

## HOUSE BILL NO. 905

INTRODUCED BY G. OVERSTREET, J. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A REFUND OF PROPERTY TAXES FOR FAILURE TO ABATE A PUBLIC NUISANCE; PROVIDING AN APPLICATION AND APPROVAL PROCEDURE; PROVIDING THAT A REFUND IS SUBTRACTED FROM THE ENTITLEMENT SHARE PAYMENT; PROVIDING DEFINITIONS; PROVIDING A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 17-7-502, MCA."

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

**NEW SECTION. Section 1. Refund of taxes for failure to abate public nuisance -- definitions -- rulemaking.** (1) A property owner may apply for a refund in an amount determined pursuant to subsection (2) if either of the following occurs:

(a) the city, consolidated city-county, or county in which the real property is located adopts and follows a policy, pattern, or practice of declining to enforce existing laws or ordinances prohibiting illegal camping, obstructing public thoroughfares, loitering, panhandling, public urination or defecation, public consumption of alcoholic beverages, or possession or use of illegal substances and the property owner incurs documented expenses to mitigate the effects of the policy, pattern, or practice on the property owner's real property; or

(b) the city, consolidated city-county, or county in which the real property is located maintains a public nuisance and the property owner incurs documented expenses to mitigate the effects of the public nuisance on the property owner's real property.

(2) The amount of the refund is equal to the documented expenses incurred by the property owner that were reasonably necessary to mitigate the effects of the policy, pattern, or practice or the public nuisance on the property owner's real property.

(3) The refund allowed under this section:

(a) must be paid as provided in subsection (4)(a);

1 (b) is in lieu of any claim for monetary damages;

2 (c) may not exceed the amount the property owner paid for the prior tax year in property taxes to  
3 the city, consolidated city-county, or county. If the total amount of the refund determined pursuant to subsection  
4 (2) is more than the amount the property owner paid for the prior tax year in property taxes to the city,  
5 consolidated city-county, or county for the tax year and the refund is accepted, the department of revenue shall  
6 issue the refund for that tax year in an amount equal to the amount the property owner paid for the prior tax  
7 year in property tax to the city, consolidated city-county, or county. The property owner may apply to the  
8 department of revenue for the remaining portion of the refund in the following tax years.

9 (4) Within 15 days after the department of revenue receives an application from a property owner  
10 for a refund under this section, the department of revenue shall notify the city, consolidated city-county, or  
11 county. Within 30 days after receiving the notice, the city, consolidated city-county, or county shall accept or  
12 reject the refund. If the city, consolidated city-county, or county:

13 (a) accepts the refund, the department of revenue shall pay the refund to the property owner from  
14 the general fund. A refund provided for in this section is statutorily appropriated as provided in 17-7-502.

15 (b) rejects the refund, the department of revenue may not pay the refund to the property owner.  
16 The property owner may file a cause of action in the district court of the county in which the real property is  
17 located to challenge the rejection of the refund. The question of whether the property owner is entitled to the  
18 refund and whether the amount of the refund is reasonable are judicial questions. In a cause of action filed  
19 pursuant to this subsection (4)(b):

20 (i) the city, consolidated city-county, or county shall bear the burden of demonstrating that its  
21 actions are lawful;

22 (ii) the property owner is not liable to the city, consolidated city-county, or county for attorney fees  
23 or costs; and

24 (iii) a prevailing property owner must be awarded reasonable attorney fees and costs.

25 (c) does not respond to the department of revenue within the 30-day period, the refund is  
26 considered to be accepted and the department of revenue shall pay the refund as provided in subsection (4)(a).

27 (5) On notice from the department of revenue, the state treasurer shall withhold from the  
28 entitlement share payment provided for in 15-1-121 to the city, consolidated city-county, or county the total

1 amount of refunds issued under this section. The state treasurer shall credit any money withheld pursuant to  
2 this subsection (5) to the general fund as reimbursement for issuing the refunds.

3 (6) The property owner may not be required to submit a claim as a prerequisite to demanding or  
4 receiving just compensation in the form of a refund pursuant to this section.

5 (7) A property owner may apply for a refund under this section once each tax year.

