HOUSE BILL 472

Introduced by Raney, et al.

1/27	Introduced
1/28	Referred to Taxation
1/30	Fiscal Note Requested
2/03	Fiscal Note Received
2/04	Fiscal Note Printed
2/07	Hearing
2/28	Committee Report--Bill Passed as Amended
3/02	2nd Reading Passed as Amended
3/04	3rd Reading Passed

Transmitted to Senate

3/06	Referred to Finance & Claims
3/14	Hearing
4/17	Committee Report--Bill Not Concurred
4/17	Adverse Committee Report Adopted

House BILL NO. 472

INTRODUCED BY Raney, Hallgan, Vincent, Addy, Cole, Connelly, Cody, Campbell, Patterson, Rapp-Svrcek, Farrell, Bob Brown, Hager, Swysgood, Ellison, Harp, Rasmussen, Walter, Squires, O'Keefe, Bishop, Ream, Hayne, Daily, Russell, Dave Brown, Wyatt, Russell, Kolstad, Harrington, Peck, Blotkamp, Cobb, Johnson, Nisbet, Menahan, Fuller, Gervais, Kimberley, Moore, Whalen, Brooke, Driscoll, Stella Jean Hansen, Cocchiarella, McNutt, J. Brown, Brown, McLean, Bradley

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROPERTY TAX DEFERRAL PROGRAM FOR PERSONS 62 YEARS OF AGE OR OLDER; PROVIDING STATE REIMBURSEMENT TO COUNTIES FOR PROPERTY TAXES DEFERRED UNDER THE PROPERTY TAX DEFERRAL PROGRAM; APPROPRIATING UP TO $1 MILLION FOR STARTUP COSTS FOR THE PROPERTY TAX DEFERRAL PROGRAM; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR RULEMAKING AUTHORITY."

STATEMENT OF INTENT

A statement of intent is required for this bill because section 20 delegates rulemaking authority to the department of revenue. It is the intent of the legislature that the rules adopted by the department prescribe the forms and procedures to be used by eligible applicants and by counties seeking reimbursement. The forms and applications should be as easy to use as possible while maintaining the integrity of the program.

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

NEW SECTION. **Section 1.** Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Federal poverty level" means the federal poverty threshold published by the U.S. bureau of the census in its publication Characteristics of the Population Below the Poverty Level (Current Population Reports, Series P-60) and adopted annually by the department.

(3) "Homestead" means the owner-occupied, principal dwelling, either real or personal property, owned by the taxpayer and the land, not exceeding 1 acre, on which it is located. If the homestead is located in a multiunit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the land on which it is built. The percentage attributable to the unit is the value of the unit consisting of the homestead compared to the total value of the building exclusive of the common elements, if any. The value of the land and common elements must be divided equally among the units.

(4) "Tax-deferred property" means the property on which taxes are deferred under [sections 1 through 20].

(5) "Taxes" or "property taxes" means ad valorem taxes, an assessment for a special improvement district or a rural special improvement district, and other assessments, fees, and charges that constitute a lien against the

INTRODUCED BILL
HB 472

tax-deferred property and that are required to be paid to the county treasurer.

(6) "Taxpayer" means an individual who has filed a claim for deferral under [section 2] or individuals who have jointly filed a claim for deferral under [section 2].

<u>NEW SECTION.</u> **Section 2.** **Claim for deferral of tax on homestead -- eligibility -- effect.** (1) Subject to [section 3], an individual or two or more individuals jointly may elect to defer the property taxes on their homestead by filing a claim for deferral with the county assessor between January 1 and April 15 of the first year in which deferral is claimed if:

(a) the individual is or, in the case of two or more individuals filing a claim jointly, each individual is 62 years of age or older on April 15 of the year in which the claim is filed; and

(b) the individual has or, in the case of two or more individuals filing a claim jointly, all of the individuals together have gross household income, as defined in 15-30-171, not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed.

(2) If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under [sections 1 through 20], the guardian or

conservator may act for the individual in complying with the provisions of [sections 1 through 20].

(3) If a trustee of an inter vivos trust that was created by and is revocable by an individual who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under [sections 1 through 20] owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of [sections 1 through 20].

(4) When the taxpayer elects to defer property taxes for any year, filing a claim for deferral under subsection (1) has the effect of:

(a) deferring the payment of the property taxes levied on the homestead for the taxable year beginning in the calendar year in which the claim is filed;

(b) continuing the deferral of the payment by the taxpayer of any property taxes that are deferred under [sections 1 through 20] for previous years and that have not become delinquent under [section 11]; and

(c) continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of [section 3] are met.

(5) Nothing in this section may be construed to require the spouse of an individual to file a claim jointly with the individual, even though the spouse may be eligible

to claim the deferral jointly with the individual.

(6) The county assessor shall forward each claim filed under subsection (1) to the department. The department shall determine if the property is eligible for deferral.

NEW SECTION. **Section 3.** **Property entitled to deferral -- limits.** (1) In order to qualify for tax deferral under [sections 1 through 20], the property must meet all of the following requirements when the claim is filed and thereafter so long as the payment of taxes by the taxpayer is deferred:

(a) The property must be the homestead of the individual or individuals who file the claim for deferral, except for an individual required to be absent from the homestead by reason of health.

(b) The person claiming the deferral must, by himself or together with his spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale, or two or more persons must together own or be purchasing the fee simple estate, with rights of survivorship, under a recorded instrument of sale, and all owners must live in the homestead and apply for the deferral jointly.

(c) There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule, or regulation applicable to a mortgage, trust deed,

land sale contract, or conditional sale contract for which the homestead is security.

(2) (a) Subject to the limit contained in subsection (b), the amount of property tax deferred in each year may not exceed 50% of the tax due.

(b) The total amount of property taxes deferred under [sections 1 through 20] may not exceed 50% of the appraised value of the property on which the taxes are deferred.

NEW SECTION. **Section 4.** **Claim forms -- contents.** A claim for deferral under [section 2] must be in writing on a form supplied by the department and must:

(1) describe the homestead;

(2) list facts establishing the eligibility for the deferral under the provisions of [sections 1 through 20], including facts that establish that the gross household income, as defined in 15-30-171, of the individual, or in the case of two or more individuals claiming the deferral jointly, the total gross household income of all of the individuals, was not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed;

(3) have attached any documentary proof required by the department to show that the requirements of [section 3] have been met; and

(4) be signed and dated by the claimant. The signature

is considered an affidavit that the contents of the claim are true.

NEW SECTION. **Section 5. Deferral as lien -- foreclosure.** (1) (a) The department, on behalf of the state of Montana, has a lien against the tax-deferred property for the payment of the deferred taxes plus interest thereon and any fees paid to the county clerk by the department in connection with the recording, release, or satisfaction of the lien.

(b) The lien for deferred taxes attaches to the property on July 1 of the year in which the taxes were assessed.

(c) The deferred property tax lien has the same priority as other real property tax liens, except that the lien of mortgages or trust deeds that is recorded prior in time to the attachment of the lien for deferred taxes are considered prior to the lien for deferred taxes.

(2) (a) The lien may be foreclosed by the department as if it were a purchase money security interest under Title 30, chapter 9. Reasonable attorney fees at trial and on appeal and costs may be granted the department in a suit for foreclosure of the lien.

(b) If the receipts from a foreclosure, after allowing for satisfaction of a mortgage or trust deed recorded prior to the attachment of the lien for deferred taxes, are

insufficient to satisfy the lien for deferred taxes, the receipts must be considered satisfaction of the lien for deferred taxes.

(3) Receipts from foreclosure proceedings must be credited in the same manner as other repayments of deferred property taxes under [section 19].

NEW SECTION. **Section 6. Listing of tax-deferred property -- interest accrual.** (1) If eligibility for deferral of homestead property is established as provided in [sections 1 through 20], the department shall notify the county assessor and the county assessor shall show on the current tax roll which property is tax-deferred property by an entry clearly designating the property as tax-deferred property.

(2) The county assessor shall send to the department as soon as the taxes are extended upon the roll the tax statement for each tax-deferred property.

(3) Interest accrues on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of 8% per annum.

(4) For property taxes deferred after [the effective date of this act], the state liens provided by [section 5] and recorded under [section 7] are for the actual amount of taxes deferred, plus interest, and advanced to the counties and not for the gross amount of taxes for which the property

would be liable as shown on the tax statement for each tax-deferred property.

