



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0261

Title: Constitutional amendment for taxpayer protection act to limit tax types

Primary Sponsor: Skees, Derek

Status: As Introduced

Significant Local Gov Impact

Needs to be included in HB 2

Technical Concerns

Included in the Executive Budget

Significant Long-Term Impacts

Dedicated Revenue Form Attached

FISCAL SUMMARY

| | <u>FY 2022</u> <u>Difference</u> | <u>FY 2023</u> <u>Difference</u> | <u>FY 2024</u> <u>Difference</u> | <u>FY 2025</u> <u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Expenditures: | | | | |
| General Fund | \$0 | \$0 | (\$1,319,068) | (\$1,336,384) |
| State Special Revenue | \$0 | \$0 | (\$182,728,729) | (\$365,457,458) |
| Federal Special Revenue | \$0 | \$0 | (\$248,925,627) | (\$497,851,254) |
| Revenue: | | | | |
| General Fund | \$0 | \$0 | (\$124,376,000) | (\$253,672,000) |
| State Special Revenue | \$0 | \$0 | (\$251,579,843) | (\$547,052,844) |
| Federal Special Revenue | \$0 | \$0 | (\$248,925,627) | (\$497,851,254) |
| Net Impact-General Fund Balance: | <u>\$0</u> | <u>\$0</u> | <u>(\$123,056,932)</u> | <u>(\$252,335,616)</u> |

Description of fiscal impact: HB 261 would submit to the electorate, in November 2022, a constitutional amendment that if approved would limit the types of taxes the State of Montana can levy to two of the following three taxes: income tax, property tax, and a general statewide sales tax. The constitutional amendment, if passed, would reduce general fund, state special revenue and federal special revenue. The reduction in the tax types collected and their distributions would result in direct expenditure reductions. The fiscal note assumes the limitations apply to taxes, but not fees, or payments in lieu of taxes (see technical note #1)

FISCAL ANALYSIS

Assumptions:

Department of Revenue (DOR)

1. HB 261 proposes a vote to amend the Constitution of the State of Montana in November 2022. If the constitutional amendment were to pass, the State of Montana would be limited to recognizing revenue from two of the following three taxes: income tax, general statewide sales tax, and property tax. The bill also limits the number of qualified tax types to two of the three taxes allowed any one time.

2. This fiscal note assumes that the state’s current (personal and corporate) income and property taxes will continue to be collected.
3. To estimate the changes, it is assumed that HB 261 applies to taxes administered by the department, but not the fees.
4. The table below contains the total revenue estimates for each of the non-income and non-property taxes administered by the Department of Revenue in HJ 2.

| Tax | Total Revenue (\$ Millions) | | | | |
|--|-----------------------------|-----------------|-----------------|-----------------|-----------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
| All Other Tax Revenue | \$44.69 | \$43.70 | \$44.79 | \$45.25 | \$46.35 |
| Beer Tax | \$4.14 | \$4.15 | \$4.16 | \$4.17 | \$4.17 |
| Cigarette Tax | \$63.39 | \$62.30 | \$61.24 | \$60.10 | \$58.81 |
| Coal Severance Tax | \$45.40 | \$44.75 | \$44.07 | \$42.87 | \$41.35 |
| Electrical Energy Production Tax | \$4.48 | \$4.22 | \$4.20 | \$4.19 | \$4.19 |
| Liquor Excise and License Tax | \$34.11 | \$36.15 | \$38.31 | \$40.40 | \$42.44 |
| Lodging Facility Use and Sales Tax | \$55.68 | \$81.57 | \$97.01 | \$108.04 | \$116.28 |
| Marijuana Tax | \$0.00 | \$14.69 | \$27.59 | \$38.13 | \$48.04 |
| Medical Marijuana Tax | \$3.90 | \$2.93 | \$1.95 | \$1.95 | \$1.95 |
| Metalliferous Mines Tax | \$21.11 | \$17.10 | \$17.49 | \$18.02 | \$18.69 |
| Oil and Natural Gas Production Tax | \$80.05 | \$88.64 | \$89.95 | \$87.62 | \$85.70 |
| Public Contractor's Gross Receipts Tax | \$4.99 | \$5.10 | \$5.21 | \$5.31 | \$5.41 |
| Rail Car Tax | \$4.31 | \$4.39 | \$5.14 | \$5.07 | \$5.15 |
| Rental Vehicle Tax | \$5.10 | \$6.30 | \$6.96 | \$7.80 | \$8.57 |
| Retail Telecommunications Tax | \$10.95 | \$10.09 | \$9.19 | \$8.22 | \$7.19 |
| Resource Indemnity Tax | \$2.43 | \$2.21 | \$2.06 | \$2.12 | \$2.04 |
| Tobacco Products Tax | \$12.11 | \$11.90 | \$11.77 | \$11.67 | \$11.56 |
| Wholesale Energy Tax | \$3.47 | \$3.46 | \$3.47 | \$3.46 | \$3.45 |
| Wine Tax | \$3.83 | \$3.91 | \$4.00 | \$4.09 | \$4.19 |
| Total Tax Revenue | \$404.12 | \$447.57 | \$478.56 | \$498.48 | \$515.54 |

