

FISCAL NOTE

Bill #: HB0253

Title: Direct Attorney General to sue federal government over land ownership

Primary Sponsor: Bob Davies

Status: As Introduced

Sponsor signature Date

Chuck Swysgood, Budget Director Date

Fiscal Summary

	<u>FY2002</u> <u>Difference</u>	<u>FY2003</u> <u>Difference</u>
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

(See Assumptions and Technical Notes for further discussion)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
X		Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached	X		Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Natural Resources and Conservation

1. Because the Attorney General's office advises that a court challenge would take at least two years, no fiscal impact to the DNRC is shown in FY 2002 and FY 2003. Significant revenue and expenditure impacts would occur as the lands are transferred to the State of Montana.
2. If the court challenge is successful, the United States would transfer approximately 27.0 million acres of federal lands of the following types: Forest Service (16.8 million acres), Bureau of Land Management (8.1 million surface acres), U.S. Fish & Wildlife (0.6 million acres), U.S. Park Service (1.2 million acres), and Bureau of Reclamation (0.3 million acres). The Bureau of Land Management also administers 37.8 million

acres of mineral estate, which the Department assumes would also be transferred to the state. It is assumed that 4.6 million acres of lands managed by the Bureau of Indian Affairs would not be transferred.

3. The DNRC would be directed to manage these lands in a manner similar to current management of state school trust lands.
4. The relative mix of forest, agriculture & grazing, commercial, and mineral resources on the lands acquired from the United States would be similar to the mix found on the 5.2 million surface acres and 6.3 million mineral acres currently managed by the department.
5. In FY 2000, the Trust Land Management Division (TLMD) incurred surface and mineral management costs averaging \$.60 per acre. By extrapolation, additional operating costs of at least \$39.8 million per year would be required by the TLMD.
6. In FY 2000, the TLMD required 1.00 FTE for every 45,000 surface acres and 630,000 mineral acres. By extrapolation, at least 700 FTE more would be required by the TLMD.
7. Significant additional start-up costs would be required for acquisition of offices, vehicles, equipment, etc.
8. In FY 2000, the department management of state school trust lands generated \$39.3 million in new revenue. By extrapolation, and assuming revenue generation was an acceptable management objective, \$213 million in additional annual revenue may be possible from the acquired lands.
9. The cost for wildland fire suppression to taxpayers would be tremendous. Estimates for suppression costs on the Bitterroot National Forest alone in 2000 is estimated at \$68,000,000. Costs on other federally owned lands within the state will probably exceed \$200,000,000
10. Proceeds from the lands acquired by the state would be used to reduce property taxes and income taxes and would not be utilized to fund the costs of wildland fire protection.
11. The current resources utilized by the federal agencies for wildland fire protection would need to be transferred to the state to maintain an acceptable level of protection for the lands involved and other public and private owned lands.
12. The estimated current costs for providing wildland fire protection to state and private lands by DNRC is approximately \$1.50 per acre. Approximately \$1.00 per acre is for pre-suppression fire costs and approximately \$.50 per acre for suppression costs.
13. Centralized Services current budget of \$2.3 million would at least triple to handle the increased workload.
14. The state's liability would drastically increase due to inclusion of dams and reservoirs.

Department of Justice

15. The Attorney General would be required to initiate litigation against the federal government to require the United States to transfer title to the state of Montana of all federally owned land in Montana not subject to the restrictions of Article I, Section 8 of the United States Constitution. A lawsuit would be required regardless of the legal merits of the state's position.
16. It is assumed that during the next biennium the legislature would direct that one lawsuit be filed. The lawsuit would be handled by existing staff of the Legal Services Division of the Department of Justice.
17. The issues addressed in such litigation would be complex. At least one expert witness would be required for the state, and the state would incur regular costs of litigation, including expenses for deposition of the state's witnesses, as well as depositions of the defendant's experts and other witnesses. While it is impossible to predict costs with certainty, costs for major constitutional litigation average in the tens of thousands of dollars.
18. Regardless of the outcome of such litigation, the non-prevailing party would likely appeal. An appeal could ultimately end up before the United States Supreme Court. While appeal costs cannot be predicted with certainty, they would likely average in the tens of thousands of dollars.

19. HB 2 will include a biennial appropriation to the Department of Justice for major litigation in the amount of \$500,000. It is assumed in this fiscal note that department costs will be covered by this appropriation. However, depending on the costs of other litigation being handled by the department, the department's major litigation budget may not be adequate to cover the litigation costs associated with HB 253.
20. The Legal Services Division would require Agency Legal Services representation. Billing costs would be \$70 per hour for attorney work and \$38 per hour for paralegal work. Associated costs and expenses would be taken from the department's major litigation budget.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES

Department of Natural Resources and Conservation

The federal government currently disburses Payment In Lieu of Tax payments and one-half of the mineral revenues it generates on BLM land. HB 253 directs all proceeds to be used to reduce property and income taxes.

LONG-RANGE IMPACTS:

Department of Natural Resources and Conservation

State trust management objectives in Title 77 differ from current federal objectives.

TECHNICAL NOTES:

Department of Natural Resources and Conservation

1. Federal lands are generally managed for specific objectives or for multiple use, without the obligation to generate revenue for specific trust beneficiaries. In some areas, trust management objectives may be incompatible with existing resource values (national park lands, for example).
2. The United States Forest Service annual budget is approximately \$157 million for managing lands in Montana (16.8 million acres). The Bureau of Land Management annual budget is approximately \$27 million for managing their lands in Montana (8.1 million surface acres and 37.8 mineral acres).
3. Transfer of management responsibility for 27.0 million surface and 37.8 million mineral acres would likely require implementation over several years.

Department of Justice

4. HB 253 raises constitutional concerns whether the legislature can require the Attorney General to initiate litigation regardless of the Attorney General's independent review of the legal merits.