

HOUSE BILL 62

Introduced by Raney

12/04	Introduced
12/04	Referred to Taxation
12/04	First Reading
12/04	Fiscal Note Requested
12/08	Hearing
12/09	Fiscal Note Received
12/09	Fiscal Note Printed
12/10	Motion Failed to Take from Committee and Place on 2nd Reading Died in Committee

1 House BILL NO. 62
2 INTRODUCED BY Rang
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4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING A PROPOSED
5 CONSTITUTIONAL AMENDMENT ON PROPERTY TAX ADMINISTRATION THAT
6 WOULD ALLOW THE VALUATION OF RESIDENTIAL PROPERTY TO BE
7 BASED UPON ACQUISITION COST; PROVIDING THAT THE ASSESSED
8 VALUE OF CLASS FOUR PROPERTY IS BASED UPON THE ACQUISITION
9 COST OF THE PROPERTY; PROVIDING THAT THE ACQUISITION COST
10 WILL BE CHANGED WHEN THE PROPERTY IS PURCHASED OR NEWLY
11 CONSTRUCTED OR WHEN ITS OWNERSHIP CHANGES; PROVIDING CERTAIN
12 EXCLUSIONS RELATING TO CHANGE IN OWNERSHIP; ALLOWING A
13 REDUCTION IN THE ACQUISITION COST IF SUBSTANTIATED BY AN
14 INDEPENDENT APPRAISAL PROVIDED BY THE PROPERTY OWNER;
15 PROVIDING THAT CONSTRUCTION FOR DAMAGE REPAIR OR
16 REPLACEMENT, SOLAR ENERGY SYSTEMS, RESIDENTIAL HANDICAPPED
17 ACCESS, AND FIRE SAFETY DO NOT AFFECT THE ACQUISITION COST
18 OF THE PROPERTY; PROVIDING ADMINISTRATIVE CHANGES TO
19 IMPLEMENT THE SYSTEM OF VALUING CLASS FOUR PROPERTY BY
20 ACQUISITION COST; AMENDING SECTIONS 15-1-201, 15-1-402,
21 15-6-134, 15-7-101, 15-7-102, 15-7-103, 15-7-112, 15-7-201,
22 15-7-202, 15-7-303, 15-7-305, 15-7-307, 15-8-111, 15-8-112,
23 15-10-412, 15-15-101, 15-15-103, AND 77-1-208, MCA;
24 REPEALING SECTIONS 15-7-111, 15-7-113, 15-7-114, 15-7-401,
25 15-7-402, AND 15-7-403, MCA; AND PROVIDING A CONTINGENT

1 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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STATEMENT OF INTENT

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A statement of intent is required for this bill because the bill gives the department of revenue authority to adopt administrative rules to administer the provisions of this bill. The legislature intends that the department of revenue adopt rules to prescribe forms and procedures to implement this bill and adopt any other rule necessary for the proper administration of the bill.

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

NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 13], the following definitions apply:

(1) "Arm's-length transaction" or "arm's-length sale" means a sale between a willing buyer and a willing seller who are not related either personally or through other business dealings, neither being under any compulsion to buy or sell and both having a reasonable knowledge of relevant facts.

(2) "Change in ownership" means a transfer of a present interest in real property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. The term does not include a purchase.

(3) "Department" means the department of revenue created in 2-15-1301.

(4) "Newly constructed" and "new construction" mean:

(a) an addition to real property, whether land or improvements, including fixtures;

(b) an alteration of land or any improvement, including fixtures; or

(c) any rehabilitation, renovation, or modernization of an improvement or fixture.

(5) "Property" or "real property" means all improvements, including trailers or mobile homes used as a residence, and appurtenant land not exceeding 5 acres, occupied as a residence at least 6 months a year by the owner or a tenant or lessee of the owner. The term does not include transient lodging facilities or other accommodations rented for periods of less than 30 days.

(6) "Purchase" or "purchased" means an arm's-length sale or a transfer for consideration.

NEW SECTION. Section 2. Real property -- determination of assessed value. (1) The assessed value of property is the acquisition cost of the property, adjusted for inflation. The acquisition cost is:

(a) the January 1, 1993, assessed value of the property;

(b) the value of the property if after January 1, 1993,

the property is purchased or newly constructed or its ownership has changed; or

(c) the market value of the property based upon an independent appraisal if that value is less than the acquisition cost of the property.

(2) (a) Each year, the base acquisition cost of the property must be adjusted. The base acquisition cost for assessment purposes is the lesser of the prior year's base acquisition cost increased or decreased based upon an inflationary rate for Montana that reflects Montana changes in consumer prices. The inflationary rate may not exceed 2% per year.

(b) The inflation rate used for annual adjustments of the base acquisition cost is the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, adjusted to reflect prices in Montana.

(c) The department shall by rule adopt criteria for adjusting the national index to reflect prices in Montana and shall adopt an inflation rate by rule.

(3) The value of property that is purchased is the purchase price paid for the property in an arm's-length sale. The value of newly constructed property is the appraised market value. The value of property whose ownership has changed without a purchase is the appraised

1 market value.

2 (4) If the property owner believes that the value of
3 the property is less than the acquisition cost, the property
4 owner may hire an independent appraiser to determine the
5 market value of the property. The appraiser must be approved
6 by the department to perform the type of appraisal necessary
7 and shall conduct the appraisal according to criteria
8 established by the department by rule. Upon approval of the
9 appraisal by the department, the market value shown by the
10 appraisal becomes the acquisition cost of the property for
11 the succeeding year. If the department refuses to approve
12 the appraised value of the property, the taxpayer may
13 contest the department's decision as provided in 15-7-102.

14 NEW SECTION. Section 3. Change in ownership --
15 inclusions -- presumption. (1) A change in ownership
16 includes but is not limited to the following:

17 (a) the creation, transfer, or termination of any joint
18 tenancy or tenancy in common interest, except as provided in
19 [sections 4, 5, and 7];

20 (b) a vesting of the right to possession or enjoyment
21 of a remainder or reversionary interest that occurs upon the
22 termination of a life estate or other similar precedent
23 property interest, except as provided in [sections 4(1)(d)
24 and 5];

25 (c) when the trust is irrevocable, an interest in the

1 property that vests in persons other than the trustor or,
2 pursuant to [section 5], the trustor's spouse;

3 (d) the transfer of any interest in the property
4 between a corporation, partnership, or other legal entity
5 and a shareholder, partner, or any other person;

6 (e) the creation, renewal, sublease, or assignment of a
7 taxable possessory interest in tax-exempt real property for
8 any term; and

9 (f) (i) the creation of a leasehold interest in real
10 property for a term of 35 years or more, including renewal
11 options; the termination of a leasehold interest in real
12 property that had an original term of 35 years or more,
13 including renewal options; and any transfer of a leasehold
14 interest having a remaining term of 35 years or more,
15 including renewal options;

16 (ii) a transfer of a lessor's interest in taxable real
17 property subject to a lease with a remaining term, including
18 renewal options, of less than 35 years.