5. Several of the taxes are distributed to the general fund and state special revenue funds. These are presented in the following two tables.

| Tax | General Fund Revenue (\$ Millions) | | | | |
|--|------------------------------------|-----------------|-----------------|-----------------|-----------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
| All Other Tax Revenue | \$44.69 | \$43.70 | \$44.79 | \$45.25 | \$46.35 |
| Beer Tax | \$3.10 | \$3.11 | \$3.12 | \$3.12 | \$3.13 |
| Cigarette Tax | \$27.04 | \$26.56 | \$26.11 | \$25.63 | \$25.08 |
| Coal Severance Tax | \$10.97 | \$10.81 | \$10.65 | \$11.59 | \$11.18 |
| Electrical Energy Production Tax | \$4.48 | \$4.22 | \$4.20 | \$4.19 | \$4.19 |
| Liquor Excise and License Tax | \$24.93 | \$26.43 | \$28.01 | \$29.54 | \$31.03 |
| Lodging Facility Use and Sales Tax | \$20.89 | \$30.59 | \$36.38 | \$40.52 | \$43.60 |
| Marijuana Tax | \$0.00 | \$0.37 | \$1.90 | \$3.01 | \$4.05 |
| Metalliferous Mines Tax | \$9.92 | \$8.04 | \$8.22 | \$8.47 | \$8.78 |
| Oil and Natural Gas Production Tax | \$36.49 | \$40.40 | \$41.00 | \$41.24 | \$40.34 |
| Public Contractor's Gross Receipts Tax | \$4.99 | \$5.10 | \$5.21 | \$5.31 | \$5.41 |
| Rail Car Tax | \$4.31 | \$4.39 | \$5.14 | \$5.07 | \$5.15 |
| Rental Vehicle Tax | \$3.82 | \$4.73 | \$5.22 | \$5.85 | \$6.43 |
| Retail Telecommunications Tax | \$10.95 | \$10.09 | \$9.19 | \$8.22 | \$7.19 |
| Tobacco Products Tax | \$5.72 | \$5.63 | \$5.56 | \$5.52 | \$5.47 |
| Wholesale Energy Tax | \$3.47 | \$3.46 | \$3.47 | \$3.46 | \$3.45 |
| Wine Tax | \$2.58 | \$2.64 | \$2.70 | \$2.76 | \$2.83 |
| Total Revenue | \$218.35 | \$230.26 | \$240.86 | \$248.75 | \$253.67 |

