

Fiscal Note Request HB0572, As Introduced

(continued)

3. The enforcement of environmental regulations can indirectly restrict the use that can be made of land. If the courts were to interpret HB 572 to include decreases in value in these instances, then DEQ may occasionally impose restrictions that require compensation in amounts that could range from several thousand dollars to millions of dollars. More precise cost estimation is not possible.
4. If HB 572 were interpreted to require compensation for decreases in value to land that result from imposition of regulatory requirements that involve significant expense (e.g., reclamation of mines), then DEQ would probably take a number of regulatory actions per year that could trigger the compensation requirements in amounts that could range from several thousand dollars to millions of dollars. More precise cost estimation is not possible.
5. Because HB 572 is retroactively applicable to actions that occurred before its effective date, DEQ would be immediately subject to claims for actions that occurred prior to the effective date of HB 572. These claims may or may not be subject to two or three year statute of limitation.
6. HB 572 will result in substantial litigation during the first biennium because it is retroactive. One additional attorney will be necessary. Litigation expenses will also be necessary for witness fees, appraisers, and deposition costs. Personal services would be \$70,304 in FY 2006 and \$70,304 in FY 2007. Operating expenses would be \$133,576 in FY 2006 and \$127,503 in FY 2007 including: litigation expenses (\$100,000 per year), office rent (\$3,000 per year), office supplies and services (\$9,423 in FY 2006 and \$3,350 in FY 2007), travel and training (\$4,280 per year), and indirect costs (\$16,873 per year).
7. It is assumed that the funds for this bill would be provided by the general fund.

Department of Transportation (DOT)

8. The Department of Transportation, as it relates to access control, is not exempted from this bill.
9. DOT purchases approximately 925 parcels of real property each year totaling \$11,000,000. The number of parcels is estimated to be 950 in FY 2006 and FY 2007.
10. Approximately 7-10 percent of parcels, 95 parcels, go to condemnation. Of those parcels, 90 percent of the parcels in condemnation, 85 parcels, involve access.
11. There are another approximate 85 parcels involving access that are settled without going to condemnation.
12. Therefore, approximately 170 parcels involving access will be effected by this bill per year.
13. The average additional compensation will be between \$5,000 and \$25,000 for each parcel. For purposes of this fiscal note, \$12,000 per parcel will be used.
14. The total increase to DOT would be \$2,040,000 per year. (170 parcels x \$12,000) Since the bill is effective on passage by the electorate, only 60 percent of the impact will occur in FY 2007.
15. Additionally, since the bill is retroactive a certain number of landowners that DOT has acquired land from will want additional compensation. An estimated additional 15 percent cost per year is assumed. ($\$2,040,000 \times 1.15 = \$2,346,000/\text{year}$)
16. Funding is assumed to qualify at a 90/10 split between federal and state dollars.

Department of Natural Resources and Conservation (DNRC)

17. It is not possible to estimate the fiscal impact of this legislation based on the following assumptions.
18. Any restriction on the use of land is entitled to compensation if the fair market value of the property is impacted.
19. To determine if the value of land has been impacted, an appraisal of any property affected by statute, state government agency administrative rule, or local government ordinance would be required prior to and after the restriction of use.
20. Because the bill is retroactive, it would not be possible to measure the change in value in cases where citizens are seeking retroactive compensation.
21. Compliance with statute for the management of natural resources can restrict the use of land (SMZ law is a prime example). Given the extensive cost of this bill, it is likely that the department would not be able to meet its statutory requirements.

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(continued)

FISCAL IMPACT:

Department of Environmental Quality (DEQ)

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
FTE	1.00	1.00
<u>Expenditures:</u>		
Personal Services	\$70,304	\$70,304
Operating Expenses	<u>\$133,576</u>	<u>\$127,503</u>
TOTAL	\$203,880	\$197,807
<u>Funding of Expenditures:</u>		
General Fund (01)	\$203,880	\$197,807
<u>Revenues:</u>		
General Fund (01)	\$0	\$0

FISCAL IMPACT:

Department of Transportation (DOT)

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	\$2,346,000	\$2,346,000
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$234,600	\$234,600
Federal Special Revenue (03)	<u>\$2,111,400</u>	<u>\$2,111,400</u>
TOTAL	\$2,345,000	\$2,345,000
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	(\$203,880)	(\$197,807)
State Special Revenue (02)	\$234,600	\$234,600
Federal Special Revenue (03)	\$2,111,400	\$2,111,400

LONG-RANGE IMPACTS:

Department of Environmental Quality (DEQ)

1. If through litigation, it is found that the department must provide compensation to a landowner, the department will come to future legislatures for general fund appropriations for the reimbursement of the claims.
2. Due to the uncertainty of the workload that may result from this proposed legislation, the department may come to future legislatures for increased staffing.

Department of Transportation (DOT)

3. This impact will occur every year for the life of the bill eliminating one or two modest highway projects per year or one major project per biennium.

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(continued)

TECHNICAL NOTES

Department of Environmental Quality

1. It is not clear whether HB 572 applies to regulations that were adopted to protect the human health or the environment, but that are not traditional land use regulations in that they do not restrict types of uses, density of uses, aesthetic impact of uses (e.g., requirements for design and placement of structures on land), or the effect of land uses on community values (e.g. prohibition on adult entertainment establishments).

Department of Fish, Wildlife and Parks

2. FWP has several statutes in Title 87, MCA, giving authority to protect fish and wildlife resources. There is potential that some people may consider these statutes restrictive in the use of their land.
3. Due to the retroactive clause in HB572, FWP assumes there could be an undetermined amount of claims by landowners requesting fair market value for losses incurred by what they may believe were a result of an FWP enforcement or regulation. The possibility that the restrictions or regulations would decrease property values is too remote to guess and is too difficult to give numbers for that decrease. For example, hunting regulations could be said to devalue a landowner's property by decreasing hunting seasons and shortening the length of time the landowner can allow hunting for a fee upon the property. However, by decreasing the length, it may congregate more persons at one time to hunt on the property. By lengthening the seasons, it may just disburse the same number of hunters and may not increase the number anyway. The regulations, rules, and statutes adopted by FWP to restrict a person's use of their land could have either effect upon the landowner's use of that property. Therefore, it is difficult to determine the real impact, if any, in dollars.

Department of Transportation (DOT)

4. It is difficult to determine if access control, turning medians, approach permits, outdoor advertising, junkyard regulations, or other routine highway functions would fall under the umbrella of this law and would therefore be grounds for compensation.

Department of Natural Resources and Conservation (DNRC)

5. It may not be possible to determine if the change in fair market value or what portion of a change in the value is due to statute, state government agency administrative rule, or local government ordinance in retroactive cases.
6. The Department of Natural Resources and Conservation is tasked with many requirements in law that could impact the fair market value of land. The extensive cost of the impact of this legislation would cause the department to weigh not meeting its statutory mandates against the fiscal health of the department.