NEW SECTION. **Section 7. Recording liens in county -- recording to constitute notice of state lien.** (1) In each county where there is tax-deferred property, the department shall cause to be recorded in the mortgage records of the county a list of tax-deferred properties of that county. The list must contain a description of the property as entered on the assessment roll, together with the name of the owner listed thereon.

(2) The recording of the tax-deferred properties under subsection (1) is notice that the department claims a lien against those properties in the amount of the deferred taxes plus interest, together with any fees paid to the county clerk in connection with the recording, release, or satisfaction of the lien, even though the amount of taxes, interest, or fees is not listed.

(3) The department is not required to pay any filing, indexing, or recording fees to the county in connection with the recording, release, or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made.

NEW SECTION. **Section 8. County treasurer to receive amount equivalent to deferred taxes from state.** (1) After determining the amount of deferred taxes on tax-deferred

property for the tax year, the department shall pay to the county treasurer an amount equal to the deferred taxes. Payment must be made from the account established in [section 19].

(2) The department shall maintain accounts for each deferred property and shall accrue interest only on the actual amount of taxes advanced to the county.

NEW SECTION. **Section 9. Notice to taxpayer.** (1) On or before December 15 of each year, the department shall send a notice to each taxpayer who has claimed homestead deferral of property taxes for the current tax year. The notice must:

(a) inform the taxpayer that the property taxes have been deferred in the current year;

(b) inform the taxpayer that a claim must be filed annually;

(c) show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing to November 15 of the current year;

(d) inform the taxpayer that voluntary payment of the deferred taxes may be made at any time to the department; and

(e) contain other information the department considers necessary to facilitate administration of the property tax deferral program.

(2) The department shall mail the notice required

under subsection (1) to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the department to be the correct address of the taxpayer.

NEW SECTION. **Section 10. Events requiring payment of deferred tax and interest.** All deferred property taxes, including accrued interest, become payable as provided in [section 11] when:

(1) the taxpayer, or if there was more than one claimant, the survivor of the taxpayers, who claimed deferment of collection of property taxes on the homestead under [section 2] dies;

(2) the property with respect to which deferment of collection of taxes is claimed is sold, a contract to sell is entered into, or some person other than the taxpayer who claimed the deferment becomes the owner of the property;

(3) the tax-deferred property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from the tax-deferred property by reason of health; or

(4) the tax-deferred property is moved out of the county or state.

NEW SECTION. **Section 11. Time for payment -- delinquencies.** (1) When any of the circumstances listed in [section 10] occurs:

(a) the deferral of taxes must continue for the assessment year in which the circumstance occurs; and

(b) the amount of deferred property taxes, including accrued interest, for all years is due and payable to the department on August 15 of the year following the calendar year in which the circumstance occurs, except as provided in [section 12], [section 16], and subsection (2) of this section.

(2) Notwithstanding the provisions of [section 16] and subsection (1)(b), when the circumstance listed in [section 10(4)] occurs, the amount of deferred taxes is due and payable 5 days before the date of removal of the property from the state.

(3) If the amounts falling due as provided in this section are not paid on the indicated due date or as extended under [section 16], the amounts are considered delinquent as of that date and the property is subject to foreclosure as provided in [section 5].

NEW SECTION. **Section 12. Election by spouse to continue tax deferral -- extension of time to file claim.** (1) When any of the circumstances listed in [section 10(1) through (3)] occurs, the spouse who was not eligible to or did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under [section 2] if:

(a) the spouse of the taxpayer is or will be 60 years of age or older not later than 6 months from the date the circumstance occurs; and

(b) the property is the homestead of the spouse of the taxpayer and meets the requirements of [section 3(2)].

(2) A spouse who does not meet the age requirements of subsection (1)(a) but is otherwise qualified to continue the property in its tax-deferred status under subsection (1) may continue the deferral of property taxes deferred for previous years by filing a claim within the time and in the manner provided under [section 2]. If a spouse eligible for and continuing the deferral of taxes previously deferred under this subsection becomes 62 years of age prior to April 15 of any year, the spouse may elect to continue the deferral of previous years' taxes deferred under this subsection and may elect to defer the current assessment year's taxes on the homestead by filing a claim within the time and in the manner provided under [section 2]. Thereafter, payment of the taxes levied on the homestead and deferred under this subsection and payment of taxes levied on the homestead in the current assessment year and in future years may be deferred in the manner provided in and subject to [sections 1 through 20].

(3) Notwithstanding that [section 2] requires a claim

to be filed no later than April 15, if the department determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before April 15, the claim may be filed within 180 days after the notice of taxes due and payable under [section 11] is mailed or delivered by the department to the taxpayer or spouse.

NEW SECTION. **Section 13.** Voluntary payment of deferred taxes and interest. (1) All payments of deferred taxes must be made to the department.

(2) Subject to subsection (3), all or part of the deferred taxes and accrued interest may at any time be paid to the department by:

(a) the taxpayer or the spouse of the taxpayer; or

(b) the next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer, or any person having or claiming a legal or equitable interest in the property.

(3) A person listed in subsection (2)(b) may make payments of deferred taxes and accrued interest only if no objection is made by the taxpayer within 30 days after the department deposits in the mail a notice to the taxpayer that such payment has been tendered.

(4) A payment made under this section must be applied first against accrued interest and any remainder against the deferred taxes. The payment does not affect the deferred tax

status of the property. Unless otherwise provided by law, the payment does not give the person paying the taxes an interest in the property or a claim against the estate, in the absence of a valid agreement to the contrary.

(5) When the deferred taxes and accrued interest are paid in full and the property is no longer subject to tax deferral, the department shall prepare and record in the county where the property is located a satisfaction of deferred property tax lien.

NEW SECTION. **Section 14. Taxes unpaid before deferral as lien -- effect on foreclosure -- exceptions.** (1) Notwithstanding [section 17], upon compliance with [section 15], taxes not in excess of $1,000 assessed against a tax-deferred homestead for any tax year beginning on or after [the effective date of this act] that were unpaid as of July 1 of the tax year for which homestead property tax deferral was initially granted under [sections 1 through 20] and that remain unpaid remain a lien and become delinquent as otherwise provided by law but are not subject to foreclosure until August 15 of the calendar year following the calendar year in which any of the circumstances listed in [section 10] occurs.

(2) This section does not apply if:

(a) the tax-deferred homestead property is moved out of the county or state;

(b) the tax-deferred homestead property is personal property; or

(c) the owner of the tax-deferred homestead property has gross household income exceeding 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which application is filed under [section 15].

(3) If the property to which subsection (1) applies has been included on a foreclosure list or if a decree of foreclosure has been entered and taxes in excess of $1,000 assessed against the property for the earliest year are paid, the property must be removed from the foreclosure list or the decree must be vacated unless the proceeding against the property involves delinquent taxes other than those described in subsection (1).

(4) Upon removal from the foreclosure list or vacation of the decree, no penalty may be imposed. In lieu thereof, the penalty is abated or, if the penalty has been paid, upon application to the county assessor on or before July 1 of the year immediately following the year of vacation or removal, the penalty must be refunded out of the county general fund.

(5) Within 60 days after approval of an application under [section 15] with respect to any property to which this section applies, the county assessor shall make the

proper entries on the tax roll and remove the property from the foreclosure list and proceeding.

(6) If a decree has been entered foreclosing liens for delinquent taxes against any property that is the subject of an application filed under [section 15] and if the delinquent taxes include only those taxes described in subsection (1) or taxes in excess of those described in subsection (1) are paid, the decree is void and the county treasurer shall make the proper entries on the tax rolls to reflect the vacation of the decree and to acknowledge the subsisting liens.

(7) Nothing in this section removes or releases property to which this section applies from the lien of an unpaid tax thereon, but the unpaid taxes remain valid and subsisting liens as though the foreclosure proceeding had not been instituted or as though the foreclosure proceeding had not been instituted and a decree entered.

(8) Nothing in this section affects a foreclosure proceeding instituted or a decree entered to foreclose liens for delinquent taxes against properties subject to foreclosure if the delinquent taxes include taxes other than those described under subsection (1). Such foreclosure proceedings must be instituted or continued without regard to this section, and such a decree has full force and effect as if this section did not exist.

(9) Interest on taxes to which this section applies must be determined from the same dates, in the same manner, and until paid as for other property taxes remaining unpaid upon the due dates in accordance with subsection (1) and upon entry and following a decree of foreclosure.