| Tax | State Special Revenue (\$ Millions) | | | | |
|------------------------------------|-------------------------------------|-----------------|-----------------|-----------------|-----------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
| Beer Tax | \$1.04 | \$1.04 | \$1.04 | \$1.04 | \$1.05 |
| Cigarette Tax | \$36.35 | \$35.74 | \$35.13 | \$34.47 | \$33.73 |
| Coal Severance Tax | \$34.43 | \$33.94 | \$33.42 | \$31.28 | \$30.17 |
| Liquor Excise and License Tax | \$9.18 | \$9.72 | \$10.30 | \$10.86 | \$11.41 |
| Lodging Facility Use and Sales Tax | \$34.79 | \$50.98 | \$60.63 | \$67.53 | \$72.67 |
| Marijuana Tax | \$0.00 | \$14.31 | \$25.70 | \$35.12 | \$43.99 |
| Medical Marijuana Tax | \$3.90 | \$2.93 | \$1.95 | \$1.95 | \$1.95 |
| Metalliferous Mines Tax | \$11.19 | \$9.06 | \$9.27 | \$9.55 | \$9.90 |
| Oil and Natural Gas Production Tax | \$43.56 | \$48.24 | \$48.95 | \$46.38 | \$45.36 |
| Rental Vehicle Tax | \$1.28 | \$1.58 | \$1.74 | \$1.95 | \$2.14 |
| Resource Indemnity Tax | \$2.43 | \$2.21 | \$2.06 | \$2.12 | \$2.04 |
| Tobacco Products Tax | \$6.38 | \$6.28 | \$6.20 | \$6.15 | \$6.09 |
| Wine Tax | \$1.25 | \$1.27 | \$1.30 | \$1.33 | \$1.37 |
| Total State Special Revenue | \$185.77 | \$217.30 | \$237.69 | \$249.72 | \$261.87 |

6. Under HB 261, the department would not be able to collect the taxes listed in the tables above starting January 1, 2024. It is assumed that half the revenue each of the taxes would have generated in FY 2024 would have been collected in the first half of the year, while the remaining half of revenue would have been collected during the second half of the fiscal year. The department’s general fund and state special revenue collections would be reduced as follows:

| Fiscal Year | Change in Revenue (\$ Millions) | |
|-------------|---------------------------------|-----------------------|
| | General Fund | State Special Revenue |
| 2024 | (\$124.376) | (\$124.862) |
| 2025 | (\$253.672) | (\$261.870) |

DOR Administrative Expense

7. The department would no longer be auditing these taxes, or processing any of the returns after FY 2023. The department would reduce staff immediately and not over time. The department will reduce FTE by 14.5 starting in FY 2024. Of the 14.50 FTE, 13.00 will be Tax Examiners, 1.00 FTE will be a program manager and 0.50 FTE will be a computer operator. This will reduce the department’s total expenditures by \$1,319,068 in FY 2024 and \$1,336,384 in FY 2025.

Montana Department of Transportation (MDT)

8. The constitutional amendment proposed by HB 261 could eliminate the collection of state fuel taxes effective January 1, 2024. This would result in fiscal impacts not only to MDT but to those entities that receive distributions of state fuel tax collections. In addition, by not collecting state fuel tax revenue, federal aid monies will no longer be leveraged with due to not having an available matching source.
9. The total revenue loss to MDT programs would be \$420,661,922 in FY 2024 and \$872,774,936 in FY 2025.
10. The collection of state fuel tax revenue authorized under 15-70-403, MCA, would be eliminated. In FY 2024 the reduction in Highways State Special Revenue and Bridge and Road Safety Accountability Accounts would be \$86,885,534 and in FY 2025 the reduction would be \$188,792,702.
11. The distribution of state fuel tax revenue to cities and counties authorized under 15-70-101, MCA, would be reduced by \$15,311,552 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$41,241,030.
12. The distribution of state fuel tax revenue to the Montana local technical assistance transportation program authorized under 15-70-101, MCA, would be reduced by \$75,000 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$150,000.
13. The distribution of state fuel tax revenue to tribal entities authorized under MCA 15-70-450 would be reduced by \$2,544,657 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$5,740,006.