19 (2) For purposes of subsections (1)(f)(i) and
20 (1)(f)(ii), only the portion of property subject to the
21 lease or transfer is considered to have undergone a change
22 of ownership.

23 (3) It is conclusively presumed that residences, other
24 than mobile homes located on rented or leased land and
25 subject to taxation as personal property pursuant to

15-24-202, that are on leased land have a renewal option of at least 35 years on the lease of the land, whether or not a renewal option exists in a contract or agreement.

NEW SECTION. Section 4. Change in ownership -- exclusions. (1) A change in ownership does not include:

(a) a transfer between co-owners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in the property, such as a tenancy in common;

(b) a transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each piece of real property transferred remain the same after the transfer;

(c) any transfer for the purpose of perfecting title to the property;

(d) the creation, assignment, termination, or reconveyance of a security interest or the substitution of a trustee under a security instrument;

(e) a transfer by the trustor, by the trustor's spouse, or by both, into a trust if:

(i) the transferor is the present beneficiary of the

trust;

(ii) the trust is revocable;

(iii) any transfer by a trustee of a trust described in subsection (1)(e)(i) or (1)(e)(ii) is back to the trustor; or

(iv) any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years' duration;

(f) any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of an estate for years or estate for life constitutes a change in ownership except as provided in [section 5(4)].

(g) any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of 35 years or more, other than mobile homes located on rented or leased land subject to taxation as personal property pursuant to 15-24-202. It is conclusively presumed that residences, other than mobile homes located on rented or leased land and subject to taxation as personal property pursuant to 15-24-202, that are on leased land have a renewal option of at least 35 years on the lease of the land, whether or not a renewal option exists in a contract or agreement.

(h) any purchase, redemption, or other transfer of the

1 shares or units of participation of a group trust, pooled
2 fund, common trust fund, or other collective investment fund
3 established by a financial institution;

4 (i) any transfer of stock or membership certificate in
5 a housing cooperative:

6 (i) (A) that was financed under one mortgage, if the
7 mortgage was insured under section 213, 221(d)(3),
8 221(d)(4), or 236 of the National Housing Act, as amended
9 (12 U.S.C.A. 1715e, 1715 l, and 1715z-1);

10 (B) that was financed or assisted pursuant to section
11 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C.A.
12 1484, 1485, or 1486) or section 202 of the Housing Act of
13 1959 (12 U.S.C.A. 1701q); or

14 (C) that was financed by the Montana board of housing
15 pursuant to Title 90, chapter 6;

16 (ii) whose regulatory and occupancy agreements were
17 approved by the governmental lender or insurer; and

18 (iii) when the transfer is to the housing cooperative or
19 to a person or family qualifying for purchase by reason of
20 limited income. Any subsequent transfer from the housing
21 cooperative to a person or family not eligible for state or
22 federal assistance in reduction of monthly carrying charges
23 or not eligible for interest reduction by reason of the
24 income level of that person or family constitutes a change
25 of ownership.

1 (j) any transfer, which would otherwise be a change in
2 ownership, between or among the same parties for the purpose
3 of correcting or reforming a deed to express the true
4 intentions of the parties as long as the original
5 relationship between the grantor and grantee is not changed;

6 (k) any intrafamily transfer of an eligible dwelling
7 unit, as described in subsection (2), from a parent or legal
8 guardian to a child or ward. The child or ward may be an
9 adult or minor.

10 (2) To be eligible for transfer under subsection
11 (1)(k), the dwelling unit must have been the principal place
12 of residence of the child or ward prior to the transfer and
13 remain the principal place of residence of the child or ward
14 after the transfer.

15 **NEW SECTION. Section 5. Interspousal transfer -- not**
16 **change in ownership.** A change of ownership does not include
17 an interspousal transfer. As used in this section, an
18 interspousal transfer includes but is not limited to:

19 (1) transfers:

20 (a) to a trustee for the beneficial use of a spouse;

21 (b) to the surviving spouse of a deceased transferor;

22 or

23 (c) by a trustee of the trust to the spouse of the
24 trustor;

25 (2) transfers to a surviving spouse that take effect

upon the death of a spouse;

(3) transfers to a spouse or former spouse in connection with a property settlement agreement, decree of dissolution of a marriage, or legal separation;

(4) the creation, transfer, or termination, solely between spouses, of any co-owner's interest; or

(5) the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement, decree of dissolution of a marriage, or legal separation.

NEW SECTION. Section 6. Corporate and other legal entity ownership. (1) Except as provided in subsections (3) and (4), the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, does not constitute a transfer of real property of the legal entity.

(2) (a) A corporate reorganization is not a change of ownership if it is a reorganization:

(i) in which all of the corporations involved are members of an affiliated group;

(ii) that qualifies as a reorganization under section 368 of the Internal Revenue Code; and

(iii) is a nontaxable event under Montana law.

(b) A transfer of real property among members of an

affiliated group is not a change of ownership.

(c) For the purposes of this subsection (2), an "affiliated group" is two or more corporations connected through stock ownership with a common parent organization if:

(i) all of the voting stock, exclusive of any share owned by directors, of each of the corporations except the parent corporation is owned by one or more of the other corporations; and

(ii) the common parent corporation directly owns all of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(3) When a corporation, partnership, or other legal entity or any other person obtains control in a corporation or obtains a majority ownership interest in a partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interest in the other legal entities, the purchase or transfer of the stock or other interest is a change of ownership of the property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

(4) If property is transferred to a legal entity in a transaction excluded from change in ownership under [section 4(1)(b)], then the persons holding ownership interests in the legal entity immediately after the transfer are

considered the original co-owners. Whenever shares or other ownership interest representing cumulatively more than 50% of the total interest in the entity is transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property owned by the legal entity has occurred and the property that was previously excluded from change in ownership under [section 4(1)(b)] must be appraised.

(5) The department shall include a question on returns for partnerships, banks, and corporations (except tax-exempt organizations) to determine whether the corporation owns real property in Montana and, if so, whether cumulatively more than 50% of the voting stock or more than 50% of the total interest in both partnership capital and partnership profits has been transferred by the corporation or partnership or has been acquired by another legal entity or person during the year.

