



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

<b>Bill #</b>	SB0133	<b>Title:</b>	Revise property tax appraisal and tax appeal process
<b>Primary Sponsor:</b>	Hertz, Greg	<b>Status:</b>	As Amended in Senate Committee

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
<b>Expenditures:</b>				
General Fund	\$18,368	\$18,368	\$18,572	\$18,923
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>(\$18,368)</u>	<u>(\$18,368)</u>	<u>(\$18,572)</u>	<u>(\$18,923)</u>

**Description of fiscal impact:** SB 133 as amended, expands the current Montana Taxpayer Bill of Rights by creating an entitlement to an award of costs and attorney fees in class four residential property valuation disputes that are adjudicated in favor of the taxpayer by greater than 25% at the Montana Tax Appeal Board (MTAB) when the Department of Revenue (DOR) appeals a County Tax Appeal Board (CTAB) decision. The department is required to provide additional justification when it uses the cost approach to valuation instead of the sales approach to valuation. The bill restricts the ability of CTABs and MTAB to adjust valuations in cases where owners do not grant DOR assessors' permission to enter improvements.

## FISCAL ANALYSIS

### Assumptions:

#### Department of Revenue

- SB 133 expands current law and mandates MTAB to order the department to pay plaintiff's fees and costs when a Class 4 residential taxpayer prevails at MTAB by greater than 25% at MTAB after the Department of Revenue has appealed a CTAB decision.
- Under current law, awards of costs and attorney fees are allowed if the department has defended the appeal in bad faith or has been frivolous.
- Few residential property valuation cases reach MTAB. There are two prior steps through which to seek resolution. Taxpayers may file an informal appeal of their assessment with the department (the AB-26 process) or file a formal appeal directly with their County Tax Appeal Board. If resolution is not reached in the informal

review, a formal appeal may be filed with CTAB. CTAB decisions may be appealed to MTAB. There are roughly 803,000 taxable parcels in Montana and approximately 435,000 contain a residential structure. The department receives approximately 12,900 appeals each two-year reappraisal cycle with the vast majority in the first year of the cycle, though some can rollover into the second year. Approximately 60% of the appeals involve residential property (7,750). Roughly 95% of appeals are resolved during the AB-26 process (7,360), 4.5% at CTAB (350) and 0.5% reach the MTAB (40) for each cycle.

4. During the last two appraisal cycles, the Department of Revenue has appealed a *de minimis* number of Class 4 residential CTAB cases to the MTAB. Therefore, for fiscal note purposes, it is assumed the costs to the Department of Revenue as a result of the passage of SB 133 will be zero. However, if such costs are incurred, a general fund appropriation would be needed.
5. SB 133 requires the department to justify the use of the cost approach to valuation instead of a comparable sales valuation approach when valuing residential property.
6. SB 133 also restricts the County Tax Appeal Boards (CTABs) or MTAB from using a taxpayer's denial of access into an improvement as a basis for not adjusting an estimate of value.

### Montana Tax Appeal Board

7. Under SB 133 as amended, the Montana Tax Appeal Board (MTAB) would need to request briefing and expert testimony for and against the award of attorney fees against the Montana Department of Revenue in certain cases. An additional hearing would be required which would include additional staff and the accompanying board time.
8. Under SB 133 MTAB would require additional time to file, process, and review requests for attorney fees.
9. There would be additional resources and time needed to hear, decide, and write order granting or denying request.
10. An estimated 0.50 FTE Admin/Legal Assistant position time is needed to administer the requirements in this bill.

<b><u>Fiscal Impact:</u></b>	<b><u>FY 2022 Difference</u></b>	<b><u>FY 2023 Difference</u></b>	<b><u>FY 2024 Difference</u></b>	<b><u>FY 2025 Difference</u></b>
FTE (MTAB)	0.50	0.50	0.50	0.50
<b><u>Expenditures:</u></b>				
Personal Services (MTAB)	\$18,368	\$18,368	\$18,572	\$18,923
<b>TOTAL Expenditures</b>	<b>\$18,368</b>	<b>\$18,368</b>	<b>\$18,572</b>	<b>\$18,923</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01) (MTAB)	\$18,368	\$18,368	\$18,572	\$18,923
General Fund (01) (DOR)	\$0	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<b>\$18,368</b>	<b>\$18,368</b>	<b>\$18,572</b>	<b>\$18,923</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$18,368)	(\$18,368)	(\$18,572)	(\$18,923)

**Technical Notes:****Department of Revenue**

1. The bill requires that when the department uses the cost approach to value residential property, it must document why the comparable sales approach was not reliable. The Uniform Standards of Professional Appraisal Practice (USPAP) and the International Association of Assessing Officers (IAAO) standards allow the use of any of the three approaches to valuing property without the requirement of using one over the other. Any limitation on the department's ability to use the cost approach as a method of valuation, when applicable, could violate USPAP standards to which the department is required to adhere.
2. From a technical/statutory standpoint, an appeal of a residential property to MTAB is more akin to appellate review and not *de novo*. This means the department is appealing the market value as determined by CTAB. If the reduction gets applied to the value the DOR appeals, then using a difference means that a substantially correct DOR valuation could result in the department paying attorney costs and fees. For the originally assessed and DOR appealed amount scenarios, HB 133 could result in MTAB substantially increasing a CTAB value and the department paying attorney fees and costs.
3. Costs may vary considerably based on the particulars of a property being appealed, and the rate at which the appraised value of residential property is changing due to an accelerating or decelerating real estate market. Complicated property appeals require more time and work. As a result, the legal cost the department would be required to pay under SB 133 could be \$200,000 or more for a single case. Although this would be uncommon, and is not anticipated in this fiscal note, over time the probability of this occurring rises. Further, a significant increase in residential property value over a two-year period may increase the number of cases in dispute.
4. If a payment were required under SB 133 as amended, appropriation authority would be needed.

**Montana Tax Appeal Board**

5. There are legal questions regarding whether attorney fees can be mandated to only one side in a dispute.

**NO SPONSOR SIGNATURE***Sponsor's Initials**Date**Budget Director's Initials**Date*