FISCAL NOTE

Bill #:	SB0022	**Title:**	Disallow certain corporate business deductions
Primary Sponsor:	Steve Doherty	**Status:**	As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2003 Difference	FY2004 Difference	FY2005 Difference
Revenue:			
General Fund	$202,500	$202,500	$202,500
Net Impact on General Fund Balance:	**$202,500**	**$202,500**	**$202,500**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. This bill would disallow for corporation license tax purposes any deduction for salaries or bonuses paid to an "officer" of a publicly traded corporation if that corporation experienced a 50% or greater decline in the value of the corporation's publicly traded stock during the corporation's taxable period.
2. The bill applies retroactively to corporate taxable years beginning after December 31, 2001.
3. The starting point for the Montana corporation license tax is federal taxable income. Salaries and bonuses of corporate officers are already deducted in full in arriving at this starting point. Procedurally, this bill would require corporations to "add back" corporate officer salaries and bonuses for corporations meeting the criteria in assumption 1, above, *prior to applying the apportionment factor for multi-state corporations*.

(continued)

4. The department has no reliable means of estimating the fiscal impact of this proposal, but the impact on revenues is likely to be minimal for several reasons. First, if a corporation's stock is decreasing, it likely is due to very poor earnings performance on the part of the corporation. This is likely to place the corporation in a large net taxable income loss position for the year. Requiring the add-back for corporate officer salaries and bonuses, particularly given the relatively small apportionment factor for many multi-state corporations, is not likely to move the corporation into a positive taxable income position. Also, corporations may have significant latitude to redefine "officer", subjecting substantially lower amounts of salaries and bonuses to the add-back. Requiring the add-back of officer salaries and bonuses will act to reduce the net operating loss for the current year, which in turn will reduce any net operating loss carryback or carryforward. This could increase tax liability and revenues to the state, but the amount is assumed to be relatively small.
5. Given these considerations, the fiscal note has an estimated impact of $202,500 per year, reflecting a net increase in positive taxable income of $3,000,000 due to the add-back of corporate officer wages and bonuses under the provisions of this bill.

FISCAL IMPACT:

	FY2003 Difference	FY2004 Difference	FY2005 Difference
Revenues:			
General Fund (01)	$202,500	$202,500	$202,500
Net Impact to Fund Balance (Revenue minus Expenditure):			
General Fund (01)	$202,500	$202,500	$202,500

TECHNICAL NOTES:

1. The bill provides that a deduction is not allowed for salaries or bonuses paid to an officer of a publicly traded corporation if that corporation experiences a 50% or more decline in the value of the corporation's publicly traded stock *during the corporation's taxable period*. If a corporation begins its taxable period with its stock trading at $4 per share, and during the taxable period the price of the stock then rises to $8 per share and then falls again to $4 per share, this constitutes a drop of 50% *during the taxable period*. It is unclear whether this scenario would trigger disallowance of the deduction for officer salaries and bonuses, even though stockholders are no worse or better off than at the beginning of the taxable period.
2. Corporations issue various classes of publicly traded stock including "preferred" and "common" stock. It is unclear whether the provisions of the bill apply separately to each class of stock issued by the corporation or just to the "common" stock of the corporation.
3. The bill provides for disallowing a deduction for the salaries and bonuses paid to "officers" of a corporation. Currently, there is no incentive to define the difference between "officers" and other employees of the corporation, as all wages, salaries and bonuses are deductible in full. It would be helpful if there were some clarification of who is an "officer" under the provisions of this bill, since that will be used in order to reduce the amount required to be added back to taxable income.