



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0133	Title:	Revise property tax appraisal and tax appeal process
Primary Sponsor:	Hertz, Greg	Status:	As Amended

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|---|--|--|
| <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>
Expenditures:				
General Fund	\$68,388	\$68,368	\$68,572	\$68,923
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$68,388)</u>	<u>(\$68,368)</u>	<u>(\$68,572)</u>	<u>(\$68,923)</u>

Description of fiscal impact: SB 133 as amended in the Senate, changes the current Montana Taxpayer Bill of Rights. These amendments create an entitlement to an award of costs and attorney fees in certain class four residential property valuation disputes when the Department of Revenue (DOR) appeals a County Tax Appeal Board ruling to the Montana Tax Appeal Board (MTAB). The amendments on the Senate floor added contingencies for specific DOR appeals to higher Courts. Fees and costs are to be awarded when adjudication is substantially in favor of the taxpayer (greater than 25%) relative to the DOR valuation on appeal. The bill also requires that the department provide additional justification when it uses the cost approach to valuation instead of the sales approach to valuation. The bill restricts the ability of County Tax Appeal Boards (CTAB) 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 as amended in the Senate, expands current law and mandates MTAB (and in certain cases higher Courts) to order the department to pay plaintiff's fees and costs when a class 4 residential taxpayer prevails by a substantial amount (greater than 25% of the value on appeal in any case appealed by the DOR after 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 is ruled to have filed a frivolous case.

3. 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. Few cases are appealed to higher courts by the department. In such cases, the matter generally applies to a broader principle in addition to the particular property's assessed value. These higher court cases, while rare, can involve substantial costs. To estimate the potential cost, the experience with CTAB appeals is used as the starting point for all cases. While the department follows the law and makes good faith effort in determining which cases to appeal, for fiscal note purposes, it is assumed that the department's valuation will not be fully sustained half the appealed cases or ten CTAB cases per year (on average). Of these 10 cases, half (5) are assumed to reach the substantial threshold requiring an award.
5. It is assumed that the average cost award will be \$7,500 for the substantial cases (\$37,500).
6. It is further assumed that every biennium one case per year would be a substantial case appealed by the department to a higher court and up to half could result in an award. An award is assumed to be \$25,000 for one case a biennium (See technical note #2). This would result in an average general fund cost of \$50,000 per year (\$37,500+\$12,500) for all cases, on average, each year.
7. SB 133 requires the department to justify its use of the cost approach to valuation when that method it is used instead of the comparable sales valuation approach when valuing residential property.
8. SB 133 also restricts the County Tax Appeal Boards (CTABs) and 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

9. SB 133 would require Montana Tax Appeal Board (MTAB) to request briefing and expert testimony for and against the award of attorney fees against the Montana Department of Revenue. An additional hearing would be required which would include additional staff and the accompanying Board time.
10. An estimated 0.50 FTE Admin/Legal Assistant position is needed to administer the requirements in this bill.

<u>Fiscal Impact:</u>	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Departments of Administration (MTAB) & Revenue (DOR)				
FTE (MTAB)	0.50	0.50	0.50	0.50
<u>Expenditures:</u>				
Personal Services (MTAB)	\$18,368	\$18,368	\$18,572	\$18,923
Operating Expense (DOR)	\$50,000	\$50,000	\$50,000	\$50,000
TOTAL Expenditures	\$68,368	\$68,368	\$68,572	\$68,923
<u>Funding of Expenditures:</u>				
General Fund (01) (MTAB)	\$18,368	\$18,368	\$18,572	\$18,923
General Fund (01) (DOR)	\$50,000	\$50,000	\$50,000	\$50,000
TOTAL Funding of Exp.	\$68,368	\$68,368	\$68,572	\$68,923
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$68,368)	(\$68,368)	(\$68,572)	(\$68,923)

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. 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, over time the probability of this occurring rises. Further, a significant increase in residential property value over a 2-year period may increase the number of cases in dispute.

Montana Tax Appeal Board

3. 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