

SENATE BILL 34

Introduced by Halligan

1/03	Introduced
1/03	Referred to Taxation
1/03	Fiscal Note Requested
1/10	Fiscal Note Received
	Died in Committee

1 SENATE BILL NO. 34
2 INTRODUCED BY HALLIGAN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROPERTY
5 TAX DEFERRAL PROGRAM FOR PERSONS 62 YEARS OF AGE OR OLDER;
6 PROVIDING STATE REIMBURSEMENT TO COUNTIES FOR PROPERTY TAXES
7 DEFERRED UNDER THE PROPERTY TAX DEFERRAL PROGRAM;
8 APPROPRIATING \$400,000 FOR STARTUP COSTS FOR THE PROPERTY
9 TAX DEFERRAL PROGRAM; GRANTING RULEMAKING AUTHORITY TO THE
10 DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE
11 DATE FOR RULEMAKING AUTHORITY."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1. Definitions.** As used in [sections 1 through
15 20], the following definitions apply:

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

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

22 (3) "Homestead" means the owner-occupied, principal
23 dwelling, either real or personal property, owned by the
24 taxpayer and the land, not exceeding 1 acre, on which it is
25 located. If the homestead is located in a multiunit

1 building, the homestead is the portion of the building
2 actually used as the principal dwelling and its percentage
3 of the value of the common elements and of the value of the
4 land on which it is built. The percentage attributable to
5 the unit is the value of the unit consisting of the
6 homestead compared to the total value of the building
7 exclusive of the common elements, if any. The value of the
8 land and common elements must be divided equally among the
9 units.

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

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

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

21 **Section 2. Claim for deferral of tax on homestead --**
22 **eligibility -- effect.** (1) Subject to [section 3], an
23 individual or two or more individuals jointly may elect to
24 defer the property taxes on their homestead by filing a
25 claim for deferral with the county assessor between January

1 1 and April 15 of the first year in which deferral is
2 claimed if:

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

7 (b) the individual has or, in the case of two or more
8 individuals filing a claim jointly, all of the individuals
9 together have gross household income, as defined in
10 15-30-171, not greater than 125% of the federal poverty
11 level for the calendar year immediately preceding the
12 calendar year in which the claim is filed.

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

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

25 (4) When the taxpayer elects to defer property taxes

1 for any year, filing a claim for deferral under subsection
2 (1) has the effect of:

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

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

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

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

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

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

25 (1) The property must be the homestead of the

1 individual or individuals who file the claim for deferral,
2 except for an individual required to be absent from the
3 homestead by reason of health.

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

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

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

20 (1) describe the homestead;

21 (2) list facts establishing the eligibility for the
22 deferral under the provisions of [sections 1 through 20],
23 including facts that establish that the gross household
24 income, as defined in 15-30-171, of the individual, or in
25 the case of two or more individuals claiming the deferral

1 jointly, the total gross household income of all of the
2 individuals, was not greater than 125% of the federal
3 poverty level for the calendar year immediately preceding
4 the calendar year in which the claim is filed;

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

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

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

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

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

25 (2) (a) The lien may be foreclosed by the department

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

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

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

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

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

24 (3) Interest accrues on the actual amount of taxes
25 advanced to the county for the tax-deferred property at the

1 rate of 6% per annum.

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

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

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

24 (3) The department is not required to pay any filing,
25 indexing, or recording fees to the county in connection with

1 the recording, release, or satisfaction of liens against
2 tax-deferred properties of that county in advance or at the
3 time entry is made.

4 **Section 8. County treasurer to receive amount**
5 **equivalent to deferred taxes from state.** (1) After
6 determining the amount of deferred taxes on tax-deferred
7 property for the tax year, the department shall pay to the
8 county treasurer an amount equal to the deferred taxes less
9 3%. Payment must be made from the account established in
10 [section 19].

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

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

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

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

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

25 (d) inform the taxpayer that voluntary payment of the

1 deferred taxes may be made at any time to the department;
2 and

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

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

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

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

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

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

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

3 **Section 11. Time for payment -- delinquencies.** (1)

4 When any of the circumstances listed in [section 10] occurs:

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

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

13 (2) Notwithstanding the provisions of [section 16] and
14 subsection (1)(b), when the circumstance listed in [section
15 10(4)] occurs, the amount of deferred taxes is due and
16 payable 5 days before the date of removal of the property
17 from the state.

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

23 **Section 12. Election by spouse to continue tax**
24 **deferral -- extension of time to file claim.** (1) When any of
25 the circumstances listed in [section 10(1) through (3)]

1 occurs, the spouse who was not eligible to or did not file a
2 claim jointly with the taxpayer may continue the property in
3 its deferred tax status by filing a claim within the time
4 and in the manner provided under [section 2] if:

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

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

10 (2) A spouse who does not meet the age requirements of
11 subsection (1)(a) but is otherwise qualified to continue the
12 property in its tax-deferred status under subsection (1) may
13 continue the deferral of property taxes deferred for
14 previous years by filing a claim within the time and in the
15 manner provided under [section 2]. If a spouse eligible for
16 and continuing the deferral of taxes previously deferred
17 under this subsection becomes 62 years of age prior to April
18 15 of any year, the spouse may elect to continue the
19 deferral of previous years' taxes deferred under this
20 subsection and may elect to defer the current assessment
21 year's taxes on the homestead by filing a claim within the
22 time and in the manner provided under [section 2].
23 Thereafter, payment of the taxes levied on the homestead and
24 deferred under this subsection and payment of taxes levied
25 on the homestead in the current assessment year and in

1 future years may be deferred in the manner provided in and
2 subject to [sections 1 through 20].

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

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

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

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

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

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

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

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

13 **Section 14. Taxes unpaid before deferral as lien --**
14 **effect on foreclosure -- exceptions.** (1) Notwithstanding
15 [section 17], upon compliance with [section 15], taxes not
16 in excess of \$1,000 assessed against a tax-deferred
17 homestead for any tax year beginning on or after [the
18 effective date of this act] that were unpaid as of July 1 of
19 the tax year for which homestead property tax deferral was
20 initially granted under [sections 1 through 20] and that
21 remain unpaid remain a lien and become delinquent as
22 otherwise provided by law but are not subject to foreclosure
23 until August 15 of the calendar year following the calendar
24 year in which any of the circumstances listed in [section
25 10] occurs.

1 (2) This section does not apply if:

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

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

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

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

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

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

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

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

21 (8) Nothing in this section affects a foreclosure
22 proceeding instituted or a decree entered to foreclose liens
23 for delinquent taxes against properties subject to
24 foreclosure if the delinquent taxes include taxes other than
25 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.

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.

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

1 5 years after August 15 of the calendar year following the
2 calendar year of death. The terms and conditions under which
3 the extension is granted must be in accordance with a
4 written agreement entered into by the department and the
5 individual or individuals.

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

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

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

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

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

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

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

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

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

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

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

22 (2) All sums received by the department under
23 [sections 1 through 20] as repayment of deferred property
24 taxes must, upon receipt by the department, be credited to
25 the account established in subsection (1) for the purpose of

1 making payments of deferred property taxes to county
2 treasurers.

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

6 **Section 21. Appropriation.** There is appropriated from
7 the state general fund to the account established in
8 [section 19] \$400,000 for the purpose of making payments of
9 deferred property taxes to county treasurers.

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

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

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

-End-