NEW SECTION. Section 7. Joint tenancy property -- change in ownership. (1) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in [sections 4 and 5] and this section. Upon a change in ownership of a joint tenancy interest, only the interest or portion that is transferred from one owner to another owner must be appraised.

(2) (a) There is no change in ownership upon the

creation or transfer of a joint tenancy interest if the transferor or transferors, after the creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy, the transferor or transferors are considered the original transferor or transferors for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors are also considered original transferors within the meaning of this section.

(b) Upon the termination of an interest in any joint tenancy described in subsection (2)(a), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy must be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there may not be an appraisal. Upon the termination of the interest of the last-surviving original transferor, there must be an appraisal of the interest then transferred and all other interest in the properties that were held by original transferors and that were previously excluded from appraisal pursuant to this section.

(c) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subsection (2)(a), there may not be an appraisal if the entire interest is transferred either to an original

transferor or to all remaining joint tenants.

(3) For the purposes of this section, for joint tenancies created before January 1, 1995, it is rebuttably presumed that each joint tenant holding an interest in the property as of January 1, 1995, is considered an original transferor. There is no presumption for joint tenancies created on or after January 1, 1995.

NEW SECTION. Section 8. Partial interests -- change of ownership -- application of tax increase. (1) Except for a joint tenancy interest described in [section 4(1)(b)], when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred must be appraised. A purchase or change in ownership of an interest with a market value of less than 5% of the value of the total property may not be appraised if the market value of the interest transferred is less than \$10,000, but transfers during any 1 assessment year must be cumulated for the purpose of determining the percentage of interest and value transferred.

(2) If a unit or lot within a cooperative housing corporation, condominium, planned unit development, shopping center, industrial park, or other residential or land subdivision complex with common areas or facilities changes ownership, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of the

unit or lot must be appraised as provided in 15-8-111. The increase in property taxes resulting from the appraisal must be applied by the owner of the property only to the tenant-shareholder, lessee, or occupant of the individual unit or lot and may not be prorated among all the other units or lots of the property.

NEW SECTION. Section 9. Eminent domain and similar proceedings. The acquisition of property as a replacement for comparable property is not a change in ownership if the person acquiring the property has been displaced from property by eminent domain proceedings, acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation.

NEW SECTION. Section 10. Disasters -- transfer of acquisition costs. The acquisition cost of property that is substantially damaged or destroyed by a disaster, as declared by the governor, may be transferred to comparable property within the same county.

NEW SECTION. Section 11. New construction -- exclusions. (1) If real property has been damaged or destroyed by misfortune or calamity, timely reconstruction of the property or a portion of the property is not new construction if the property after reconstruction is substantially equivalent to the property prior to the damage or destruction. Reconstruction that is not substantially

1 equivalent to the damaged or destroyed property is
 2 considered to be new construction, and only the portion that
 3 exceeds substantially equivalent reconstruction must be
 4 reappraised.

5 (2) The construction or addition of any active solar
 6 energy system is not new construction. Active solar energy
 7 systems that are excluded from new construction are systems
 8 that use solar devices thermally isolated from living space
 9 or other areas where the energy is used and that provide for
 10 collection, storage, or distribution of solar energy. To
 11 qualify for the exclusion, the solar energy system must be
 12 used for:

13 (a) domestic, recreational, therapeutic, or service hot
 14 water heating;

15 (b) space conditioning;

16 (c) production of electricity;

17 (d) process heat; or

18 (e) solar mechanical energy.

19 (3) The construction or installation of a fire
 20 sprinkler system or other fire extinguishing system, a fire
 21 detection system, or a fire-related egress improvement is
 22 not new construction.

23 (4) The construction, installation, or modification of
 24 any component of a residential improvement for the purpose
 25 of making the dwelling more accessible to severely disabled

1 persons is not new construction.

2 NEW SECTION. **Section 12. Appraisal by department --**
 3 **change in ownership and new construction -- disputed**
 4 **purchase price.** (1) Whenever a change in ownership or new
 5 construction not excluded under [section 11] occurs, the
 6 department shall appraise the property at the full market
 7 value of the property effective January 1 of the next year.

8 (2) Upon the purchase of property, the department may
 9 appraise the property and establish an acquisition cost for
 10 the property if:

11 (a) the department believes that the purchase price of
 12 a sale of property was not the result of an arm's-length
 13 transaction between the buyer and the seller;

14 (b) the purchase price is not reported on the realty
 15 transfer certificate; or

16 (c) the purchase price as reported appears to be
 17 erroneous or incomplete or the department believes that the
 18 purchase price in any other manner does not represent the
 19 market value of the property.

20 (3) If a purchase price is not reported or if the
 21 assessed value upon appraisal by the department is more than
 22 20% greater than the reported purchase price, the department
 23 shall charge the taxpayer for the cost of the appraisal. The
 24 taxpayer may contest the department's valuation of the
 25 property as provided in 15-7-102.

NEW SECTION. Section 13. Rulemaking authority. The department may adopt rules to implement [sections 1 through 13].

Section 14. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1) (a) The department of revenue ~~shall--have~~ has and shall exercise general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapter 70, and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property ~~be~~ are made relatively just and equal at true value or that other methods of valuation are applied to applicable classes of property in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department of revenue shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules specifying the methodology to be used in conducting sales assessment ratio studies and in determining the value-weighted mean sales assessment ratio for all commercial and industrial

real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and other information as may be needful and helpful in the work of the department in a form prescribed by the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered needful or helpful."

Section 15. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, ~~which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.~~

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund

to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and

1 finally determined in favor of the department of revenue,
 2 county, municipality, or treasurer of the county or the
 3 municipality, the amount of the protested portions of the
 4 property tax or fee must be taken from the protest fund and
 5 deposited to the credit of the fund or funds to which the
 6 property tax belongs, less a pro rata deduction for the
 7 costs of administration of the protest fund and related
 8 expenses charged the local government units.

9 (b) If the action is finally determined adversely to
 10 the department of revenue, a county, a municipality, or the
 11 treasurer of a county or a municipality, then the treasurer
 12 shall, upon receiving a certified copy of the final judgment
 13 in the action from the state tax appeal board or from the
 14 district or supreme court, as appropriate, if the final
 15 action of the state tax appeal board is appealed in the time
 16 prescribed, refund to the person in whose favor the judgment
 17 is rendered the amount of the protested portions of the
 18 property tax or fee deposited in the protest fund, and not
 19 released pursuant to subsection (5), as the person holding
 20 the judgment is entitled to recover, together with interest
 21 from the date of payment under protest, at the greater of:

22 (i) the rate of interest generated from the pooled
 23 investment fund provided for in 17-6-203 for the applicable
 24 period; or

25 (ii) 6% a year.

1 (c) If the amount retained in the protest fund is
 2 insufficient to pay all sums due the taxpayer, the treasurer
 3 shall apply the available amount first to tax repayment,
 4 then interest owed, and lastly to costs.

5 (d) If the protest action is decided adversely to a
 6 taxing jurisdiction and the amount retained in the protest
 7 fund is insufficient to refund the tax payments and costs to
 8 which the taxpayer is entitled and for which local
 9 government units are responsible, the treasurer shall bill
 10 and the taxing jurisdiction shall refund to the treasurer
 11 that portion of the taxpayer refund, including tax payments
 12 and costs, for which the taxing jurisdiction is proratably
 13 responsible.

14 (e) In satisfying the requirements of subsection
 15 (6)(d), the taxing jurisdiction is allowed not more than 1
 16 year from the beginning of the fiscal year following a final
 17 resolution of the protest. The taxpayer is entitled to
 18 interest on the unpaid balance at the greater of the rates
 19 referred to in subsections (6)(b)(i) and (6)(b)(ii) from the
 20 date of payment under protest until the date of final
 21 resolution of the protest and at the combined rate of the
 22 federal reserve discount rate quoted from the federal
 23 reserve bank in New York, New York, on the date of final
 24 resolution, plus four percentage points, from the date of
 25 final resolution of the protest until refund is made.

1 (7) A taxing jurisdiction may satisfy the requirements
2 of this section by use of funds from one or more of the
3 following sources:

4 (a) imposition of a property tax to be collected by a
5 special tax protest refund levy;

6 (b) the general fund, except that amount generated by
7 the all-purpose mill levy, or any other funds legally
8 available to the governing body; and

9 (c) proceeds from the sale of bonds issued by a county,
10 city, or school district for the purpose of deriving revenue
11 for the repayment of tax protests lost by the taxing
12 jurisdiction. The governing body of a county, city, or
13 school district is authorized to issue the bonds pursuant to
14 procedures established by law. The bonds may be issued
15 without being submitted to an election. Property taxes may
16 be levied to amortize the bonds."

17 **Section 16.** Section 15-6-134, MCA, is amended to read:

18 "15-6-134. Class four property -- description --
19 taxable percentage. (1) Class four property includes:

20 (a) all land except that specifically included in
21 another class;

22 (b) all improvements, including trailers or mobile
23 homes used as a residence, except those specifically
24 included in another class;

25 (c) the first \$80,000 or less of the market value of

1 any improvement on real property, including trailers or
2 mobile homes, and appurtenant land not exceeding 5 acres
3 owned or under contract for deed and actually occupied for
4 at least 10 months a year as the primary residential
5 dwelling of any person whose total income from all sources,
6 including net business income and otherwise tax-exempt
7 income of all types but not including social security income
8 paid directly to a nursing home, is not more than \$10,000
9 for a single person or \$12,000 for a married couple or a
10 head of household, as adjusted according to subsection
11 (2)(b)(ii). For the purposes of this subsection (c), net
12 business income is gross income less ordinary operating
13 expenses but before deducting depreciation or depletion
14 allowance, or both.

15 (d) all golf courses, including land and improvements
16 actually and necessarily used for that purpose, that consist
17 of at least 9 holes and not less than 3,000 lineal yards;
18 and

19 (e) all improvements on land that is eligible for
20 valuation, assessment, and taxation as agricultural land
21 under 15-7-202(2), including 1 acre of real property beneath
22 the agricultural improvements. The 1 acre must be valued at
23 market value.

24 (2) Class four property is taxed as follows:

25 (a) Except as provided in 15-24-1402 or 15-24-1501,

1 property described in subsections (1)(a), (1)(b), and (1)(e)
2 is taxed at 3.86% of its market value.

3 (b) (i) Property described in subsection (1)(c) is
4 taxed at 3.86% of its market value multiplied by a
5 percentage figure based on income and determined from the
6 following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$ 0 - \$ 1,000	\$ 0 - \$ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

20 (ii) The income levels contained in the table in
21 subsection (2)(b)(i) must be adjusted for inflation annually
22 by the department of revenue. The adjustment to the income
23 levels is determined by:

24 (A) multiplying the appropriate dollar amount from the
25 table in subsection (2)(b)(i) by the ratio of the PCE for

1 the second quarter of the year prior to the year of
2 application to the PCE for the second quarter of 1986; and
3 (B) rounding the product thus obtained to the nearest
4 whole dollar amount.

5 (iii) "PCE" means the implicit price deflator for
6 personal consumption expenditures as published quarterly in
7 the Survey of Current Business by the bureau of economic
8 analysis of the U.S. department of commerce.

9 (c) Property described in subsection (1)(d) is taxed at
10 one-half the taxable percentage rate established in
11 subsection (2)(a).

12 ~~(3) After July 1, 1986, an adjustment may not be made~~
13 ~~by the department to the taxable percentage rate for class~~
14 ~~four property until a revaluation has been made as provided~~
15 ~~in 15-7-111.~~

16 ~~(4)~~ (3) Within the meaning of comparable property as
17 defined in 15-1-101, property assessed as commercial
18 property is comparable only to other property assessed as
19 commercial property, and property assessed as other than
20 commercial property is comparable only to other property
21 assessed as other than commercial property."

22 **Section 17.** Section 15-7-101, MCA, is amended to read:

23 "15-7-101. Classification and appraisal -- duties of
24 the department of revenue. (1) It is the duty of the
25 department of revenue to accomplish the following:

1 (a) the classification of all taxable lands;
 2 (b) the appraisal, when required, of ~~all~~ taxable city
 3 and town lots;
 4 (c) the appraisal, when required, of ~~all~~ taxable rural
 5 and urban improvements.
 6 (2) A record ~~thereof~~ of the classification and
 7 appraisal must be kept upon ~~such~~ those maps, plats, and
 8 forms and entered in ~~such~~ books of record ~~as may be~~ that are
 9 prescribed by the department. ~~Such~~ The maps, plats, forms,
 10 and books of record ~~shall be~~ are official records of the
 11 state. A certified copy of ~~all such~~ requested records ~~as may~~
 12 ~~be desired shall~~ must be furnished to the department.
 13 (3) It ~~shall be~~ is the duty of the department to
 14 maintain and keep current the classification of all taxable
 15 lands and ~~appraisal~~ the assessed value of city and town lots
 16 and rural and urban improvements, as provided for ~~herein~~ in
 17 this title."

