
M E M O R A N D U M

Date: December 16, 2021

To: Austin Knudsen, Montana Attorney General

From: Montana Association of REALTORS®

RE: 2021 Ballot Issue No. 9

INTRODUCTION

The Montana Association of REALTORS® has several concerns with Ballot Issue No. 9 (the “Ballot Issue” or “Issue”) and the Statement of Purpose and Implication (“Statement”), which are attached. The following is a summary of those issues.

CONCERNS WITH BALLOT ISSUE NO. 9 AND STATEMENT OF PURPOSE

Statement of Purpose and Implication is Inaccurate and Confusing

The Statement “must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.”¹ A revised version of the Statement that addresses the issues discussed below and meets the foregoing statutory requirements is attached.

1. The Statement incorrectly states the Ballot Issue “limits annual **increases** in valuations of residential property.” (emphasis added).
 - The Ballot Issue limits the decreases and increases the total amount of the assessed value, not only the increases in valuation.
 - It states:

If residential property is not newly constructed or significantly improved or did not have a change of ownership since January 1, 2019, **the change** in revised assessed valuation for a year may not exceed the lower of the following:

 - (a) two percent of the valuation for the prior year; or
 - (b) the percent change in the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor. (emphasis added).

¹ Mont. Code Ann. § 13-27-312(4).

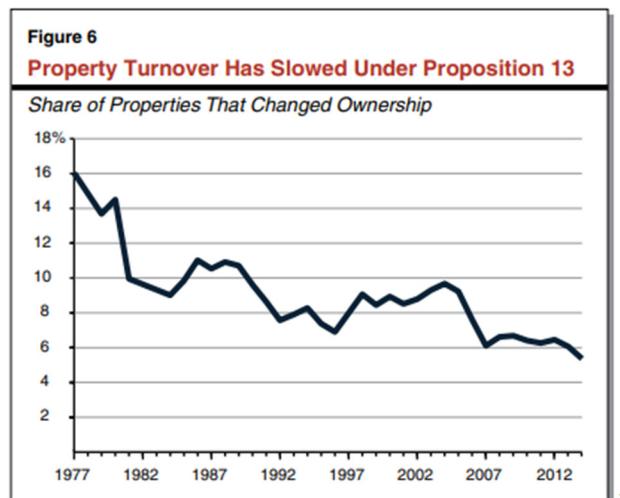
- Use of the words “the change” in valuation includes both decreases and increases. The statement is most clear if it mentions both increases and decreases.
 - Example: Assume a home valued at \$500,000 in the prior year was not newly constructed, was not significantly improved, and did not have a change in ownership. The value of home dropped to \$250,000. The Ballot Issue would force the Department of Revenue to assess the home at \$490,000, just two percent below the prior year’s value. The Statement completely ignores this limitation, which has significant impact on taxpayers.
2. The Statement also incorrectly states the Ballot Issue “provides for reassessment if a residential property has been newly constructed or significantly improved or has a change of ownership.”
 - The Ballot Issue states that assessment may occur each year for all properties. “The value of residential property may be reassessed annually on January 1 of each year.”
 3. The Statement also states “CI [***] limits annual increases in valuations of residential property to either 2% or the inflation rate (whichever is lower) when assessing property taxes,” which is not true for many Montana properties.
 - Any property that is newly constructed, that is significantly improved, or that changes ownership after January 1, 2019 is to be reassessed at its fair market value. This is true even for properties that were constructed, significantly improved, or changed ownership after January 1, 2019 but before the Ballot Issue is presented to them. Omitting this language renders the statement untrue and will confuse voters.
 4. The Statement may also be confusing because it is inaccurate.
 - It also states that that the Issue “permits the Legislature to assess other real property based on acquisition value.” The Legislature does not assess property. The Department of Revenue does. The Ballot Issue does not change this.

Significant Material Harm to Business Interests

“If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana pursuant to 13-27-312(9), the statement in subsection (2)(b) must appear on the front page of the petition form”

1. Likely Transfer of up to \$175,000,000 Tax Burden onto Businesses.
 - Based on the Fiscal Note, commercial properties could see an increase in property tax of up to approximately \$175,000,000, which would likely worsen over time, as follows:
 - According to the Fiscal Note, Ballot Issue No. 9 will result in general fund and special revenues between \$23,380,000 and \$32,593,000 over the next two Fiscal Years.
 - In addition, the Fiscal Note estimates reductions in local collection of roughly \$150,000,000 based on current allocations, which will only worsen as increases in market value exceed the change in CPI or 2%.

