

## LEGAL REVIEW NOTE

**Bill No.:** HB 839

**LC#:** LC 4083, To Legal Review Copy, as  
of February 3, 2025

**Short Title:** Provide income tax credit for  
certain long-time residents

**Attorney Reviewer:** Todd Everts  
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**Date:** March 18, 2025

### 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:

HB 839, as drafted, provides for a tax credit for residents who have lived in Montana for 10 or more years as follows:

**NEW SECTION. Section 1. Montana ten-year resident credit.** (1) A taxpayer who has resided in Montana for the prior 10 years and who has income of less than

\$100,000 is allowed a credit against the tax imposed by 15-30-2103.

- (2) A taxpayer is considered to have resided in Montana each year that the taxpayer resided in Montana for at least 7 months of the year.
- (3) The amount of the credit allowed under this section is \$500.
- (4) The credit may not be refunded and may not be carried to another tax year.
- (5) Pursuant to 5-4-104, the legislature finds that the purpose of the tax credit provided for in this section is to reduce the tax burden of long-time Montana residents.
- (6) For the purposes of this section, "income" has the same meaning as in 15-30-2337.

The United State Supreme Court has held that distributions of income based on the length of person's residency in the state violates the equal protection rights of newer state citizens. In Zobel v. Williams, 457 U.S. 55 (1982) the Supreme Court considered whether the Alaska dividend distribution plan that apportioned revenue to its adult citizens based on their length of residency violated the Equal Protection Clause of the Fourteenth Amendment. Zobel v. Williams, 457 U.S. at 60.

In Zobel, the Supreme Court noted that "[w]hen a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment." Id. The Court also cited earlier precedent where it concluded that "The only apparent justification for the retrospective aspect of the program, 'favoring established residents over new residents,' is constitutionally unacceptable." Zobel, 457 U.S. at 63 (quoting Vlandis v. Kline, 412 U.S. 441, 450 (1973)). Based on earlier precedent and its analysis of the Alaska distribution plan, the Court held that the plan was unconstitutional.

Therefore, HB 839 may raise a potential constitutional conformity question as to whether this legislation conflicts with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

#### **Requester Comments:**