

LEGAL REVIEW NOTE

Bill No.: HB 692

LC#: LC1631 To Legal Review Copy, as of
February 8, 2019

Short Title: Provide tax exemption for property
taxes if no child enrolled in public schools

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

LC1631 as drafted provides for an exemption from school property taxes for an individual taxpayer who is not a parent or legal guardian of a child enrolled in a public school system. The exemption applies to property taxes that raise revenue for elementary and secondary schools, including all school district mill levies, county mill levies, and state mills. The exemption can be claimed by the owner of a primary residence.

By allowing an exemption to one group of people that do not utilize the public school system while providing for the taxation of people that utilize the public school system, LC1631 may raise potential constitutional conformity issues with respect to (1) the Equal Protection requirements of Article II, section 4, of the Montana Constitution, as well as the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution; (2) Article VIII, section 3, of the Montana Constitution; and (3) Article X, section 1, of the Montana Constitution.

Article II, section 4, of the Montana Constitution provides:

Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Montana Department of Revenue v. Barron, 245 Mont. 100, 799 P.2d 533 (1990), was a case dealing with problems from cyclical revaluation. The Legislature provided that property values were to be adjusted each year of the cycle based upon geographic areas. The value of each residence in each of the 47 areas of the state was to be adjusted by a percentage based upon a statistical analysis of sales in the area during the prior year. If the ratio of sales prices to taxable market values was more than 5% above or below the average, the value of all the property in the area was to be adjusted by the percentage difference. In Area 2.1, a part of Great Falls, the difference was 30%. The 30% was applied to all residential properties in the area. The Court looked at those that had recently sold in the area. The underappraised properties increased in value, but even so, many were still valued at only 65% of actual sales price, where overappraised properties ended up 255% over their actual sales price. The Supreme Court said that "the use of the 1990 tax values derived from the ratio studies and the application of the 30% factor to residential properties in Area 2.1 require certain taxpayers therein **to bear a disproportionate share of Montana's tax burden** in violation of the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution, and Art. II, § 4, 1972 Montana Constitution". *Id.* at 111.

Imposing different mills based on family status would run into the same problem, but the results are arguably more significant. Taxpayers with identical incomes, identical age, and identical primary housing will pay different amounts if one taxpayer uses the public school system and the other taxpayer does not. Since the differential treatment is based on family status, it is likely the Supreme Court would apply a higher level of review than rational basis. For example, in *Butte Cmty. Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986)¹, the Montana Supreme Court adopted a middle tier scrutiny test in determining that a bill that limited welfare benefits for individuals under 50 with no children was unconstitutional. In declaring the bill unconstitutional,

¹Superseded on other grounds as recognized in *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 938 P.2d 658 (1997), and *Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).

the Court held that the age requirement was not reasonable and that a classification based on age was not more important than the people's interest in obtaining welfare benefits. A middle tier scrutiny was applied since another section of the Montana Constitution directed the Legislature to provide necessary assistance to the misfortunate. *Id.* at 434 (citing Article XII, section 3(3), of the Montana Constitution). As applied here, the fact that a right to a "basic system of free quality public elementary and secondary schools" is provided for in Article X, section 1, of the Montana Constitution, means that a middle tier scrutiny may be applicable. Under this tier, the state would need to prove that it is reasonable for taxpayers with children in public school to pay more in property taxes while identical taxpayers without children in public school pay less, and that tax shift is more important to the people's interest than having a public education. It would be very difficult to pass this level of review. It is also arguable that the Court could apply strict scrutiny review, but no cases were located that discriminated based on family status in taxation, so this potential issue is not discussed. Rational basis review is discussed below.

Article VIII, section 3, of the Montana Constitution provides:

Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Usually this section of the Montana Constitution comes up in the course of appraisal or equalization of property, but the same legal arguments for uniformity in appraisal and equalization apply to the assessment of taxes. Since the proposed exemption for taxpayers without children in the public school system involves the assessment of property, it too must be done on a uniform basis.

The Supreme Court has interpreted the Equal Protection provision of Article II, section 4, of the Montana Constitution to replace the "uniformity" requirement of the 1889 Constitution relating to taxation. This has engrafted the prohibition on disproportionate taxation into the equal protection discussion of taxation. The discussion of rational basis and other analysis is sometimes ignored and the Court goes straight to the disproportionate taxation discussion. See *Department of Revenue v. Puget Sound Power and Light Co.* 179 Mont. 255, 270, 587 P.2d 1282 (1978), and *Kottel v. State*, 2002 MT 278, ¶ 32, 312 Mont. 387, 60 P.3d 403.

In *Powder River County v. State*, 2002 MT 259, 312 Mont. 198, 60 P.3d 357, the Montana Supreme Court specifically discussed the uniformity clauses of the 1889 Montana Constitution and how uniformity was to be applied under the 1972 Montana Constitution. At issue was a challenge to the legality of the Legislature's changes to the way oil, gas, and coal were taxed as enacted in the 1989 and 1995 Sessions. The new form of taxation was no longer property tax based. Oil, gas, and coal were separately taxed, and the revenue was distributed to the state, local governments, and schools based upon formulas. The Court specifically stated that the uniformity principle established in *Hilger v. Moore*, 56 Mont. 146, 182 P. 477 (1919), was still the law in Montana:

In other words, in order to secure a just valuation of all property, the method of assessing value must be uniform, and subsequently, after the property has been

justly valued via a uniform method, property within the same class must be uniformly taxed, that is, taxed at the same percentage. *Powder River*, ¶ 52 (citing *Hilger*, 56 Mont. at 170, 182 P. at 481-482).

Uniformity allows classification to reflect the character of the property and thus allows different taxes per dollar of value of the taxed property. Uniformity does not allow different levies against different classes of property, let alone the same class of property. Under LC1631, identical primary residences within the same neighborhood would be taxed using different mill levies, which potentially violates the uniformity principle and is a potential of a denial of equal protection.

Article X, section 1, of the Montana Constitution provides:

Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

This section of the Montana Constitution was discussed above in the discussion of Article II, section 4, of the Montana Constitution. As such, it is not discussed in depth here. There is no case law regarding taxpayers with children paying more in property taxes than identical taxpayers with no children. However, the plain language of this section provides that "educational opportunity is guaranteed to each person of the state". Additionally, the legislature is required to "**fund and distribute in an equitable manner** to the school districts the state's share of the cost of the basic elementary and secondary school system" (emphasis added). A system of property taxation that charges significantly more in tax to similarly situated people based on family status may not guarantee educational opportunity to all children of this state and may not be considered equitable.

Consequently, LC1631 as drafted may raise potential constitutional conformity issues with the Equal Protection requirements of Article II, section 4, of the Montana Constitution, Article VIII, section 3, of the Montana Constitution, and Article X, section 1, of the Montana Constitution.

Requester Comments: