

THE MONTANA ASSOCIATION OF LAND TRUSTS

LA 0311 15
DATE 2.10.05
HB 554

House Committee on Taxation HB 554

House Bill 554 is an ill designed effort to tax non-possessory interests in land more commonly know as conservation easements. We at the Montana Land Reliance hold conservation easements on Montana ranch land which provide us with no affirmative rights to that land. HB 554 seeks to impose a tax on these easements which have no value. This is an unfair and possibly unconstitutional effort to restrict the ability of private land owners to sell or gift conservation easements to private non-profit entities.

Problems with taxation of conservation easements.

The proposed taxation of conservation easements seeks to create a second tax on a property interest which is already subject to Montana real property tax.

- **Under Montana Law, a conservation easement does not lower the taxable value of the property.** The tax classification stays the same. MCA Section 76-6-208(2).
- **There is no future loss of property tax revenue to a county due to conservation easements.** Conservation easement land is generally classified as agricultural land. The property tax assessment for agricultural land is based on production. As a result, there is no loss of property tax revenue due to the conservation easement.
- **HB 554 will create a double taxation on property already subject to real property tax.** This is inherently unfair and possibly unconstitutional.
- **Conservation easements are non-possessory property rights and have no taxable value.** Conservation easements represent liabilities for the entities, such as the Montana Land Reliance, that hold them. Conservation easements do not convey affirmative rights to earn any stream of income. *They have no positive market value once they are severed from the underlying fee title.*
- Land Trusts are precluded from selling conservation easements and have legal duty to maintain the easements for the benefit of the public. Conservation easements are non-possessory property rights which typically give the easement holders the right to prevent certain activities such as subdivision. Conservation easements are not traded in the marketplace. Land trusts do not buy and sell conservation easements. Instead, they have a fiduciary duty to the public to maintain the conservation easements in perpetuity (or for a term of years). Thus, under both Montana law and federal tax law, land trusts may not sell or trade conservation easements to earn taxable revenue there from.

PLEASE OPPOSE HB 554

Thank you,

Mona Jamison