- The Fiscal Note states these “revenue reductions would shift to all other non-residential property” tax classes. All other property tax classes are commercial property, and the taxes are paid by businesses, with very few exceptions.
 - *See, e.g.*, Class 1 mining, Class 2 metal mines, Class 3 agricultural land, Class 4 commercial land and improvements, Class 5 pollution control property, Class 7 public utilities, Class 8 business persona property, Class 9 electrical utilities, Class 12 railroad and airline property, Class 13 telecommunication and electric property, Class 14 wind generation, Class 15 pipeline, Class 16 converter stations, Class 17 data centers, Class 18 hydrogen facilities).²
2. Slowing of Property Transfers Based on California’s Proposition 13 (“CA Prop 13”)
- Montana REALTORS®, lenders, builders, title companies, and other businesses may be harmed by a slowing of property transfers in Montana
 - Based on CA Prop 13, homeowners may be incentivized to stay in their properties because of the tax benefits, rather than selling them, which could slow the housing market
 - CA Prop 13 contained key provisions similar to the Ballot Issue: property taxes capped at 1 percent of assessed value, assessments limited to the lower of 2% or the rate of inflation, until the property is transferred, properties that are transferred are assessed at the transfer value.³
 - There are differences between California and Montana, as well as CA Prop 13 and the Ballot Issue, that must be considered, but CA Prop 13 is informative
 - In 2016, the California Legislative Analyst’s Office issued a study of CA Prop 13, which showed property transfers declined significantly after its passage:



² *See* Mont. Code Ann. § 15-6-122 through §15-6-163 listing 18 categories of property for taxation purposes. All categories involve businesses with Class 10 Forest Land as a possible exception.

³ *Common Claims About Proposition 13*, dated Sept. 19, 2016, California Legislative Analyst’s Office, available at <https://lao.ca.gov/publications/report/3497> (last visited Nov. 1, 2021).

⁴ *Id.*

- The study states that “[h]omeowners generally receive greater tax relief from Proposition 13 the longer they stay in their same home. In response, homeowners appear to move less often.”
- Montana homeowners would also see more benefit from remaining in their homes any time the fair market value of their residence grew faster than the lower of 2% or inflation each year.
- The study also suggested that the development of land becomes less likely the longer it is owned and home ownership among younger residents may decline, in part due to CA Prop 13.
- The study recognized that other factors may have contributed to all of these issues but concluded that Proposition 13 played a contributing role.

3. Inequitable Treatment of Business Property

- Montana law currently requires that “all taxable property [residential and business] must be appraised at 100% of its market value.”
- If the Ballot Initiative passes, many residential properties will be valued below fair market value, but business properties will have no such relief.

Constitutional Issue – Potential Violation of Equal Protection and Due Process Rights Under State and Federal Constitutions

“Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amd. XIV, § 1. “No person shall be denied the equal protection of the laws.” Mont. Const. art. II, § 4.

The Montana Supreme Court has already held a similar restriction on the reduction in assessed value violates taxpayers’ Equal Protection and Due Process Rights. *Roosevelt v. Dep’t of Revenue*, 1999 MT 30, ¶ 51, 293 Mont. 240, 975 P.2d 295.

- In *Roosevelt*, a statute restricted the decrease or increase in market value to be phased in at 2% per year. The taxpayer’s valuation dropped from one year to the next. The decrease was limited to 2 percent, and as a result, the taxpayer was tax on a value higher than market value, while other taxpayers were taxed on values below market value. The taxpayer challenged the assessment and appealed to the Montana Supreme Court.
- The Court held as follows:

Because Roosevelt's property declined in value from 1996 to 1997, and because he is denied full recognition of that decline in value for purposes of assessment pursuant to the phase-in provision in § 15–7–111(1), MCA(1997), Roosevelt's 1997 property taxes are based on more than the market value of his property, while the property taxes of other property owners whose property did not decline in value are based on either market value or less than market value. We conclude that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property while other property owners are assessed based on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of this state's property taxes, in violation of the right to equal