NEW SECTION. **Section 15. Application to delay foreclosure -- effect of denial -- appeal.** (1) The owner of tax-deferred homestead property desiring delay in foreclosure on account of delinquent taxes, as provided in [section 14], shall make application for the delay to the county assessor prior to the date the period of redemption expires. The application must contain or be accompanied by a verified statement of gross household income, as defined in 15-30-171, of the owner for the calendar year immediately preceding the calendar year in which the application is made.

(2) Upon receipt of an application under subsection (1), the county assessor shall approve or deny the application. If the application is denied, the owner may appeal to the county tax appeal board in the county where the tax-deferred homestead property is located within 90 days after notice in writing of the denial is mailed to the owner by the county assessor. A decision of the county tax appeal board may be appealed to the district court within the time and in the manner provided under Title 15, chapter

2, part 3.

NEW SECTION. **Section 16.** **Extension of time for payment upon death of claimant or spouse.** (1) If the taxpayer who claimed a homestead property tax deferral dies or if a spouse who continued the deferral under [section 12] dies, the department may extend the time for payment of the deferred taxes and accrued interest with respect to the taxes becoming due and payable under [section 11] if:

(a) the homestead property becomes property of an individual or individuals:

(i) by inheritance or devise; or

(ii) if the individual or individuals are heirs or devisees in the course of settlement of the estate;

(b) the individual or individuals commence occupancy of the property as a principal residence on or before August 15 of the calendar year following the calendar year of death; and

(c) the individual or individuals make application to the department for an extension of time for payment of the deferred taxes and interest prior to August 15 of the calendar year following the calendar year of death.

(2) (a) Subject to subsection (2)(b), an extension granted under this section may be for a period not to exceed 5 years after August 15 of the calendar year following the calendar year of death. The terms and conditions under which

the extension is granted must be in accordance with a written agreement entered into by the department and the individual or individuals.

(b) An extension granted under this section terminates immediately if:

(i) the homestead property is sold or otherwise transferred by any party to the extension agreement;

(ii) all of the heirs or devisees who are parties to the extension agreement cease to occupy the property as a principal residence; or

(iii) the homestead property is moved out of the county or state.

(3) If the department has reason to believe that the homestead property is not sufficient security for the deferred taxes and interest, the department may require the individual or individuals to furnish a bond conditioned upon payment of the amount extended in accordance with the terms of the extension. The bond may not exceed an amount double the taxes with respect to which tax extension is granted.

(4) During the period of extension and until paid, the deferred taxes continue to accrue interest in the same manner and at the same rate as provided under [section 6]. No interest accrues on interest.

NEW SECTION. **Section 17.** **Limitations.** Nothing in [sections 1 through 20] is intended to or may be construed to:

(1) prevent the collection, by foreclosure, of property taxes that become a lien against tax-deferred property; or

(2) affect any provision of a mortgage or other instrument relating to land and requiring a person to pay property taxes.

NEW SECTION. **Section 18.** **Deed or contract clauses preventing application for deferral prohibited.** After [the effective date of this act], it is unlawful for any mortgage trust deed or land sale contract to contain a clause or statement prohibiting the owner from applying for the benefits of the deferral of homestead property taxes provided in [sections 1 through 20]. Such clause or statement in a mortgage trust deed or land sale contract executed after [the effective date of this act] is void.

NEW SECTION. **Section 19.** **Senior property tax deferral account.** (1) There is an account in the state special revenue fund to be used by the department for the purpose of making payments of deferred property taxes to county treasurers.

(2) After paying back the appropriation from the education trust fund plus interest at 10% per year, all sums received by the department under [sections 1 through 20] as repayment of deferred property taxes must, upon receipt by

the department, be credited to the account established in subsection (1) for the purpose of making payments of deferred property taxes to county treasurers.

NEW SECTION. **Section 20.** **Rulemaking authority.** The department may make rules necessary to effectively administer the provisions of [sections 1 through 20].

NEW SECTION. **Section 21.** **Appropriation -- payback.** (1) There is appropriated from the education trust fund to the account established in [section 19] up to $1 million for the purpose of making payments of deferred property taxes to county treasurers.

(2) The department pursuant to [section 19] shall deposit repayments of deferred property taxes to the education trust fund until the amount actually spent plus interest at 10% per year is repaid to the trust fund.

NEW SECTION. **Section 22.** **Codification instruction.** [Sections 1 through 20] are intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15 apply to [sections 1 through 20].

NEW SECTION. **Section 23.** **Effective dates.** (1) [Section 20 and this section] are effective on passage and approval.

(2) [Section 21] is effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB472, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a property tax deferral program for persons 62 years of age or older; providing state reimbursement to counties for property taxes deferred under the property tax deferral program; appropriating up to $1 million for startup costs for the property tax deferral program; granting rulemaking authority to the Department of Revenue; and providing an immediate effective date for rulemaking authority.

ASSUMPTIONS:

1. Currently, approximately 3,600 households with household income of less than 125% of the poverty level are receiving benefits under the low-income property tax relief program provided under MCA 15-6-134.
2. Approximately 10 percent (360) of these households will participate in the proposed deferral program. (The highest participation rate among the other states that have a deferral program is 6% of the eligible population (Oregon) - NCSL survey).
3. Average property tax on these homes is $241 (after low-income property tax relief).
4. Under the proposal, 50% of property taxes will be deferred, with the state reimbursing the counties for 100% of property taxes deferred.
5. Implementation and continued operation of the administration of the program will require an additional 3.5 FTE in FY90, and one additional FTE in FY91 and beyond.
6. One additional lap-top computer will be required for continued administration of the program.

Ray Shackleford 2/3/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

2/4/89

BOB RANEY, PRIMARY SPONSOR DATE

Fiscal Note for HB472, as introduced

HB 472

FISCAL IMPACT

Expenditure Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Property Tax Payments	$ 0	$ 43,380	$ 43,380	$ 0	$ 43,380	$ 43,380
Personal Serv.	$ 0	$ 92,945	$ 92,945	$ 0	$ 24,045	$ 24,045
Operating Exp.	$ 0	$ 78,735	$ 78,735	$ 0	$ 3,235	$ 3,325
Equip.	$ 0	$ 2,700	$ 2,700	$ 0	$ 0	$ 0
Total Adm.	$ 0	$ 174,380	$ 174,380	$ 0	$ 27,280	$ 27,280
Startup Appropriation	$ 0	$ 1,000,000	$1,000,000	$ 0	$ 0	$ 0
Total	$ 0	$ 1,217,760	$1,217,760	$ 0	$ 70,660	$ 70,660
Fund Information:						
Education Trust Fund						
Startup Appropriation	$ 0	$ 1,000,000	$1,000,000	$ 0	$ 0	$ 0
Administration	$ 0	$ 174,380	$ 174,380	$ 0	$ 27,280	$ 27,280
Total	$ 0	$ 1,174,380	$1,174,380	$ 0	$ 27,280	$ 27,280
Property Tax Deferral Account	$ 0	$ 43,380	$ 43,380	$ 0	$ 43,380	$ 43,380

The legislation does not provide for the funding of administration expenses. The analysis assumes the funding source is the education trust fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The impact on county revenues and expenditures would be minimal. The deferred property taxes are reimbursed to counties by the state. Also, responsibility for administering the program lies with the Department of Revenue.

TECHNICAL NOTE/CONFLICT WITH EXISTING LEGISLATION:

The bill does not address the deferral program's interaction with the current homeowner/renter credit program. This fiscal note assumes that elderly households that opt for the deferral program would be eligible for the elderly homeowner/renter credit only to the extent of property taxes that are not deferred. Current law specifies that the credit is available only for property tax paid in the tax year; here, property tax paid assumes that the tax must have been paid by the homeowner. To the extent that elderly homeowners opting for the deferral program were previously receiving homeowner income tax credits, credit amounts would be reduced resulting in a slight increase in income tax revenue.