18 **Section 18.** Section 15-7-102, MCA, is amended to read:

19 "15-7-102. Notice of classification and appraisal to
 20 owners -- appeals. (1) The department of revenue shall,
 21 through its agent as specified in subsection (2), mail to
 22 each owner or purchaser under contract for deed a notice of
 23 the classification of the land owned or being purchased and
 24 the appraisal of the improvements on the land only if one or
 25 more of the following changes pertaining to the land or

1 improvements have been made since the last notice:
 2 (a) change in ownership;
 3 (b) change in classification;
 4 (c) change in valuation, including the approval or
 5 denial of a change in valuation based on an independent
 6 appraisal under [section 2]; or
 7 (d) addition or subtraction of personal property
 8 affixed to the land.
 9 (2) (a) The county assessor shall assign each
 10 assessment to the correct owner or purchaser under contract
 11 for deed and mail the notice of classification and appraisal
 12 on a standardized form, adopted by the department,
 13 containing sufficient information in a comprehensible manner
 14 designed to fully inform the taxpayer as to the
 15 classification and appraisal of the property and of changes
 16 over the prior tax year.
 17 (b) The notice must advise the taxpayer that in order
 18 to be eligible for a refund of taxes from an appeal of the
 19 classification or appraisal, the taxpayer is required to pay
 20 the taxes under protest as provided in 15-1-402.
 21 (3) If the owner of any land and improvements is
 22 dissatisfied with the appraisal as it reflects the market
 23 value of the property as determined by the department, with
 24 the denial of a reduction in value based upon an independent
 25 appraisal, or with the classification of the land or

1 improvements, the owner may request an assessment review by
 2 submitting an objection in writing to the department, on
 3 forms provided by the department for that purpose, within 15
 4 days after receiving the notice of classification and
 5 appraisal from the department. The review must be conducted
 6 informally and is not subject to the contested case
 7 procedures of the Montana Administrative Procedure Act. As a
 8 part of the review, the department may consider ~~the--actual~~
 9 ~~selling-price-of-the-property~~; independent appraisals of the
 10 property; and other relevant information presented by the
 11 taxpayer in support of the taxpayer's opinion as to the
 12 market value of the property. The department shall give
 13 reasonable notice to the taxpayer of the time and place of
 14 the review. After the review, the department shall determine
 15 the true and correct appraisal and classification of the
 16 land or improvements and notify the taxpayer of its
 17 determination. In the notification, the department shall
 18 state its reasons for revising the classification or
 19 appraisal. When the proper appraisal and classification have
 20 been determined, the land must be classified and the
 21 improvements appraised in the manner ordered by the
 22 department.

23 (4) Whether a review as provided in subsection (3) is
 24 held or not, the department or its agent may not adjust an
 25 appraisal or classification upon taxpayer's objection

1 unless:

2 (a) the taxpayer has submitted an objection in writing;
 3 and

4 (b) the department or its agent has stated its reason
 5 in writing for making the adjustment.

6 (5) A taxpayer's written objection to a classification,
 7 refusal to lower a valuation, or appraisal and the
 8 department's notification to the taxpayer of its
 9 determination and the reason for that determination are
 10 public records. The department shall make the records
 11 available for inspection during regular office hours.

12 (6) If any property owner feels aggrieved by the
 13 classification or appraisal made by the department after the
 14 review provided for in subsection (3), the property owner
 15 has the right to first appeal to the county tax appeal board
 16 and then to the state tax appeal board, whose findings are
 17 final subject to the right of review in the courts. The
 18 appeal to the county tax appeal board must be filed within
 19 15 days after notice of the department's determination is
 20 mailed to the taxpayer. A county tax appeal board or the
 21 state tax appeal board may consider the actual selling price
 22 of the property, independent appraisals of the property, and
 23 other relevant information presented by the taxpayer as
 24 evidence of the market value of the property. If the county
 25 tax appeal board or the state tax appeal board determines

that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 19. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal -- ~~general--and~~ uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a ~~general--and--uniform~~ method of classifying lands in the state for the purpose of securing an equitable and-uniform-basis-of assessment of-said within each class of lands for taxation purposes;

(b) for a ~~general-and-uniform~~ method of appraising city and town lots;

(c) for a ~~general--and--uniform~~ method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands ~~shall~~ must be classified according to their use or uses and graded within each class according to soil and productive capacity. In ~~such~~ the classification work, use ~~shall~~ must be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections,

fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

~~(5)--in--any--periodic--revaluation--of--taxable--property--completed--under--the--provisions--of--15-7--111--after--January--17--1986,--all--property--classified--in--15-6-134--must--be--appraised--on--its--market--value--in--the--same--year. The--department--shall--publish--a--rule--specifying--the--year--used--in--the--appraisal.~~

~~(6)(5)~~ All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. ~~in--no--event~~ may-the The sewage disposal or domestic water supply systems may not be included twice by including them in the valuation and assessing them separately."

Section 20. Section 15-7-112, MCA, is amended to read:

"15-7-112. Equalization of valuations. The same method of appraisal and assessment ~~shall~~ must be used in each county of the state to the end that comparable property ~~that~~ is assessed by market value with similar true market values and subject to taxation in Montana ~~shall~~ must have

substantially equal taxable values ~~at--the--end--of--each~~
~~cyclical-revaluation-program-hereinbefore-provided."~~

Section 21. Section 15-7-201, MCA, is amended to read:

"15-7-201. (Temporary -- applicable to 1986 land valuation schedules) Legislative intent -- value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use. Within each class, land must be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986, provided that the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs must be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value that the land would have if it were not irrigated.

(3) Capital costs, such as improved water distribution,

fertilizer, and land shaping that increase productivity, may not be used in determining assessed values.

15-7-201. (Applicable to 1994 and later land valuation schedules) Legislative intent -- value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect on January 1, 1994, and thereafter, ~~on the--effective--date--when--each--revaluation~~
~~cycle--takes--effect--pursuant--to--15-7-111~~ January 1 at 3-year intervals, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of

1 agricultural land in each land use and production category;

2 (b) I is the per-acre net income of agricultural land
3 in each land use and production category and is to be
4 determined as provided in subsection (5); and

5 (c) R is the capitalization rate and is equal to 6.4%.
6 This capitalization rate must remain in effect until new
7 agricultural land valuation schedules are computed as
8 required by law.

9 (5) (a) Net income must be determined separately in
10 each land use based on production categories.

11 (b) Net income must be based on commodity price data,
12 grazing fees, crop share arrangements, and water cost data
13 for the base period.

14 (i) Commodity price data and grazing fees for the base
15 period must be obtained from the Montana Agricultural
16 Statistics and from the Montana crop and livestock reporting
17 service.

18 (ii) Crop share arrangements are based on the rental
19 value of the land and average landowner costs.

20 (iii) Allowable water costs consist only of the per-acre
21 labor costs and energy costs of irrigation.

22 (A) Labor costs are zero for pivot sprinkler irrigation
23 systems; \$4.50 an acre for tow lines, side roll, and lateral
24 sprinkler irrigation systems; and \$9 an acre for hand-moved
25 and flood irrigation systems.

1 (B) Energy costs must be based on per-acre energy costs
2 incurred in 1992. By July 1, 1993, an owner of irrigated
3 land shall provide the department, on a form prescribed by
4 the department, with energy costs incurred in 1992. In the
5 event that no energy costs were incurred in 1992, the owner
6 of irrigated land shall provide the department with energy
7 costs from the most recent year available. The department
8 shall adjust the most recent year's energy costs to reflect
9 costs in 1992.

10 (c) The base crop for valuation of irrigated land is
11 alfalfa hay, adjusted to 80% of sales price, and the base
12 crop for valuation of nonirrigated land is wheat. The base
13 unit for valuation of grazing lands is the average grazing
14 fee for a 1,000-pound animal.

15 (d) The base period used to determine net income must
16 be the most recent 7 years for which data is available prior
17 to the date the revaluation cycle ends. Commodity price data
18 and grazing fees referred to in subsection (5)(b) must be
19 averaged for the 7-year period, but the average must exclude
20 the lowest and highest commodity prices or grazing fees in
21 the period.

22 (6) The department shall compile data and develop
23 valuation manuals adopted by rule to implement the valuation
24 method established by subsections (4) and (5).

25 (7) The governor shall appoint an advisory committee of

persons knowledgeable in agriculture and agricultural economics to compile and review the data required by subsections (4) and (5). The advisory committee shall include one member of the Montana state university, college of agriculture, staff. The advisory committee shall recommend agricultural land valuation schedules to the department. With respect to irrigated land, the value of irrigated land may not be below the value that the land would have if it were not irrigated."

Section 22. Section 15-7-202, MCA, is amended to read:

"15-7-202. (Temporary) Eligibility of land for valuation as agricultural. (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use ~~shall--be~~ are eligible for valuation, assessment, and taxation as herein provided in this section each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in

annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) ~~shall~~ may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise ~~shall~~ may not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as

1 agricultural land in any year, it ~~shall~~ must continue to be
2 ~~so~~ valued, assessed, and taxed as agricultural land until
3 the department reclassifies the property. ~~A-reclassification~~
4 ~~does-not-mean-revaluation-pursuant-to-15-7-111-~~

5 (7) For the purposes of this part, growing timber is
6 not an agricultural use.

7 (8) Subject to the provisions of subsections (2)(a) and
8 (2)(b), property upon which sod, ornamental, nursery, or
9 horticultural crops are raised, grown, or produced must
10 consist of at least 10 acres before the property is eligible
11 to be classified as agricultural land. Improvements devoted
12 to crop production described in this subsection may not be
13 included in class eleven property.

14 15-7-202. (Effective July 1, 1994) Eligibility of land
15 for valuation as agricultural. (1) (a) Contiguous parcels of
16 land totaling 160 acres or more under one ownership are
17 eligible for valuation, assessment, and taxation as
18 agricultural land each year that none of the parcels is
19 devoted to a residential, commercial, or industrial use.

20 (b) (i) Contiguous parcels of land of 20 acres or more
21 but less than 160 acres under one ownership are eligible for
22 valuation, assessment, and taxation as agricultural land if
23 the land is used primarily for raising and marketing, as
24 defined in subsection (1)(c), products that meet the
25 definition of agricultural in 15-1-101. A parcel of land is

1 presumed to be used primarily for raising agricultural
2 products if the owner or the owner's immediate family
3 members, agent, employee, or lessee markets not less than
4 \$1,500 in annual gross income from the raising of
5 agricultural products produced by the land. The owner of
6 land that is not presumed to be agricultural land shall
7 verify to the department that the land is used primarily for
8 raising and marketing agricultural products.

9 (ii) Noncontiguous parcels of land that meet the income
10 requirement of subsection (1)(b)(i) are eligible for
11 valuation, assessment, and taxation as agricultural land
12 under subsection (1)(b)(i) if:

13 (A) the land is an integral part of a bona fide
14 agricultural operation undertaken by the persons set forth
15 in subsection (1)(b)(i) as defined in this section; and

16 (B) the land is not devoted to a residential,
17 commercial, or industrial use.

18 (c) For the purposes of this subsection (1),
19 "marketing" means the selling of agricultural products
20 produced by the land and includes but is not limited to:

21 (i) rental or lease of the land as long as the land is
22 actively used for grazing livestock or for other
23 agricultural purposes; and

24 (ii) rental payments made under the federal conservation
25 reserve program or a successor to that program.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection

only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no an application for agricultural classification has not been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property.

~~A-reclassification-does-not-mean-revaluation-pursuant-to 15-7-111.~~

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land.

Improvements devoted to crop production described in this subsection may not be included in class eleven property."

Section 23. Section 15-7-303, MCA, is amended to read:

"15-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Partial interest" means a percentage interest in property when less than 100%.

(2) "Person" means and includes an individual, corporation, partnership, or other business organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

(3) "Real estate" includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land; and

(d) mobile homes.

(4) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

(5) "Value" means the amount of the full actual consideration ~~therefor~~ paid or to be paid for real estate, including the amount of any lien or liens ~~thereon~~ on the real estate."

Section 24. Section 15-7-305, MCA, is amended to read:

"15-7-305. Realty transfer certificate required. (1)

The county clerk and recorder shall cause to be executed by the parties to the transaction or their agents or representatives a certificate declaring the consideration paid or to be paid for the real estate transferred. In addition to containing matter required by the department of revenue, a valid certificate must:

(a) contain the social security numbers or, in the case of legal entities that are not individuals, the tax identification numbers of the transferors and transferees;

(b) contain, under penalty for perjury as provided in 45-7-201, a statement that the transferors and transferees under oath, or equivalent affirmation, swear or affirm that the recorded transaction was an arm's-length transaction, as defined in [section 1]; and

(c) be signed by both the transferor and transferee or by the appropriate agent for a transferor or transferee that is a legal entity and not an individual.