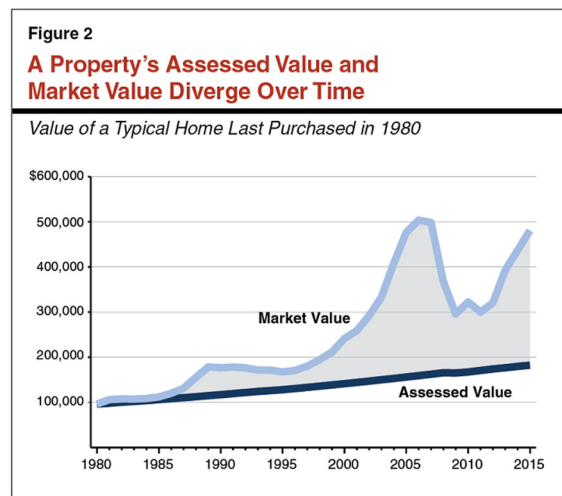
protection of the laws guaranteed by Article II, Section 4, of the Montana Constitution. Therefore, § 15-7-111(1), MCA (1997), as applied to Roosevelt, is unconstitutional and he and other similarly situated Class Four property owners are entitled to be assessed at the actual 1997 market value of their property for the purpose of calculating their 1997 property taxes. *Id.*

- The Ballot Issue also limits decreases and increases in value to 2% per year and would likely create similar circumstances.
- Although the Ballot Issue amends the equalization provisions of the Montana Constitution, it does not amend the Equal Protection or Due Process provisions.
- If a similar challenge were brought, Courts would be in the position of decided whether an express provision of the Montana Constitution violates other Montana and Federal Constitutional provisions.
- A copy of the *Roosevelt* decision is attached.

Unequal Treatment of Property Owners Based on 2% Annual Valuation Cap.

At a minimum, the Ballot Issue also risks assessing identical properties at different values whenever home values increase faster than 2% per year.

- Example: A person living in a home for 30 years will see, at a maximum, an increase in the valuation of only 60%. By contrast, a person living in an identical home in the same neighborhood could see an increase in assessment far in excess of 60%, simply because the home values outpaced inflation and the home was sold or otherwise transferred.
- CA Prop 13 demonstrated this issue:



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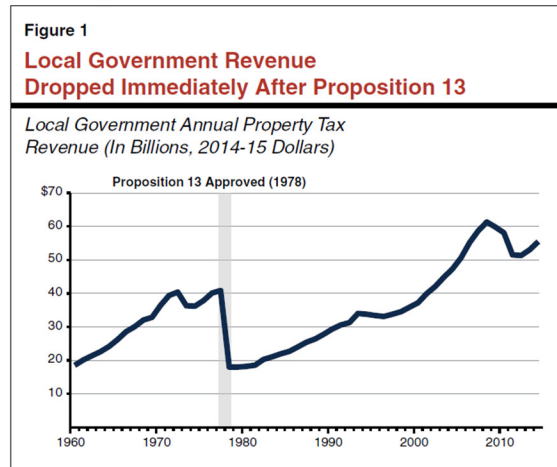
- This result is unfair, which may raise questions regarding the propriety of treating similar property in an unequal manner.

Negative Impact to State and Local Budgets with No Immediate Replacement Funds

The Ballot Issue seeks to reduce real property taxes from residential property without providing any immediate replacement for these revenues.

⁵ *Id.*

- The Fiscal Note estimates initial revenue losses of roughly \$150,000,000 annually to local jurisdictions. These losses worsen as increases in market value exceed the change in CPI or 2%.
- The Ballot Issue provides no alternative source of funding to local jurisdictions, which will create reductions in revenue collected by local governments absent legislation to fill in this gap.
- CA Prop 13 illustrates the potential shortfalls. While CA Prop 13 included all real property, it reflected a 60 percent reduction in tax revenues:



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- The study also noted that in later years, especially during housing booms, local jurisdictions raised impact fees, presumably to collect revenue to deal with new development since property taxes were capped.⁷ Local jurisdictions will be more likely to find reasons to deny new developments to the extent that fees and property tax revenue generated by the development are less than the cost of providing services.
- A revised version of the Fiscal Statement is attached.