HB 472

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 472

INTRODUCED BY RANEY, HALLIGAN, VINCENT, ADDY, COHEN, CONNELLY, CODY, CAMPBELL, PATTERSON, SEVERSON, RAPP-SVRCEK, FARRELL, B. BROWN, HAGER, ELLISON, STRIZICH, RASMUSSEN, WALKER, SQUIRES, O'KEEFE, HARP, BISHOP, REAM, SPAETH, DARKO, RUSSELL, HARPER, D. BROWN, WYATT, DRISCOLL, KOEHNKE, HARRINGTON, PECK, O'CONNELL, ECK, JOHNSON, NISBET, MENAHAN, QUILICI, GERVAIS, KIMBERLEY, MOORE, WHALEN, BROOKE, DAVIS, HANSEN, COCCHIARELLA, MCDONOUGH, J. BROWN, BACHINI, MCCORMICK, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROPERTY TAX DEFERRAL PROGRAM FOR PERSONS 62 YEARS OF AGE OR OLDER; PROVIDING STATE REIMBURSEMENT TO COUNTIES FOR PROPERTY TAXES DEFERRED UNDER THE PROPERTY TAX DEFERRAL PROGRAM; APPROPRIATING UP TO $1 MILLION FOR STARTUP COSTS FOR THE PROPERTY TAX DEFERRAL PROGRAM; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR RULEMAKING AUTHORITY."

STATEMENT OF INTENT

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and procedures to be used by eligible applicants and by counties seeking reimbursement. The forms and applications should be as easy to use as possible while maintaining the integrity of the program.

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 20], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Federal poverty level" means the federal poverty threshold published by the U.S. bureau of the census in its publication Characteristics of the Population Below the Poverty Level (Current Population Reports, Series P-60) and adopted annually by the department.

(3) "Homestead" means the owner-occupied, principal dwelling, either real or personal property, owned by the taxpayer and the land, not exceeding 1 acre, on which it is located. If the homestead is located in a multiunit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the land on which it is built. The percentage attributable to the unit is the value of the unit consisting of the homestead compared to the total value of the building exclusive of the common elements, if any. The value of the

SECOND READING

land and common elements must be divided equally among the units.

(4) "Tax-deferred property" means the property on which taxes are deferred under [sections 1 through 20].

(5) "Taxes" or "property taxes" means ad valorem taxes, an assessment for a special improvement district or a rural special improvement district, and other assessments, fees, and charges that constitute a lien against the tax-deferred property and that are required to be paid to the county treasurer.

(6) "Taxpayer" means an individual who has filed a claim for deferral under [section 2] or individuals who have jointly filed a claim for deferral under [section 2].

NEW SECTION. **Section 2. Claim for deferral of tax on homestead -- eligibility -- effect.** (1) Subject to [section 3], an individual or two or more individuals jointly may elect to defer the property taxes on their homestead by filing a claim for deferral with the county assessor between January 1 and April 15 of the first year in which deferral is claimed if:

(a) the individual is or, in the case of two or more individuals filing a claim jointly, each individual is 62 years of age or older on April 15 of the year in which the claim is filed; and

(b) the individual has or, in the case of two or more

individuals filing a claim jointly, all of the individuals together have gross household income, as defined in 15-30-171, not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed.

(2) If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under [sections 1 through 20], the guardian or conservator may act for the individual in complying with the provisions of [sections 1 through 20].

(3) If a trustee of an inter vivos trust that was created by and is revocable by an individual who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under [sections 1 through 20] owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of [sections 1 through 20].

(4) When the taxpayer elects to defer property taxes for any year, filing a claim for deferral under subsection (1) has the effect of:

(a) deferring the payment of the property taxes levied on the homestead for the taxable year beginning in the calendar year in which the claim is filed;

(b) continuing the deferral of the payment by the taxpayer of any property taxes that are deferred under [sections 1 through 20] for previous years and that have not become delinquent under [section 11]; and

(c) continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of [section 3] are met.

(5) Nothing in this section may be construed to require the spouse of an individual to file a claim jointly with the individual, even though the spouse may be eligible to claim the deferral jointly with the individual.

(6) The county assessor shall forward each claim filed under subsection (1) to the department. The department shall determine if the property is eligible for deferral.

NEW SECTION. **Section 3. Property entitled to deferral -- limits.** (1) In order to qualify for tax deferral under [sections 1 through 20], the property must meet all of the following requirements when the claim is filed and thereafter so long as the payment of taxes by the taxpayer is deferred:

(a) The property must be the homestead of the individual or individuals who file the claim for deferral, except for an individual required to be absent from the homestead by reason of health.

(b) The person claiming the deferral must, by himself or together with his spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument

of sale, or two or more persons must together own or be purchasing the fee simple estate, with rights of survivorship, under a recorded instrument of sale, and all owners must live in the homestead and apply for the deferral jointly.

(c) There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule, or regulation applicable to a mortgage, trust deed, land sale contract, or conditional sale contract for which the homestead is security.

(2) (a) Subject to the ~~limit~~ LIMITS contained in ~~subsection~~ SUBSECTIONS (b) AND (C), the amount of property tax deferred in each year may not exceed 50% of the tax due.

(b) The total amount of property taxes deferred under [sections 1 through 20] may not exceed 50% of the appraised value of the property on which the taxes are deferred.

(C) THE TOTAL COMBINED AMOUNT OF PROPERTY TAXES DEFERRED UNDER [SECTIONS 1 THROUGH 20] PLUS THE OUTSTANDING MORTGAGE ON THE PROPERTY, IF ANY, ON WHICH THE TAXES ARE DEFERRED MAY NOT EXCEED 90% OF THE APPRAISED VALUE OF THE PROPERTY ON WHICH THE TAXES ARE DEFERRED.

NEW SECTION. **Section 4. Claim forms -- contents.** A claim for deferral under [section 2] must be in writing on a form supplied by the department and must:

(1) describe the homestead;

(2) list facts establishing the eligibility for the deferral under the provisions of [sections 1 through 20], including facts that establish that the gross household income, as defined in 15-30-171, of the individual, or in the case of two or more individuals claiming the deferral jointly, the total gross household income of all of the individuals, was not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed;

(3) have attached any documentary proof required by the department to show that the requirements of [section 3] have been met; and

(4) be signed and dated by the claimant. The signature is considered an affidavit that the contents of the claim are true.

NEW SECTION. **Section 5. Deferral as lien -- foreclosure.** (1) (a) The department, on behalf of the state of Montana, has a lien against the tax-deferred property for the payment of the deferred taxes plus interest thereon and any fees paid to the county clerk by the department in connection with the recording, release, or satisfaction of the lien.

(b) The lien for deferred taxes attaches to the property on July 1 of the year in which the taxes were assessed.

(c) The deferred property tax lien has the same priority as other real property tax liens, except that the lien of mortgages or trust deeds that is recorded prior in time to the attachment of the lien for deferred taxes are considered prior to the lien for deferred taxes.

(2) (a) The lien may be foreclosed by the department as if it were a purchase money security interest under Title 30, chapter 9. Reasonable attorney fees at trial and on appeal and costs may be granted the department in a suit for foreclosure of the lien.

(b) If the receipts from a foreclosure, after allowing for satisfaction of a mortgage or trust deed recorded prior to the attachment of the lien for deferred taxes, are insufficient to satisfy the lien for deferred taxes, the receipts must be considered satisfaction of the lien for deferred taxes.

(3) Receipts from foreclosure proceedings must be credited in the same manner as other repayments of deferred property taxes under [section 19].

NEW SECTION. **Section 6. Listing of tax-deferred property -- interest accrual.** (1) If eligibility for deferral of homestead property is established as provided in [sections 1 through 20], the department shall notify the county assessor and the county assessor shall show on the current tax roll which property is tax-deferred property by an entry clearly designating the property as tax-deferred property.

(2) The county assessor shall send to the department as soon as the taxes are extended upon the roll the tax statement for each tax-deferred property.

(3) Interest accrues on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of 8% per annum.

(4) For property taxes deferred after [the effective date of this act], the state liens provided by [section 5] and recorded under [section 7] are for the actual amount of taxes deferred, plus interest, and advanced to the counties and not for the gross amount of taxes for which the property would be liable as shown on the tax statement for each tax-deferred property.

NEW SECTION. **Section 7. Recording liens in county -- recording to constitute notice of state lien.** (1) In each county where there is tax-deferred property, the department shall cause to be recorded in the mortgage records of the county a list of tax-deferred properties of that county. The list must contain a description of the property as entered on the assessment roll, together with the name of the owner listed thereon.

(2) The recording of the tax-deferred properties under subsection (1) is notice that the department claims a lien

against those properties in the amount of the deferred taxes plus interest, together with any fees paid to the county clerk in connection with the recording, release, or satisfaction of the lien, even though the amount of taxes, interest, or fees is not listed.

(3) The department is not required to pay any filing, indexing, or recording fees to the county in connection with the recording, release, or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made.