(2) No An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate or a claim for exemption pursuant to 15-7-307(2) has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as between the parties to it ~~shall~~ may not be affected by the failure to comply with the provisions in this part.

(3) The form of certificate ~~shall~~ must be prescribed by the department of ~~revenue~~, and the department shall provide an adequate supply of ~~such~~ forms to each county clerk and recorder in the state.

(4) The clerk and recorder shall prepare a like certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department."

Section 25. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate -- exceptions. (1) The certificate imposed by this part ~~shall~~ does not apply to:

(1)(a) an instrument recorded prior to July 1, 1975;

(2)(b) the sale of agricultural land when the land is used for agricultural purposes;

(3)(c) the sale of timberland when the land is used for producing timber;

(4)(d) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(5)(e) an instrument ~~which~~ that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6)(f) a transfer pursuant to court decree;

(7)(g) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8)(h) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9)(i) a transfer of decedents' estates;

(10)(j) a transfer of a gift;

(11)(k) a transfer between husband and wife or parent and child with only nominal actual consideration therefor;

(12)(l) an instrument the effect of which is to transfer the property to the same party or parties;

(13)(m) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

(14)(n) a transfer made in contemplation of death.

(2) A transferee shall file a claim of exemption on forms provided by the department of revenue before a transfer specified in [sections 1 through 13] or in subsection (1) of this section is exempt from the certification requirement of this part."

Section 26. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment -- market value standard -- exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell

and both having reasonable knowledge of relevant facts.

(b) If the department of revenue uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not

listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through ~~15-6-133~~ 15-6-134 and 15-6-143 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, or 15-23-517.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) ~~Beginning--January-17-19907--and--ending--December-317-19937--properties--in--15-6-1437--under--class--ten7--are--assessed~~

(2) The percentage basis of assessed value as provided

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax

1 liability for an individual property is capped at the dollar
2 amount due in that taxing unit for the 1985 tax year.

3 (3) The limitation on the amount of taxes levied does
4 not prohibit a further increase in the total taxable
5 valuation of a taxing unit as a result of:

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

8 (b) construction, expansion, or remodeling of
9 improvements;

10 (c) transfer of property into a taxing unit;

11 (d) subdivision of real property;

12 (e) reclassification of property;

13 (f) increases in the amount of production or the value
14 of production for property described in 15-6-131 or
15 15-6-132;

16 (g) transfer of property from tax-exempt to taxable
17 status; or

18 (h) revaluations caused by:

19 ~~(i) cyclical reappraisal; or~~

20 ~~(ii) expansion, addition, replacement, or remodeling of~~
21 ~~improvements.~~

22 (4) The limitation on the amount of taxes levied does
23 not prohibit a further increase in the taxable valuation or
24 in the actual tax liability on individual property in each
25 class as a result of:

1 (a) a revaluation caused by:

2 ~~(i) construction, expansion, replacement, or remodeling~~
3 ~~of improvements that adds value to the property; or~~

4 ~~(ii) cyclical reappraisal;~~

5 (b) transfer of property into a taxing unit;

6 (c) reclassification of property;

7 (d) increases in the amount of production or the value
8 of production for property described in 15-6-131 or
9 15-6-132;

10 (e) annexation of the individual property into a new
11 taxing unit; or

12 (f) conversion of the individual property from
13 tax-exempt to taxable status.

14 ~~(5) Property in class four is valued according to the~~
15 ~~procedures used in 1986, including the designation of 1982~~
16 ~~as the base year, until the reappraisal cycle beginning~~
17 ~~January 1, 1986, is completed and new valuations are placed~~
18 ~~on the tax rolls and a new base year designated, if the~~
19 ~~property is:~~

20 ~~(a) new construction;~~

21 ~~(b) expanded, deleted, replaced, or remodeled~~
22 ~~improvements;~~

23 ~~(c) annexed property; or~~

24 ~~(d) property converted from tax-exempt to taxable~~
25 ~~status;~~

~~(6) Property described in subsections (5)(a) through (5)(d) that is not class four property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.~~

~~(7)(5)~~ The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) except as provided in subsection ~~(8)(a)~~ (6)(a), the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but the mills levied may not exceed a number calculated to equal the revenue from property taxes for the

1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

~~(8)(6)~~ (a) Except as provided in subsection ~~(8)(b)~~ (6)(b), if a taxing unit has levied additional mills under subsection ~~(7)(a)~~ (5)(a) to compensate for a decrease in taxable valuation, it may continue to levy additional mills to equal the revenue from property taxes for the 1986 tax year when the taxing unit's taxable valuation is greater than 95% but less than 100% of the taxing unit's taxable valuation in tax year 1986.

(b) When the taxable valuation of a taxing unit that levied additional mills under subsection ~~(7)(a)~~ (5)(a) or

~~(8)(a)~~ (6)(a) is equal to or greater than the taxing unit's taxable valuation in tax year 1986, it may not levy additional mills to compensate for a subsequent decrease in taxable valuation unless the conditions of subsection ~~(7)(a)~~ (5)(a) are satisfied.

~~(9)(7)~~ (7) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

- (a) rural improvement districts;
- (b) special improvement districts;
- (c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;
- (d) city street maintenance districts;
- (e) tax increment financing districts;
- (f) satisfaction of judgments against a taxing unit;
- (g) street lighting assessments;
- (h) revolving funds to support any categories specified in this subsection ~~(9)(7)~~ (7);
- (i) levies for economic development authorized pursuant to 90-5-112(4);
- (j) levies authorized under 7-6-502 for juvenile detention programs;
- (k) levies authorized under 76-15-531 and 76-15-532 for conservation district special administrative assessments;

(1) elementary and high school districts; and

(m) voted poor fund levies authorized under 53-2-322.

~~(10)(8)~~ (8) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

~~(11)(9)~~ (9) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by

famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); and

(iii) a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in 7-14-1632.

~~(12)~~(10) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

~~(13)~~(11) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.

~~(14)~~(12) A taxing jurisdiction that included special

improvement district revolving fund levies in the limitation on the amount of taxes levied prior to April 22, 1993, may continue to include the amount of the levies within the dollar amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred."

Section 29. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board -- meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board ~~shall~~ must be residents of the county in which they serve. They shall receive compensation of \$45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an

1 organizational meeting each year on the date of its first
 2 scheduled hearing, immediately before conducting the
 3 business for which the hearing was otherwise scheduled. It
 4 must continue in session from time to time to hear protests
 5 concerning assessments made by the department of revenue
 6 until the business of hearing protests is disposed of, but,
 7 except as provided in 15-2-201, not later than 60 days after
 8 the department of revenue or its agent:

9 (a) has mailed notice of classification and appraisal
 10 or valuation to all property owners and purchasers under
 11 contracts for deed as required in 15-7-102; and

12 (b) has notified the county tax appeal board that
 13 classification and ~~appraisal~~ assessment notices have been
 14 mailed to all property owners and purchasers under contracts
 15 for deed.