6 (8) If the policy, pattern, practice, or public nuisance remains in place after the property owner  
7 applies for a refund pursuant to this section, the property owner is entitled to another refund under this section  
8 in a subsequent tax year unless the city, consolidated city-county, or county and the property owner enter into a  
9 knowing and voluntary settlement or the city, consolidated city-county, or county ends the policy, pattern, or  
10 practice or abates the public nuisance.

11 (9) A property owner whose real property is located in the corporate boundaries of a city is eligible  
12 to apply for a refund only from that city. A property owner whose real property is located in a consolidated city-  
13 county or an unincorporated area of a county is eligible to apply for a refund only from that consolidated city-  
14 county or county.

15 (10) The remedy established by this section is in addition to any other remedy that is provided by  
16 the laws and constitution of this state or the United States and is not intended to modify or replace any other  
17 remedy.

18 (11) This section does not apply to:

19 (a) decisions by city, consolidated city-county, or county authorities to exercise prosecutorial  
20 discretion not to prosecute alleged offenders if the decisions are made on a case-by-case basis and the  
21 justifications for each decision are published on a monthly basis by the city, consolidated city-county, or county.

22 (b) acts of executive clemency; or

23 (c) acts or omissions mandated by federal law.

24 (12) The department of revenue may adopt rules to administer this section.

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26 **Section 2.** Section 17-7-502, MCA, is amended to read:

27 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without

1 the need for a biennial legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with  
3 both of the following provisions:

4 (a) The law containing the statutory authority must be listed in subsection (3).

5 (b) The law or portion of the law making a statutory appropriation must specifically state that a  
6 statutory appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-  
8 11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-  
9 807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-316; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121;  
10 15-1-142; 15-1-143; 15-1-218; 15-1-2302; [section 1]; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-  
11 332; 15-37-117; 15-39-110; 15-65-121; 15-70-128; 15-70-131; 15-70-132; 15-70-433; 16-11-119; 16-11-509;  
12 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-6-214; 17-7-133; 17-7-215; 18-11-112; 19-3-319; 19-3-  
13 320; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-  
14 21-203; 20-3-369; 20-7-1709; 20-8-107; 20-9-250; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503;  
15 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-  
16 10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-4-1506; 44-12-  
17 213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-  
18 321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-  
19 150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-  
20 112; 81-1-113; 81-2-203; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-  
21 1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

22 (4) There is a statutory appropriation to pay the principal, interest, premiums, and any costs or fees  
23 associated with issuing, paying, securing, redeeming, or defeasing all bonds, notes, or other obligations, as due  
24 in the ordinary course or when earlier called for redemption or defeased, that have been authorized and issued  
25 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of  
26 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined  
27 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have  
28 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the

1 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement  
2 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410  
3 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental  
4 benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on  
5 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117  
6 terminates June 30, 2025; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates  
7 September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027;  
8 pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to secs.  
9 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 1, Ch.  
10 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021,  
11 the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-  
12 310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates  
13 June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025;  
14 pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; pursuant to  
15 sec. 1, Ch. 20, L. 2023, sec. 2, Ch. 20, L. 2023, and sec. 3, Ch. 20, L. 2023, the inclusion of 81-1-112, 81-1-  
16 113, and 81-7-106 terminates June 30, 2029; pursuant to sec. 9, Ch. 44, L. 2023, the inclusion of 15-1-142  
17 terminates December 31, 2025; pursuant to sec. 10, Ch. 47, L. 2023, the inclusion of 15-1-2302 terminates  
18 June 30, 2025; pursuant to sec. 2, Ch. 374, L. 2023, the inclusion of 10-3-802 terminates June 30, 2031;  
19 pursuant to sec. 12, Ch. 558, L. 2023, the inclusion of 20-9-250 terminates December 31, 2029; pursuant to  
20 sec. 4, Ch. 621, L. 2023, the inclusion of 22-1-327 terminates July 1, 2029; pursuant to sec. 24, Ch. 722, L.  
21 2023, the inclusion of 17-7-133 terminates June 30, 2027; pursuant to sec. 10, Ch. 758, L. 2023, the inclusion  
22 of 44-4-1506 terminates June 30, 2027; and pursuant to sec. 10, Ch. 764, L. 2023, the inclusion of 15-1-143  
23 terminates December 31, 2025.)"

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25 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
26 integral part of Title 15, chapter 16, and the provisions of Title 15, chapter 16, apply to [section 1].

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