NEW SECTION. **Section 8. County treasurer to receive amount equivalent to deferred taxes from state.** (1) After determining the amount of deferred taxes on tax-deferred property for the tax year, the department shall pay to the county treasurer an amount equal to the deferred taxes. Payment must be made from the account established in [section 19].

(2) The department shall maintain accounts for each deferred property and shall accrue interest only on the actual amount of taxes advanced to the county.

NEW SECTION. **Section 9. Notice to taxpayer.** (1) On or before December 15 of each year, the department shall send a notice to each taxpayer who has claimed homestead deferral of property taxes for the current tax year. The notice must:

(a) inform the taxpayer that the property taxes have been deferred in the current year;

(b) inform the taxpayer that a claim must be filed annually;

(c) show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing to November 15 of the current year;

(d) inform the taxpayer that voluntary payment of the deferred taxes may be made at any time to the department; and

(e) contain other information the department considers necessary to facilitate administration of the property tax deferral program.

(2) The department shall mail the notice required under subsection (1) to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the department to be the correct address of the taxpayer.

NEW SECTION. **Section 10. Events requiring payment of deferred tax and interest.** All deferred property taxes, including accrued interest, become payable as provided in [section 11] when:

(1) the taxpayer, or if there was more than one claimant, the survivor of the taxpayers, who claimed deferment of collection of property taxes on the homestead under [section 2] dies;

(2) the property with respect to which deferment of collection of taxes is claimed is sold, a contract to sell is entered into, or some person other than the taxpayer who claimed the deferment becomes the owner of the property;

(3) the tax-deferred property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from the tax-deferred property by reason of health; or

(4) the tax-deferred property is moved out of the county or state.

NEW SECTION. **Section 11. Time for payment -- delinquencies.** (1) When any of the circumstances listed in [section 10] occurs:

(a) the deferral of taxes must continue for the assessment year in which the circumstance occurs; and

(b) the amount of deferred property taxes, including accrued interest, for all years is due and payable to the department on August 15 of the year following the calendar year in which the circumstance occurs, except as provided in [section 12], [section 16], and subsection (2) of this section.

(2) Notwithstanding the provisions of [section 16] and subsection (1)(b), when the circumstance listed in [section 10(4)] occurs, the amount of deferred taxes is due and payable 5 days before the date of removal of the property

from the state.

(3) If the amounts falling due as provided in this section are not paid on the indicated due date or as extended under [section 16], the amounts are considered delinquent as of that date and the property is subject to foreclosure as provided in [section 5].

NEW SECTION. **Section 12. Election by spouse to continue tax deferral -- extension of time to file claim.** (1) When any of the circumstances listed in [section 10(1) through (3)] occurs, the spouse who was not eligible to or did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under [section 2] if:

(a) the spouse of the taxpayer is or will be 60 years of age or older not later than 6 months from the date the circumstance occurs; and

(b) the property is the homestead of the spouse of the taxpayer and meets the requirements of [section 3(2)].

(2) A spouse who does not meet the age requirements of subsection (1)(a) but is otherwise qualified to continue the property in its tax-deferred status under subsection (1) may continue the deferral of property taxes deferred for previous years by filing a claim within the time and in the manner provided under [section 2]. If a spouse eligible for

and continuing the deferral of taxes previously deferred under this subsection becomes 62 years of age prior to April 15 of any year, the spouse may elect to continue the deferral of previous years' taxes deferred under this subsection and may elect to defer the current assessment year's taxes on the homestead by filing a claim within the time and in the manner provided under [section 2]. Thereafter, payment of the taxes levied on the homestead and deferred under this subsection and payment of taxes levied on the homestead in the current assessment year and in future years may be deferred in the manner provided in and subject to [sections 1 through 20].

(3) Notwithstanding that [section 2] requires a claim to be filed no later than April 15, if the department determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before April 15, the claim may be filed within 180 days after the notice of taxes due and payable under [section 11] is mailed or delivered by the department to the taxpayer or spouse.

NEW SECTION. **Section 13. Voluntary payment of deferred taxes and interest.** (1) All payments of deferred taxes must be made to the department.

(2) Subject to subsection (3), all or part of the deferred taxes and accrued interest may at any time be paid

to the department by:

(a) the taxpayer or the spouse of the taxpayer; or

(b) the next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer, or any person having or claiming a legal or equitable interest in the property.

(3) A person listed in subsection (2)(b) may make payments of deferred taxes and accrued interest only if no objection is made by the taxpayer within 30 days after the department deposits in the mail a notice to the taxpayer that such payment has been tendered.

(4) A payment made under this section must be applied first against accrued interest and any remainder against the deferred taxes. The payment does not affect the deferred tax status of the property. Unless otherwise provided by law, the payment does not give the person paying the taxes an interest in the property or a claim against the estate, in the absence of a valid agreement to the contrary.

(5) When the deferred taxes and accrued interest are paid in full and the property is no longer subject to tax deferral, the department shall prepare and record in the county where the property is located a satisfaction of deferred property tax lien.

NEW SECTION. **Section 14. Taxes unpaid before deferral as lien -- effect on foreclosure -- exceptions. (1)** Notwithstanding [section 17], upon compliance with [section

15], taxes not in excess of $1,000 assessed against a tax-deferred homestead for any tax year beginning on or after [the effective date of this act] that were unpaid as of July 1 of the tax year for which homestead property tax deferral was initially granted under [sections 1 through 20] and that remain unpaid remain a lien and become delinquent as otherwise provided by law but are not subject to foreclosure until August 15 of the calendar year following the calendar year in which any of the circumstances listed in [section 10] occurs.

(2) This section does not apply if:

(a) the tax-deferred homestead property is moved out of the county or state;

(b) the tax-deferred homestead property is personal property; or

(c) the owner of the tax-deferred homestead property has gross household income exceeding 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which application is filed under [section 15].

(3) If the property to which subsection (1) applies has been included on a foreclosure list or if a decree of foreclosure has been entered and taxes in excess of $1,000 assessed against the property for the earliest year are paid, the property must be removed from the foreclosure list

or the decree must be vacated unless the proceeding against the property involves delinquent taxes other than those described in subsection (1).

(4) Upon removal from the foreclosure list or vacation of the decree, no penalty may be imposed. In lieu thereof, the penalty is abated or, if the penalty has been paid, upon application to the county assessor on or before July 1 of the year immediately following the year of vacation or removal, the penalty must be refunded out of the county general fund.

(5) Within 60 days after approval of an application under [section 15] with respect to any property to which this section applies, the county assessor shall make the proper entries on the tax roll and remove the property from the foreclosure list and proceeding.

(6) If a decree has been entered foreclosing liens for delinquent taxes against any property that is the subject of an application filed under [section 15] and if the delinquent taxes include only those taxes described in subsection (1) or taxes in excess of those described in subsection (1) are paid, the decree is void and the county treasurer shall make the proper entries on the tax rolls to reflect the vacation of the decree and to acknowledge the subsisting liens.

(7) Nothing in this section removes or releases

property to which this section applies from the lien of an unpaid tax thereon, but the unpaid taxes remain valid and subsisting liens as though the foreclosure proceeding had not been instituted or as though the foreclosure proceeding had not been instituted and a decree entered.

(8) Nothing in this section affects a foreclosure proceeding instituted or a decree entered to foreclose liens for delinquent taxes against properties subject to foreclosure if the delinquent taxes include taxes other than those described under subsection (1). Such foreclosure proceedings must be instituted or continued without regard to this section, and such a decree has full force and effect as if this section did not exist.

(9) Interest on taxes to which this section applies must be determined from the same dates, in the same manner, and until paid as for other property taxes remaining unpaid upon the due dates in accordance with subsection (1) and upon entry and following a decree of foreclosure.

<u>NEW SECTION.</u> **Section 15. Application to delay foreclosure -- effect of denial -- appeal.** (1) The owner of tax-deferred homestead property desiring delay in foreclosure on account of delinquent taxes, as provided in [section 14], shall make application for the delay to the county assessor prior to the date the period of redemption expires. The application must contain or be accompanied by a

verified statement of gross household income, as defined in 15-30-171, of the owner for the calendar year immediately preceding the calendar year in which the application is made.

(2) Upon receipt of an application under subsection (1), the county assessor shall approve or deny the application. If the application is denied, the owner may appeal to the county tax appeal board in the county where the tax-deferred homestead property is located within 90 days after notice in writing of the denial is mailed to the owner by the county assessor. A decision of the county tax appeal board may be appealed to the district court within the time and in the manner provided under Title 15, chapter 2, part 3.