Extensive Amendment or Repeal of Statutes and Administrative Rules.

The Issue may also render obsolete a number of Montana statutes and administrative rules, which require valuation of residential property based on market value, allow for assessment beyond the 1% limitation under the Ballot Issue, or otherwise contradict its limitations.

Examples:

- Mont. Code Ann. § 15-8-111 requires that “all taxable property must be appraised at 100% of its market value.” If the Ballot Issue passes, this will no longer be permitted for some residential properties.
- Mont. Code Ann. § 15-10-420, allow mill levies based on the prior year’s assessment and one-half of the average rate of inflation for the prior three years. These statutes will also need to be amended to reflect the 1% limitations on total tax proposed by the Ballot Issue.

⁶ *Common Claims About Proposition 13*, dated Sept. 19, 2016, California Legislative Analyst’s Office, available at <https://lao.ca.gov/publications/report/3497> (last visited Sept. 2, 2021).

⁷ *Id.* Figure 22.

- *See also, e.g.*, Mont. Code Ann. 15-8-104 (requiring the Department to “ensure the value of property . . . reflects market value”); *id.* 15-7-102 (requiring the Department to include market value on assessment notices); *id.* 15-7-103 (requiring assessment based on market value); *id.* 15-7-112 (requiring equalization based on market values); 15-9-101 et seq. (requiring equalization of values); *id.* 15-10-101 et seq. (establishing the process for tax levies); *id.* Title 7, Chapter 12, Parts 11-46 (provisions governing improvement districts); ARM 42.20.101 (requiring lots and improvements to be assessed at market value); *id.* 42.20.156 (requiring 100% fair market value when certain criteria are met).

Technical Issues and Ambiguities in the Ballot Issue

1. The meaning of key terms is unclear including “newly constructed,” “significantly improved,” or “change of ownership.”
 - While the Ballot Initiative calls on the legislature to define “residential property,” it makes no such request for these terms.
 - These questions may require legislation, administrative action, and/or appeal and litigation to determine.
2. It is unclear how the one percent limitation on taxes would be applied, and which mill levies would be reduced, and which governmental entities would be impacted.
 - Montana property taxes are an aggregation of state, county, city, school district, and other local district taxes.
 - The Ballot Issue does not indicate if or how these jurisdictions would share the reduction.
3. The Ballot Issue states “[t]he value of residential property may be reassessed annually on January of each year.”
 - Current law requires the Department of Revenue to revalue residential property every two years. It is unclear which standard would apply.
 - The two percent limitation on increased assessment applies to “the valuation of the of the prior year.” If the two-year reappraisal cycle is maintained, it is unclear how this provision would apply.

VII. Prior Montana Rejection of Acquisition-Based Property Tax.

1. The Montana Legislature has a long history of rejecting acquisition-based property tax systems, including:
 - HB 690 (2021) proposed acquisition-priced property tax valuations through an exemption.⁸
 - HB 308 (2011) proposed constitutional amendment to provide acquisition-based valuation with limited annual increases for individuals owning residential property.⁹
 - HB 355 (2005) proposed an acquisition value property tax system for principal residential dwellings.¹²
 - SB 61 (1999) proposed a constitutional amendment to move valuation of residential, commercial, and industrial property to an acquisition-based system.¹³

⁸ 2021 HB 690, available at <https://leg.mt.gov/bills/2021/billpdf/HB0690.pdf> (last visited Aug. 25-2021).

⁹ 2011 HB 308, available at <https://leg.mt.gov/bills/2011/billpdf/HB0308.pdf> (last visited Aug. 25, 2021).

¹² 2005 HB 355, available at <https://leg.mt.gov/bills/2005/billpdf/HB0355.pdf> (last visited Nov. 9, 2021).

¹³ 1999 SB 61, available at <https://leg.mt.gov/bills/1999/billpdf/SB0061.pdf> (last visited Nov. 9, 2021).

2. Proposals to change Montana's market-value based property tax system into an acquisition value system have been found to be rife with negative unintended consequences. None has ever survived the scrutiny of the Legislature. Complex property tax matters such as those the Ballot Initiative wades into should be vetted through the legislative process rather than at the ballot box.