

HOUSE BILL NO. 642

INTRODUCED BY E. MCCLAFFERTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A SCHOOL DISTRICT TO APPLY FOR AND USE AN INTERCAP LOAN FROM THE BOARD OF INVESTMENTS FOR THE REPAYMENT OF TAX PROTESTS; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made.

(2) A person appealing a property tax or fee pursuant to Title 15, chapter 2 or 15, including a person appealing a property tax or fee on property that is annually assessed by the department or subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal or mediation may continue but a tax or fee may not be refunded as a result of the appeal or mediation.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first

1 installment portion paid under protest determines the right of the party paying the subsequent installment to have
2 it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not
3 paid by the taxpayer plus interest from the date the subsequent installment was due.

4 (4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county
5 or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to
6 be designated as a protest fund and must be retained in the protest fund until the final determination of any action
7 or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other
8 local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money
9 of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision
10 creating the special protest fund does not apply to any payments made under protest directly to the state.

11 (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to
12 15-23-101 and any protested taxes on industrial property that is annually assessed by the department in a school
13 district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be
14 remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through
15 (4)(b)(iv).

16 (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant
17 to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the
18 funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue
19 fund.

20 (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited
21 in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special
22 revenue fund.

23 (iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be
24 deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest
25 state special revenue fund.

26 (5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction
27 affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains
28 unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all
29 or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year
30 of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund

1 does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except
2 the first-year protest amount.

3 (b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property
4 that is centrally assessed pursuant to 15-23-101 or on industrial property that is assessed annually by the
5 department in the first and subsequent years that a tax protest remains unresolved may demand that the
6 treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest
7 payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes
8 of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any
9 or all of the payments to which it is entitled.

10 (c) The provisions of subsection (5)(b) do not apply to a school district that has elected to waive its right
11 to its portion of protested taxes on centrally assessed property and on industrial property that is assessed
12 annually by the department for that specific year as provided in 15-1-409.

13 (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not
14 commenced within the time specified or if the action is commenced and finally determined in favor of the
15 department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the
16 protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed
17 property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax
18 belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses
19 charged to the local government units.

20 (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the
21 treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the
22 final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to
23 the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or
24 fee that the person holding the judgment is entitled to recover, together with interest from the date of payment
25 under protest. The department shall refund from the school district property tax protest state special revenue fund
26 the protested portions of property taxes and interest to a taxpayer in a school district in which the school district
27 has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the
28 amount available for the refund in the school district property tax protest state special revenue fund is insufficient
29 to refund the property tax payments, the department shall pay the remainder of the refund from the state general
30 fund.

1 (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund
2 provided for in 17-6-203 for the applicable period.

3 (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer
4 shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

5 (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the
6 protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which
7 local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the
8 treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction
9 is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state
10 treasurer as provided in subsection (6)(b).

11 (ii) For an adverse protest action against the state for centrally assessed property, the department shall
12 refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and
13 from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an
14 adverse protested action from the centrally assessed property tax state special revenue fund may not exceed
15 the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii)
16 and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred
17 to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested
18 action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments
19 to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder
20 of the refund proportionally from the state general fund and from money deposited in the state special revenue
21 fund levied pursuant to 15-10-108.

22 (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is
23 allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The
24 taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of
25 payment under protest until the date of final resolution of the protest and at the combined rate of the federal
26 reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution,
27 plus 4 percentage points, from the date of final resolution of the protest until refund is made.

28 (7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds
29 from one or more of the following sources:

30 (a) imposition of a property tax to be collected by a special tax protest refund levy;

1 (b) the general fund or any other funds legally available to the governing body; ~~and~~
 2 (c) for a school district that is eligible under 17-5-1604(3), an intercap loan through the board of
 3 investments pursuant to Title 17, chapter 5, part 16; and

4 (d) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving
 5 revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or
 6 school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be
 7 issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

8 (8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is
 9 not owed."

10
 11 NEW SECTION. Section 2. Loans available to school districts. A school district may apply to the
 12 board of investments for a general fund debt loan or a general obligation loan for the purpose of refunding tax
 13 payments to which a taxpayer is entitled under 15-1-402.

14
 15 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
 16 integral part of Title 17, chapter 5, and the provisions of Title 17, chapter 5, apply to [section 2].

17
 18 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2015.

19 - END -