NEW SECTION. **Section 16. Extension of time for payment upon death of claimant or spouse.** (1) If the taxpayer who claimed a homestead property tax deferral dies or if a spouse who continued the deferral under [section 12] dies, the department may extend the time for payment of the deferred taxes and accrued interest with respect to the taxes becoming due and payable under [section 11] if:

(a) the homestead property becomes property of an individual or individuals:

(i) by inheritance or devise; or

(ii) if the individual or individuals are heirs or

devisees in the course of settlement of the estate;

(b) the individual or individuals commence occupancy of the property as a principal residence on or before August 15 of the calendar year following the calendar year of death; and

(c) the individual or individuals make application to the department for an extension of time for payment of the deferred taxes and interest prior to August 15 of the calendar year following the calendar year of death.

(2) (a) Subject to subsection (2)(b), an extension granted under this section may be for a period not to exceed 5 years after August 15 of the calendar year following the calendar year of death. The terms and conditions under which the extension is granted must be in accordance with a written agreement entered into by the department and the individual or individuals.

(b) An extension granted under this section terminates immediately if:

(i) the homestead property is sold or otherwise transferred by any party to the extension agreement;

(ii) all of the heirs or devisees who are parties to the extension agreement cease to occupy the property as a principal residence; or

(iii) the homestead property is moved out of the county or state.

(3) If the department has reason to believe that the homestead property is not sufficient security for the deferred taxes and interest, the department may require the individual or individuals to furnish a bond conditioned upon payment of the amount extended in accordance with the terms of the extension. The bond may not exceed an amount double the taxes with respect to which tax extension is granted.

(4) During the period of extension and until paid, the deferred taxes continue to accrue interest in the same manner and at the same rate as provided under [section 6]. No interest accrues on interest.

NEW SECTION. **Section 17. Limitations.** Nothing in [sections 1 through 20] is intended to or may be construed to:

(1) prevent the collection, by foreclosure, of property taxes that become a lien against tax-deferred property; or

(2) affect any provision of a mortgage or other instrument relating to land and requiring a person to pay property taxes.

NEW SECTION. **Section 18. Deed or contract clauses preventing application for deferral prohibited.** After [the effective date of this act], it is unlawful for any mortgage trust deed or land sale contract to contain a clause or statement prohibiting the owner from applying for the

benefits of the deferral of homestead property taxes provided in [sections 1 through 20]. Such clause or statement in a mortgage trust deed or land sale contract executed after [the effective date of this act] is void.

NEW SECTION. **Section 19. Senior property tax deferral account.** (1) There is an account in the state special revenue fund to be used by the department for the purpose of making payments of deferred property taxes to county treasurers.

(2) After paying back the appropriation from the education trust fund plus interest at 10% per year, all sums received by the department under [sections 1 through 20] as repayment of deferred property taxes must, upon receipt by the department, be credited to the account established in subsection (1) for the purpose of making payments of deferred property taxes to county treasurers.

NEW SECTION. **Section 20. Rulemaking authority.** The department may make rules necessary to effectively administer the provisions of [sections 1 through 20].

NEW SECTION. **Section 21. Appropriation -- payback.** (1) There is appropriated from the education trust fund to the account established in [section 19] up to $1 million for the purpose of making payments of deferred property taxes to county treasurers.

(2) The department pursuant to [section 19] shall

deposit repayments of deferred property taxes to the education trust fund until the amount actually spent plus interest at 10% per year is repaid to the trust fund.

NEW SECTION. **Section 22.** **Codification instruction.** [Sections 1 through 20] are intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15 apply to [sections 1 through 20].

NEW SECTION. **Section 23.** **Effective dates.** (1) [Section 20 and this section] are effective on passage and approval.

(2) [Section 21] is effective July 1, 1989.

-End-

HOUSE BILL NO. 472

INTRODUCED BY RANEY, HALLIGAN, VINCENT, ADDY, COHEN, CONNELLY, CODY, CAMPBELL, PATTERSON, SEVERSON, RAPP-SVRCEK, FARRELL, B. BROWN, HAGER, ELLISON, STRIZICH, RASMUSSEN, WALKER, SQUIRES, O'KEEFE, HARP, BISHOP, REAM, SPAETH, DARKO, RUSSELL, HARPER, D. BROWN, WYATT, DRISCOLL, KOEHNKE, HARRINGTON, PECK, O'CONNELL, ECK, JOHNSON, NISBET, MENAHAN, QUILICI, GERVAIS, KIMBERLEY, MOORE, WHALEN, BROOKE, DAVIS, HANSEN, COCCHIARELLA, MCDONOUGH, J. BROWN, BACHINI, MCCORMICK, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROPERTY TAX DEFERRAL PROGRAM FOR PERSONS 62 YEARS OF AGE OR OLDER; PROVIDING STATE REIMBURSEMENT TO COUNTIES FOR PROPERTY TAXES DEFERRED UNDER THE PROPERTY TAX DEFERRAL PROGRAM; APPROPRIATING UP TO $1 MILLION FOR STARTUP COSTS FOR THE PROPERTY TAX DEFERRAL PROGRAM; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR RULEMAKING AUTHORITY."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 20] delegates rulemaking authority to the department of revenue. It is the intent of the legislature that the rules adopted by the department prescribe the forms

and procedures to be used by eligible applicants and by counties seeking reimbursement. The forms and applications should be as easy to use as possible while maintaining the integrity of the program.

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

NEW SECTION. **Section 1.** Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Federal poverty level" means the federal poverty threshold published by the U.S. bureau of the census in its publication Characteristics of the Population Below the Poverty Level (Current Population Reports, Series P-60) and adopted annually by the department.

(3) "Homestead" means the owner-occupied, principal dwelling, either real or personal property, owned by the taxpayer and the land, not exceeding 1 acre, on which it is located. If the homestead is located in a multiunit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the land on which it is built. The percentage attributable to the unit is the value of the unit consisting of the homestead compared to the total value of the building exclusive of the common elements, if any. The value of the

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land and common elements must be divided equally among the units.

(4) "Tax-deferred property" means the property on which taxes are deferred under [sections 1 through 20].

(5) "Taxes" or "property taxes" means ad valorem taxes, an assessment for a special improvement district or a rural special improvement district, and other assessments, fees, and charges that constitute a lien against the tax-deferred property and that are required to be paid to the county treasurer.

(6) "Taxpayer" means an individual who has filed a claim for deferral under [section 2] or individuals who have jointly filed a claim for deferral under [section 2].

NEW SECTION. **Section 2. Claim for deferral of tax on homestead -- eligibility -- effect.** (1) Subject to [section 3], an individual or two or more individuals jointly may elect to defer the property taxes on their homestead by filing a claim for deferral with the county assessor between January 1 and April 15 of the first year in which deferral is claimed if:

(a) the individual is or, in the case of two or more individuals filing a claim jointly, each individual is 62 years of age or older on April 15 of the year in which the claim is filed; and

(b) the individual has or, in the case of two or more

individuals filing a claim jointly, all of the individuals together have gross household income, as defined in 15-30-171, not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed.

(2) If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under [sections 1 through 20], the guardian or conservator may act for the individual in complying with the provisions of [sections 1 through 20].

(3) If a trustee of an inter vivos trust that was created by and is revocable by an individual who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under [sections 1 through 20] owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of [sections 1 through 20].

(4) When the taxpayer elects to defer property taxes for any year, filing a claim for deferral under subsection (1) has the effect of:

(a) deferring the payment of the property taxes levied on the homestead for the taxable year beginning in the calendar year in which the claim is filed;

(b) continuing the deferral of the payment by the taxpayer of any property taxes that are deferred under [sections 1 through 20] for previous years and that have not become delinquent under [section 11]; and

(c) continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of [section 3] are met.

(5) Nothing in this section may be construed to require the spouse of an individual to file a claim jointly with the individual, even though the spouse may be eligible to claim the deferral jointly with the individual.

(6) The county assessor shall forward each claim filed under subsection (1) to the department. The department shall determine if the property is eligible for deferral.

NEW SECTION. **Section 3. Property entitled to deferral -- limits.** (1) In order to qualify for tax deferral under [sections 1 through 20], the property must meet all of the following requirements when the claim is filed and thereafter so long as the payment of taxes by the taxpayer is deferred:

(a) The property must be the homestead of the individual or individuals who file the claim for deferral, except for an individual required to be absent from the homestead by reason of health.