14. The distribution of state fuel tax revenue to the Montana Highway Patrol authorized under 15-70-403, MCA, would be reduced by \$14,696,707 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$33,071,908.
15. The distribution of state fuel tax revenue to off-highway vehicle accounts authorized under 60-3-201, MCA, would be reduced by \$1,265,601 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$2,854,827.
16. With no state fuel tax, there would not be a need to reserve funds for refunds to carriers who purchase fuel in Montana as authorized under 15-70-425, MCA, (FY 2024 \$4,671,614 & FY 2025 \$10,480,543), nor will there be a need to refund monies to distributors for their allowance as authorized under 15-70-410, MCA, (FY 2024 \$1,267,178 & FY 2025 \$2,851,828).
17. Without a state matching source, all federal monies would be returned to federal agencies such as the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and the National Highway Traffic & Safety Administration. The loss in federal revenue to MDT would be \$269,611,225 in FY 2024 and \$540,654,748 in FY 2025.
18. By turning federal monies back, MDT would no longer receive federal cost recovery revenue, nor would the department collect “other” revenue from local entities for match on projects. The reduction in federal cost recovery revenue would be \$24,182,129 in FY 2024 and \$46,784,168 in FY 2025. The reduction in “other” revenue would be \$3,379,157 in FY 2024 and \$6,792,105 in FY 2025.
19. Montana’s federal fuel taxes paid would be allocated to other states due to MDT’s inability to obligate the federal funds.
20. The collection of aviation fuel tax revenue would also be eliminated. In FY2024 the reduction in aviation revenue would be \$100,725 and in FY 2025 the reduction in aviation revenue would be \$243,176.
21. GVW revenue is considered a user fee, not a tax, thus the collection of GVW revenue will remain intact.
22. Some MDT staff would remain employed to collect GVW revenue. A portion of the GVW revenue would be required as match to federal monies received from the Federal Motor Carriers Association.
23. Any remaining GVW revenue could be used to maintain state highways, but at a significant reduction in service delivery throughout the year.
24. If all remaining GVW revenue is used to maintain state highways, the Emergency Medical Services Program will cease to exist, resulting in local communities no longer purchasing emergency medical supplies, equipment, or ambulances.
25. If all remaining GVW revenue is used to maintain state highways, the Forensic Science Division within the Department of Justice will require funding from another source in order to continue operations.

MDT Expense

26. The MDT would reduce FTE by 933.50 FTE in FY 2024 and 1,867.00 FTE in FY 2025, resulting in personal service reductions of \$83,518,488 in FY 2024 and \$167,036,975 in FY 2025. The reduction would be ongoing.

Secretary of State

27. There would be no fiscal impact to the Office of the Secretary of State. The fiscal impact would be to county governments for the proportional costs per constitutional amendment placed on the ballot.

| <u>Fiscal Impact:</u> | <u>FY 2022 Difference</u> | <u>FY 2023 Difference</u> | <u>FY 2024 Difference</u> | <u>FY 2025 Difference</u> |
|------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| FTE (DOR) | 0.00 | 0.00 | (14.50) | (14.50) |
| FTE (MDT) | 0.00 | 0.00 | (933.50) | (1,867.00) |
| <u>Expenditures:</u> | | | | |
| Personal Services (DOR) | \$0 | \$0 | (\$1,182,303) | (\$1,197,384) |
| Operating Expenses (DOR) | \$0 | \$0 | (\$136,765) | (\$139,000) |
| Personal Services (MDT) | \$0 | \$0 | (\$83,518,488) | (\$167,036,975) |
| Operating Expenses (MDT) | \$0 | \$0 | (\$281,589,650) | (\$563,179,299) |
| Equipment (MDT) | \$0 | \$0 | (\$6,296,177) | (\$12,592,354) |
| Capital Outlay (MDT) | \$0 | \$0 | (\$6,478,433) | (\$12,956,865) |
| Local Assistance (MDT) | \$0 | \$0 | (\$3,065,551) | (\$6,131,101) |
| Grants | \$0 | \$0 | (\$29,962,844) | (\$59,925,687) |
| Transfers (MDT) | \$0 | \$0 | (\$2,779,848) | (\$5,559,696) |
| Montana Highway Patrol | \$0 | \$0 | (\$16,535,953) | (\$33,071,908) |
| Off Highway Vehicles/Aero | \$0 | \$0 | (\$1,427,412) | (\$2,854,827) |
| TOTAL Expenditures | \$0 | \$0 | (\$432,973,424) | (\$864,645,096) |

