GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title:	**HB0440.01: Providing tax incentives to put Montana-produced food first**
Primary Sponsor: Jane Weber	Status: As Introduced

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact

☐ Significant Long-Term Impacts ☒ Technical Concerns ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Expenditures				
General Fund (01)	$0	$187,129	$184,229	$186,685
Revenues				
General Fund (01)	($278,400)	($1,399,400)	($1,435,800)	($1,469,200)
Net Impact General Fund Balance	($278,400)	($1,586,529)	($1,620,029)	($1,655,885)

Description of fiscal impact

HB 440 provides a tax incentive for the sale of Montana produced food. Specifically, HB 440 creates a subtraction from Montana taxable income equal to of 50% of net income derived from the retail sale of Montana-produced food. This subtraction is estimated to reduce income tax liabilities and general fund collections by $278,400 in FY 2026, $1,399,400 in FY 2027, $1,435,800 in FY 2028 and $1,469,200 in FY 2029. The Department of Revenue will require 2.00 FTE additional tax examiners to help audit and maintain compliance with this new subtraction.

FISCAL ANALYSIS

Assumptions

Department of Revenue

1. HB 440 creates a subtraction to Montana taxable income for earnings derived income from the retail sale of Montana produced food. The subtraction is equal to 50% of the net income from the sales of Montana-produced food to final consumers. The subtraction does not apply to food prepared for on-site consumption.
2. According to the Economic Value and Impact of Local Food in Montana study published in 2022 by Highland Economics, retail sales of local food in Montana totaled $158.5 million.
3. According to the 2022 Census of Agriculture, Montana farms and ranches produced $4.54 billion in agricultural products and generated net cash income of $1.14 billion. This is an income return of about 25% on total production and sales. Applying this 25% net income to the $158.5 million in local food retail sales, it is assumed the net income on those sales were $39,625,000 in 2022.
4. It is assumed this income has and will continue to grow according to the personal consumption expenditures estimates for food and beverages purchased for off-premises consumption. It is also assumed that half of this income will be claimed as a subtraction on pass-through/individual income tax returns with a tax rate of 5.9% and half on corporate income tax returns with a tax rate of 6.75%. The following table show the estimated local food income subtractions and the resulting impact on tax revenue for tax years 2026 to 2029.

As specified in the bill, the income subtraction amount is 50% of the net income from Montana-produced food sales. The bill applies to tax years beginning after December 31, 2025.

Tax Year	Montana Retail Food Sales	Income from Montana Food Sales	Income Subtractions on Returns (50%)	Reduction is Income Tax Liabilities
2026	$176,000,000	$44,000,000	$22,000,000	$1,392,000
2027	$180,800,000	$45,200,000	$22,600,000	$1,429,000
2028	$185,080,000	$46,270,000	$23,135,000	$1,463,000
2029	$189,000,000	$47,250,000	$23,625,000	$1,494,000

5. It is assumed that taxpayers will adjust their estimated payments because of the proposed subtraction, with 20% of the TY 2026 change in tax liability impacting tax collections in FY 2026 and the remaining 80% of the revenue reduction occurring in FY 2027. The same distribution applies to all following tax years.
6. Therefore, this bill is estimated to reduce general fund revenue by approximately $278,400 in FY 2026, $1,399,400 in FY 2027, $1,435,800 in FY 2028 and $1,469,200 in FY 2029.
7. The Department of Revenue will have to create rules and update forms for the proposed subtraction. Also, this will be a complicated subtraction that will require detailed auditing and verification by the department. To achieve this and maintain consistent compliance, the department will need two additional tax examiners, beginning in FY 2027 when TY 2026 tax returns begin being filed. Total costs to the department for these FTE are $187,129 in FY 2027, $184,229 in FY 2028, and $186,685 in FY 2029.

Fiscal Analysis Table

Department of Revenue	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
FTE	0.00	2.00	2.00	2.00
TOTAL Fiscal Impact	**0.00**	**2.00**	**2.00**	**2.00**
Expenditures				
Personal Services	$0	$162,907	$164,971	$167,065
Operating Expenses	$0	$24,222	$19,258	$19,620
TOTAL Expenditures	**$0**	**$187,129**	**$184,229**	**$186,685**
Funding of Expenditures				
General Fund (01)	$0	$187,129	$184,229	$186,685
TOTAL Funding of Expenditures	**$0**	**$187,129**	**$184,229**	**$186,685**
Revenues				
General Fund (01)	($278,400)	($1,399,400)	($1,435,800)	($1,469,200)
TOTAL Revenues	**($278,400)**	**($1,399,400)**	**($1,435,800)**	**($1,469,200)**
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	($278,400)	($1,586,529)	($1,620,029)	($1,655,885)

Technical Concerns

Department of Revenue

1. HB 440 appears to favor Montana products over out-of-state products. This could violate the U.S. Commerce Clause, Equal Protection and Due Process. In addition, the provisions on this bill could be challenged as economic protectionism for in-state businesses by creating a protective tariff or customs duty. West Lynn Creamery, Inc. V. Healy, 512 U.S. 186, 193 (1994).
2. The bill does not specifically define how net income from Montana-produced food would be calculated separately from other income. For larger retailers, such as grocery stores, this could be complicated to specifically identify all the associated costs related to a sale of Montana-produced food to calculate that net income amount eligible for the subtraction. The Department of Revenue would need rule making authority to specify how this calculation should be made if it is not defined in code.

Office of Budget and Program Planning

3. The HB 440's record in Bill Explorer notes a legal review note, with rebuttal, centered on technical concern #1

NOT SIGNED BY SPONSOR	2/17/25	RO	2/14/2025
Sponsor's Initials	Date	Budget Director's Initials	Date