(b) The person claiming the deferral must, by himself or together with his spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument

of sale, or two or more persons must together own or be purchasing the fee simple estate, with rights of survivorship, under a recorded instrument of sale, and all owners must live in the homestead and apply for the deferral jointly.

(c) There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule, or regulation applicable to a mortgage, trust deed, land sale contract, or conditional sale contract for which the homestead is security.

(2) (a) Subject to the ~~limit~~ LIMITS contained in ~~subsection~~ SUBSECTIONS (b) AND (C), the amount of property tax deferred in each year may not exceed 50% of the tax due.

(b) The total amount of property taxes deferred under [sections 1 through 20] may not exceed 50% of the appraised value of the property on which the taxes are deferred.

(C) THE TOTAL COMBINED AMOUNT OF PROPERTY TAXES DEFERRED UNDER [SECTIONS 1 THROUGH 20] PLUS THE OUTSTANDING MORTGAGE ON THE PROPERTY, IF ANY, ON WHICH THE TAXES ARE DEFERRED MAY NOT EXCEED 90% OF THE APPRAISED VALUE OF THE PROPERTY ON WHICH THE TAXES ARE DEFERRED.

NEW SECTION. **Section 4. Claim forms -- contents.** A claim for deferral under [section 2] must be in writing on a form supplied by the department and must:

(1) describe the homestead;

(2) list facts establishing the eligibility for the deferral under the provisions of [sections 1 through 20], including facts that establish that the gross household income, as defined in 15-30-171, of the individual, or in the case of two or more individuals claiming the deferral jointly, the total gross household income of all of the individuals, was not greater than 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which the claim is filed;

(3) have attached any documentary proof required by the department to show that the requirements of [section 3] have been met; and

(4) be signed and dated by the claimant. The signature is considered an affidavit that the contents of the claim are true.

NEW SECTION. **Section 5.** Deferral as lien -- foreclosure. (1) (a) The department, on behalf of the state of Montana, has a lien against the tax-deferred property for the payment of the deferred taxes plus interest thereon and any fees paid to the county clerk by the department in connection with the recording, release, or satisfaction of the lien.

(b) The lien for deferred taxes attaches to the property on July 1 of the year in which the taxes were assessed.

(c) The deferred property tax lien has the same priority as other real property tax liens, except that the lien of mortgages or trust deeds that is recorded prior in time to the attachment of the lien for deferred taxes are considered prior to the lien for deferred taxes.

(2) (a) The lien may be foreclosed by the department as if it were a purchase money security interest under Title 30, chapter 9. Reasonable attorney fees at trial and on appeal and costs may be granted the department in a suit for foreclosure of the lien.

(b) If the receipts from a foreclosure, after allowing for satisfaction of a mortgage or trust deed recorded prior to the attachment of the lien for deferred taxes, are insufficient to satisfy the lien for deferred taxes, the receipts must be considered satisfaction of the lien for deferred taxes.

(3) Receipts from foreclosure proceedings must be credited in the same manner as other repayments of deferred property taxes under [section 19].

NEW SECTION. **Section 6.** Listing of tax-deferred property -- interest accrual. (1) If eligibility for deferral of homestead property is established as provided in [sections 1 through 20], the department shall notify the county assessor and the county assessor shall show on the current tax roll which property is tax-deferred property by an entry clearly designating the property as tax-deferred property.

(2) The county assessor shall send to the department as soon as the taxes are extended upon the roll the tax statement for each tax-deferred property.

(3) Interest accrues on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of 8% per annum.

(4) For property taxes deferred after [the effective date of this act], the state liens provided by [section 5] and recorded under [section 7] are for the actual amount of taxes deferred, plus interest, and advanced to the counties and not for the gross amount of taxes for which the property would be liable as shown on the tax statement for each tax-deferred property.

NEW SECTION. **Section 7. Recording liens in county -- recording to constitute notice of state lien.** (1) In each county where there is tax-deferred property, the department shall cause to be recorded in the mortgage records of the county a list of tax-deferred properties of that county. The list must contain a description of the property as entered on the assessment roll, together with the name of the owner listed thereon.

(2) The recording of the tax-deferred properties under subsection (1) is notice that the department claims a lien

against those properties in the amount of the deferred taxes plus interest, together with any fees paid to the county clerk in connection with the recording, release, or satisfaction of the lien, even though the amount of taxes, interest, or fees is not listed.

(3) The department is not required to pay any filing, indexing, or recording fees to the county in connection with the recording, release, or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made.

NEW SECTION. **Section 8. County treasurer to receive amount equivalent to deferred taxes from state.** (1) After determining the amount of deferred taxes on tax-deferred property for the tax year, the department shall pay to the county treasurer an amount equal to the deferred taxes. Payment must be made from the account established in [section 19].

(2) The department shall maintain accounts for each deferred property and shall accrue interest only on the actual amount of taxes advanced to the county.

NEW SECTION. **Section 9. Notice to taxpayer.** (1) On or before December 15 of each year, the department shall send a notice to each taxpayer who has claimed homestead deferral of property taxes for the current tax year. The notice must:

(a) inform the taxpayer that the property taxes have been deferred in the current year;

(b) inform the taxpayer that a claim must be filed annually;

(c) show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing to November 15 of the current year;

(d) inform the taxpayer that voluntary payment of the deferred taxes may be made at any time to the department; and

(e) contain other information the department considers necessary to facilitate administration of the property tax deferral program.

(2) The department shall mail the notice required under subsection (1) to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the department to be the correct address of the taxpayer.

NEW SECTION. **Section 10. Events requiring payment of deferred tax and interest.** All deferred property taxes, including accrued interest, become payable as provided in [section 11] when:

(1) the taxpayer, or if there was more than one claimant, the survivor of the taxpayers, who claimed deferment of collection of property taxes on the homestead under [section 2] dies;

(2) the property with respect to which deferment of collection of taxes is claimed is sold, a contract to sell is entered into, or some person other than the taxpayer who claimed the deferment becomes the owner of the property;

(3) the tax-deferred property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from the tax-deferred property by reason of health; or

(4) the tax-deferred property is moved out of the county or state.

NEW SECTION. **Section 11. Time for payment -- delinquencies.** (1) When any of the circumstances listed in [section 10] occurs:

(a) the deferral of taxes must continue for the assessment year in which the circumstance occurs; and

(b) the amount of deferred property taxes, including accrued interest, for all years is due and payable to the department on August 15 of the year following the calendar year in which the circumstance occurs, except as provided in [section 12], [section 16], and subsection (2) of this section.

(2) Notwithstanding the provisions of [section 16] and subsection (1)(b), when the circumstance listed in [section 10(4)] occurs, the amount of deferred taxes is due and payable 5 days before the date of removal of the property

from the state.

(3) If the amounts falling due as provided in this section are not paid on the indicated due date or as extended under [section 16], the amounts are considered delinquent as of that date and the property is subject to foreclosure as provided in [section 5].

NEW SECTION. **Section 12. Election by spouse to continue tax deferral -- extension of time to file claim.** (1) When any of the circumstances listed in [section 10(1) through (3)] occurs, the spouse who was not eligible to or did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under [section 2] if:

(a) the spouse of the taxpayer is or will be 60 years of age or older not later than 6 months from the date the circumstance occurs; and

(b) the property is the homestead of the spouse of the taxpayer and meets the requirements of [section 3(2)].

(2) A spouse who does not meet the age requirements of subsection (1)(a) but is otherwise qualified to continue the property in its tax-deferred status under subsection (1) may continue the deferral of property taxes deferred for previous years by filing a claim within the time and in the manner provided under [section 2]. If a spouse eligible for

and continuing the deferral of taxes previously deferred under this subsection becomes 62 years of age prior to April 15 of any year, the spouse may elect to continue the deferral of previous years' taxes deferred under this subsection and may elect to defer the current assessment year's taxes on the homestead by filing a claim within the time and in the manner provided under [section 2]. Thereafter, payment of the taxes levied on the homestead and deferred under this subsection and payment of taxes levied on the homestead in the current assessment year and in future years may be deferred in the manner provided in and subject to [sections 1 through 20].

(3) Notwithstanding that [section 2] requires a claim to be filed no later than April 15, if the department determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before April 15, the claim may be filed within 180 days after the notice of taxes due and payable under [section 11] is mailed or delivered by the department to the taxpayer or spouse.

