,  
 25 CHAPTER 26.

1 (B) NO PERSON OTHER THAN A PARTY TO THE PETITION MAY  
 2 PETITION FOR A WRIT OF MANDAMUS UNDER THIS SECTION."

-End-

HOUSE BILL NO. 105  
INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE TAX APPEAL BOARD TO DECIDE APPEALS WITHIN 90 180 DAYS; PROVIDING ~~A PENALTY OF WITHHOLDING OF PAYMENT FOR SERVICES UNTIL APPEALS ARE DECIDED~~ ALLOWING THE PARTIES INVOLVED IN THE APPEAL TO APPLY FOR A WRIT OF MANDAMUS WHEN THE TIME PERIOD EXPIRES; AMENDING SECTIONS 15-2-301 AND 15-2-302, MCA."

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

Section 1. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board decisions. (1) Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 20 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is

received by the property assessment division of the department. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 15 calendar days' notice of the time and place of such hearing.

(2) At the time of giving such notice, the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith. The state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made.

(3) The state board shall issue a ruling in any appeal brought before it within 90 180 days after its final hearing





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 2 county tax appeal board decision if no hearing is held.

3 (4) (A) If any appeal remains pending and undecided  
 4 beyond the prescribed time period, the chairman of the board  
 5 shall submit an affidavit on or before the 90th day to the  
 6 state auditor setting forth the appeal name and number. The  
 7 state auditor may not issue a warrant for payment of  
 8 services to the board members until all such overdue  
 9 decisions are issued and that fact is certified to the state  
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 11 may be no interest earned on withheld payments. ANY PARTY TO  
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 15 PETITION FOR A WRIT OF MANDAMUS UNDER THIS SECTION.

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 17 the state the state board or the member designated to  
 18 conduct a hearing may employ the local court reporter or  
 19 other competent stenographer to take and transcribe the  
 20 testimony received and the cost thereof may be paid out of  
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 4 with the Montana Administrative Procedure Act, this section  
 shall supersede that act. The state tax appeal board may not  
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 12 state tax appeal board -- hearing. (1) A person may appeal  
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 14 of revenue involving:

- 15 (a) property centrally assessed under chapter 23 of
- 16 this title;
- 17 (b) classification of property as new industrial
- 18 property;
- 19 (c) any other tax (other than the property tax)
- 20 imposed under this title; or
- 21 (d) any other matter in which such appeal is provided
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10 accordance with the contested case provisions of the Montana  
11 Administrative Procedure Act.

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13 brought before it within 90 180 days after its final hearing  
14 on the appeal or within 90 180 days after receipt of all  
15 evidence, statements, or objections under informal  
16 proceedings under the Montana Administrative Procedure Act  
17 if no hearing is held. ~~if any appeal remains pending and~~  
18 ~~undecided beyond the prescribed time period, the chairman of~~  
19 ~~the board shall file an affidavit with the state auditor,~~  
20 ~~who shall withhold payment to board members as provided in~~  
21 ~~15-2-301.~~

22 (6) (A) IF ANY APPEAL REMAINS PENDING AND UNDECIDED  
23 BEYOND THE PRESCRIBED TIME LIMIT, ANY PARTY TO THE PETITION  
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25 CHAPTER 26.

1 (B) NO PERSON OTHER THAN A PARTY TO THE PETITION MAY  
2 PETITION FOR A WRIT OF MANDAMUS UNDER THIS SECTION."

-End-