Funding of Expenditures:

| | | | | |
|------------------------------|------------|------------|------------------------|------------------------|
| General Fund (DOR) | \$0 | \$0 | (\$1,319,068) | (\$1,336,384) |
| State Special Revenue (02) | \$0 | \$0 | (\$182,728,729) | (\$365,457,458) |
| Federal Special Revenue (03) | \$0 | \$0 | (\$248,925,627) | (\$497,851,254) |
| Other | \$0 | \$0 | \$0 | \$0 |
| TOTAL Funding of Exp. | \$0 | \$0 | (\$432,973,424) | (\$864,645,096) |

Revenues:

| | | | | |
|-------------------------------|------------|------------|------------------------|--------------------------|
| General Fund (DOR) | \$0 | \$0 | (\$124,376,000) | (\$253,672,000) |
| State Special Revenue (DOR) | \$0 | \$0 | (\$124,862,000) | (\$261,870,000) |
| State Special Revenue (MDT) | \$0 | \$0 | (\$126,717,843) | (\$285,182,844) |
| Federal Special Revenue (MDT) | \$0 | \$0 | (\$248,925,627) | (\$497,851,254) |
| Other | \$0 | \$0 | (\$3,379,157) | (\$6,792,105) |
| TOTAL Revenues | \$0 | \$0 | (\$628,260,627) | (\$1,305,368,203) |

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

| | | | | |
|------------------------------|-----|-----|-----------------|-----------------|
| General Fund (01) | \$0 | \$0 | (\$123,056,932) | (\$252,335,616) |
| State Special Revenue (02) | \$0 | \$0 | (\$68,851,114) | (\$181,595,386) |
| Federal Special Revenue (03) | \$0 | \$0 | \$0 | \$0 |
| Other | \$0 | \$0 | (\$3,379,157) | (\$6,792,105) |

Effect on County or Other Local Revenues or Expenditures:

Department of Revenue

1. The department currently collects taxes on behalf of several local governments. These collections would be eliminated.

Montana Department of Transportation

2. Cities and counties statutory distribution will be reduced by \$15,311,552 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$41,241,030.

- 3. The statutory distribution to the Montana local technical assistance transportation program in Bozeman will be reduced by \$75,000 in FY 2024 and no longer take place beginning in FY 2025, resulting in a reduction of \$150,000.

Montana Association of Counties & The Montana League of Cities and Towns

- 4. It is unclear what happens to current debt being serviced by property tax, bonds, and permissive levies.
- 5. The prohibition of any existing taxing authority at the local level would have direct fiscal effects on local government. A similar prohibition of existing taxing authority at the state level would have indirect effects on local governments resulting from the shift of service to local entities.

Long-Term Impacts:

Department of Revenue

- 1. The elimination of these taxes will reduce collections from these taxes beyond FY 2025.

Montana Department of Transportation

- 2. The elimination, or significant reduction in investment in Montana roads and bridges will result in deteriorating infrastructure. The long-term costs related to the significant reduction of investment in Montana roads and bridges cannot be calculated.
- 3. Tribal fuel tax revenue sharing agreements would no longer be necessary with no state fuel tax.
- 4. MHP loss in revenue will impact their ability to enforce highway safety for the traveling public.
- 5. Off-highway vehicle accounts will lose revenue, which will reduce their ability to provide services for certain recreation programs through FWP.
- 6. The Aeronautics program within MDT will lose revenue not only from the inability to collect aviation fuel taxes, but also revenue from 60-3-201, MCA.

Technical Notes:

- 1. This fiscal note assumes the limitations apply to taxes, but not fees, or payments in lieu of taxes. To the extent that additional taxes, fees, or payments in lieu of taxes were legally deemed to be taxes eligible for exclusion under this bill; the revenue losses to the state would be larger. Examples of these revenue sources not reflected in this fiscal note but potentially eliminated by HB 261 include (but are not limited to): vehicle registrations; video gaming revenues; and fees or taxes on insurance companies and/or insurance premiums.

Department of Revenue

- 2. This bill may conflict with Article VIII, Section 2 of the Montana Constitution, which states that “the power to tax shall never be surrendered, suspended, or contracted away.

NOT SIGNED BY SPONSOR

Sponsor's Initials

2/5/21

Date

KA

Budget Director's Initials

2/5/21

Date