NEW SECTION. **Section 13. Voluntary payment of deferred taxes and interest.** (1) All payments of deferred taxes must be made to the department.

(2) Subject to subsection (3), all or part of the deferred taxes and accrued interest may at any time be paid

to the department by:

(a) the taxpayer or the spouse of the taxpayer; or

(b) the next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer, or any person having or claiming a legal or equitable interest in the property.

(3) A person listed in subsection (2)(b) may make payments of deferred taxes and accrued interest only if no objection is made by the taxpayer within 30 days after the department deposits in the mail a notice to the taxpayer that such payment has been tendered.

(4) A payment made under this section must be applied first against accrued interest and any remainder against the deferred taxes. The payment does not affect the deferred tax status of the property. Unless otherwise provided by law, the payment does not give the person paying the taxes an interest in the property or a claim against the estate, in the absence of a valid agreement to the contrary.

(5) When the deferred taxes and accrued interest are paid in full and the property is no longer subject to tax deferral, the department shall prepare and record in the county where the property is located a satisfaction of deferred property tax lien.

NEW SECTION. **Section 14. Taxes unpaid before deferral as lien -- effect on foreclosure -- exceptions.** (1) Notwithstanding [section 17], upon compliance with [section 15], taxes not in excess of $1,000 assessed against a tax-deferred homestead for any tax year beginning on or after [the effective date of this act] that were unpaid as of July 1 of the tax year for which homestead property tax deferral was initially granted under [sections 1 through 20] and that remain unpaid remain a lien and become delinquent as otherwise provided by law but are not subject to foreclosure until August 15 of the calendar year following the calendar year in which any of the circumstances listed in [section 10] occurs.

(2) This section does not apply if:

(a) the tax-deferred homestead property is moved out of the county or state;

(b) the tax-deferred homestead property is personal property; or

(c) the owner of the tax-deferred homestead property has gross household income exceeding 125% of the federal poverty level for the calendar year immediately preceding the calendar year in which application is filed under [section 15].

(3) If the property to which subsection (1) applies has been included on a foreclosure list or if a decree of foreclosure has been entered and taxes in excess of $1,000 assessed against the property for the earliest year are paid, the property must be removed from the foreclosure list

or the decree must be vacated unless the proceeding against the property involves delinquent taxes other than those described in subsection (1).

(4) Upon removal from the foreclosure list or vacation of the decree, no penalty may be imposed. In lieu thereof, the penalty is abated or, if the penalty has been paid, upon application to the county assessor on or before July 1 of the year immediately following the year of vacation or removal, the penalty must be refunded out of the county general fund.

(5) Within 60 days after approval of an application under [section 15] with respect to any property to which this section applies, the county assessor shall make the proper entries on the tax roll and remove the property from the foreclosure list and proceeding.

(6) If a decree has been entered foreclosing liens for delinquent taxes against any property that is the subject of an application filed under [section 15] and if the delinquent taxes include only those taxes described in subsection (1) or taxes in excess of those described in subsection (1) are paid, the decree is void and the county treasurer shall make the proper entries on the tax rolls to reflect the vacation of the decree and to acknowledge the subsisting liens.

(7) Nothing in this section removes or releases

property to which this section applies from the lien of an unpaid tax thereon, but the unpaid taxes remain valid and subsisting liens as though the foreclosure proceeding had not been instituted or as though the foreclosure proceeding had not been instituted and a decree entered.

(8) Nothing in this section affects a foreclosure proceeding instituted or a decree entered to foreclose liens for delinquent taxes against properties subject to foreclosure if the delinquent taxes include taxes other than those described under subsection (1). Such foreclosure proceedings must be instituted or continued without regard to this section, and such a decree has full force and effect as if this section did not exist.

(9) Interest on taxes to which this section applies must be determined from the same dates, in the same manner, and until paid as for other property taxes remaining unpaid upon the due dates in accordance with subsection (1) and upon entry and following a decree of foreclosure.

NEW SECTION. **Section 15.** **Application to delay foreclosure -- effect of denial -- appeal.** (1) The owner of tax-deferred homestead property desiring delay in foreclosure on account of delinquent taxes, as provided in [section 14], shall make application for the delay to the county assessor prior to the date the period of redemption expires. The application must contain or be accompanied by a verified statement of gross household income, as defined in 15-30-171, of the owner for the calendar year immediately preceding the calendar year in which the application is made.

(2) Upon receipt of an application under subsection (1), the county assessor shall approve or deny the application. If the application is denied, the owner may appeal to the county tax appeal board in the county where the tax-deferred homestead property is located within 90 days after notice in writing of the denial is mailed to the owner by the county assessor. A decision of the county tax appeal board may be appealed to the district court within the time and in the manner provided under Title 15, chapter 2, part 3.

NEW SECTION. **Section 16. Extension of time for payment upon death of claimant or spouse.** (1) If the taxpayer who claimed a homestead property tax deferral dies or if a spouse who continued the deferral under [section 12] dies, the department may extend the time for payment of the deferred taxes and accrued interest with respect to the taxes becoming due and payable under [section 11] if:

(a) the homestead property becomes property of an individual or individuals:

(i) by inheritance or devise; or

(ii) if the individual or individuals are heirs or

devisees in the course of settlement of the estate;

(b) the individual or individuals commence occupancy of the property as a principal residence on or before August 15 of the calendar year following the calendar year of death; and

(c) the individual or individuals make application to the department for an extension of time for payment of the deferred taxes and interest prior to August 15 of the calendar year following the calendar year of death.

(2) (a) Subject to subsection (2)(b), an extension granted under this section may be for a period not to exceed 5 years after August 15 of the calendar year following the calendar year of death. The terms and conditions under which the extension is granted must be in accordance with a written agreement entered into by the department and the individual or individuals.

(b) An extension granted under this section terminates immediately if:

(i) the homestead property is sold or otherwise transferred by any party to the extension agreement;

(ii) all of the heirs or devisees who are parties to the extension agreement cease to occupy the property as a principal residence; or

(iii) the homestead property is moved out of the county or state.

(3) If the department has reason to believe that the homestead property is not sufficient security for the deferred taxes and interest, the department may require the individual or individuals to furnish a bond conditioned upon payment of the amount extended in accordance with the terms of the extension. The bond may not exceed an amount double the taxes with respect to which tax extension is granted.

(4) During the period of extension and until paid, the deferred taxes continue to accrue interest in the same manner and at the same rate as provided under [section 6]. No interest accrues on interest.

NEW SECTION. **Section 17. Limitations.** Nothing in [sections 1 through 20] is intended to or may be construed to:

(1) prevent the collection, by foreclosure, of property taxes that become a lien against tax-deferred property; or

(2) affect any provision of a mortgage or other instrument relating to land and requiring a person to pay property taxes.

NEW SECTION. **Section 18. Deed or contract clauses preventing application for deferral prohibited.** After [the effective date of this act], it is unlawful for any mortgage trust deed or land sale contract to contain a clause or statement prohibiting the owner from applying for the

benefits of the deferral of homestead property taxes provided in [sections 1 through 20]. Such clause or statement in a mortgage trust deed or land sale contract executed after [the effective date of this act] is void.

NEW SECTION. **Section 19. Senior property tax deferral account.** (1) There is an account in the state special revenue fund to be used by the department for the purpose of making payments of deferred property taxes to county treasurers.

(2) After paying back the appropriation from the education trust fund plus interest at ~~10%~~ 8% per year, all sums received by the department under [sections 1 through 20] as repayment of deferred property taxes must, upon receipt by the department, be credited to the account established in subsection (1) for the purpose of making payments of deferred property taxes to county treasurers.

NEW SECTION. **Section 20. Rulemaking authority.** The department may make rules necessary to effectively administer the provisions of [sections 1 through 20].

NEW SECTION. **Section 21. Appropriation -- payback.** (1) There is appropriated from the education trust fund to the account established in [section 19] up to $1 million for the purpose of making payments of deferred property taxes to county treasurers.

(2) The department pursuant to [section 19] shall

deposit repayments of deferred property taxes to the education trust fund until the amount actually spent plus interest at ~~10%~~ 8% per year is repaid to the trust fund.

NEW SECTION. **Section 22.** **Codification instruction.** [Sections 1 through 20] are intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15 apply to [sections 1 through 20].

NEW SECTION. **Section 23.** **Effective dates.** (1) [Section 20 and this section] are effective on passage and approval.

(2) [Section 21] is effective July 1, 1989.

-End-