16 (3) In connection with an appeal, the county tax appeal
 17 board may change any assessment or fix the assessment at
 18 some other level. The county clerk shall publish a notice to
 19 taxpayers, giving the time the county tax appeal board will
 20 meet to hear protests concerning assessments and the latest
 21 date the county tax appeal board may take applications for
 22 the hearings. The notice must be published in a newspaper if
 23 any is printed in the county or, if none, then in the manner
 24 that the county tax appeal board directs. The notice must be
 25 published at least 7 days prior to the first meeting of the

1 county tax appeal board.

2 (4) Challenges to a department of revenue rule
 3 governing the assessment of property or to an assessment
 4 procedure apply only to the taxpayer bringing the challenge
 5 and may not apply to all similarly situated taxpayers unless
 6 an action is brought in the district court as provided in
 7 15-1-406."

8 **Section 30.** Section 15-15-103, MCA, is amended to read:

9 "15-15-103. **Examination of applicant -- failure to hear**
 10 **application.** (1) Before the county tax appeal board grants
 11 any application or makes any reduction applied for, it must
 12 examine on oath the person or agent making the application,
 13 touching the value of the property of each person. ~~No A~~
 14 ~~reduction must~~ may not be made unless ~~such~~ the person or
 15 agent makes an application, as provided in 15-15-102, and
 16 attends and answers all questions pertinent to the inquiry.
 17 The testimony of all witnesses upon ~~such~~ the hearing must be
 18 taken in shorthand or by stenotype or electronically
 19 recorded and preserved for 1 year. If the decision of the
 20 county tax appeal board is appealed, all testimony must be
 21 transcribed or otherwise reduced to writing and forwarded,
 22 together with all exhibits, to the state tax appeal board.
 23 The date of hearing, the proceedings before the board, and
 24 the decision must be entered upon the minutes of the board,
 25 and the board shall notify the applicant of its decision by

mail within 3 days ~~thereafter~~ after the hearing. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the ~~appraisal~~ assessment or classification sought in the application in the assessment book. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session."

Section 31. Section 77-1-208, MCA, is amended to read:

"77-1-208. Cabin site licenses and leases -- method of establishing value. (1) The board shall[, taking into account recommendations of the state land board advisory council,] set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The

fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. ~~The--value-may-be-increased-or-decreased-as-a-result-of-the-statewide-periodic--revaluation-of--property-pursuant-to-15-7-111.~~ An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board. (Bracketed language in subsection (1) terminates March 1, 1996--sec. 17, Ch. 586, L. 1993.)"

1 NEW SECTION. **Section 32.** Repealer. Sections 15-7-111,
2 15-7-113, 15-7-114, 15-7-401, 15-7-402, and 15-7-403, MCA,
3 are repealed.

4 NEW SECTION. **Section 33.** Codification instruction.
5 [Sections 1 through 13] are intended to be codified as an
6 integral part of Title 15, and the provisions of Title 15
7 apply to [sections 1 through 13].

8 NEW SECTION. **Section 34.** Contingent effective date --
9 applicability. [This act] is effective January 1, 1995, and
10 applies to all tax years beginning after December 31, 1994,
11 if the constitutional amendment proposed in ____ Bill No. ____
12 [LC 14] is passed and approved by the electorate in the
13 November 1994 general election.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0062, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act implementing a proposed constitutional amendment on property tax administration that would allow the valuation of residential property to be based upon acquisition cost; providing that the assessed value of class four property is based upon the acquisition cost of the property; providing that the acquisition cost will be changed when the property is purchased or newly constructed or when its ownership changes; providing certain exclusions relating to change in ownership; allowing a reduction in the acquisition cost if substantiated by an independent appraisal provided by the property owner; providing that construction for damage repair or replacement, solar energy systems, residential handicapped access, and fire safety do not affect the acquisition cost of the property; providing administrative changes to implement the system of valuing class four property by acquisition cost; and providing a contingent effective date and an applicability date.

ASSUMPTIONS:

1. There are 206,000 owner occupied housing units in Montana (1990 Census).
2. The proposal would change the assessed value of these owner occupied units for taxing purposes beginning in FY96.
3. For the purposes of this fiscal note, it is assumed that increases in property tax liability due to the new assessment procedures listed in the proposal are not limited by I-105 (see technical note).

FISCAL IMPACT:

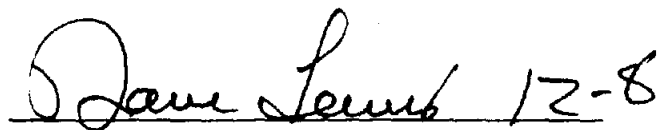
Revenues:

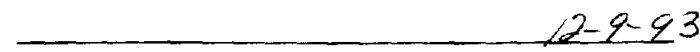
The proposal does not impact FY94 or FY95 property tax revenues. The proposal will begin to impact property tax revenues in FY96. The impact to property tax revenues is dependant on several factors, including sale activity, the economic conditions contributing to market value change, the rate of inflation as measured in the proposal, and the ability and rate at which property owners hire independent appraisers. Since it is impossible to predict these factors, an impact of the proposal to property tax revenues cannot be calculated.

Expenditures: (Department of Revenue)

Implementation of this proposal would require additional total administrative expenses of \$834,420 in FY95. This expense includes a one-time software change/modification cost of \$91,800 and a one-time upgrade of the department's AS/400 mid-range computer at a cost of \$495,000.

(continued next page)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BOB RANEY, PRIMARY SPONSOR DATE
Fiscal Note for HB0062, as introduced

HB 62

FISCAL IMPACT:

Expenditures: (continued)

<u>Property Valuation</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0	0	0	0	6.00	6.00
Personal Services	\$ 0	\$ 0	\$ 0	\$ 0	\$ 50,700	\$ 50,700
Operating Expenses	0	0	0	0	271,800	271,800
Equipment	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>511,920</u>	<u>511,920</u>
Total	\$ 0	\$ 0	\$ 0	\$ 0	\$ 834,420	\$ 834,420
Funding: General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 834,420	\$ 834,420

TECHNICAL NOTE:

The I-105 property tax freeze does not contain exemptions for increase in taxes due to either inflation adjustments to assessed value or to changes in the ownership of the property.