



## **Fiscal Note Request HB0594, As Introduced**

(continued)

Mining to regulate. However, waiver provisions and repeal of environmental laws might be challenged under Article II, section 3, and Article IX, Section 1, of the Montana Constitution.

6. Because it is a referendum, HB 594 would not become effective until November of 2006.
7. Under current law and rules, DEQ would take 10 or more 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.
8. If the voters approved HB 594, substantial litigation would result in significant legal representation costs for DEQ.

### **Department of Natural Resources and Conservation (DNRC)**

9. If passed by the electorate in November 2006, claims made under this bill would require an appraisal of the affected property prior to a floodplain study or timber harvest within a streamside management zone (SMZ) and following such activities to determine the impact to fair market value. Because it is impossible to determine the number of property owners that might make a claim, an appraisal of every property would be necessary as a baseline prior to any new floodplain studies or SMZ activity. Those properties that have already been found to be on a floodplain that did not have a timely appraisal prior to the definition of the floodplain would not have that baseline to determine the change to the property's value.
10. It is not possible to determine the number of appraisals that might be required. Therefore, it is not possible to estimate the fiscal impact this legislation would have on the DNRC with any degree of accuracy, but the compensation could be in the millions.
11. If there is a claim, this bill also requires the department to pay reasonable costs and attorney fees incurred if the land use regulation continues to apply to the subject property more than 180 days after the written demand for compensation. It is not possible to estimate the numbers of claims where the land use regulation will continue to apply.

### **Department of Transportation (DOT)**

12. Sec. (3) (2)(b) indicates the definition of "land use regulation" does not include "restricting or prohibiting public nuisances or activities for the protection of public health and safety". It is assumed that ordinary traffic control actions such as access control, medians preventing left hand turns, guardrail, jersey rail, approach permits, etc., would be considered public health and safety. Ordinances for junkyards, and billboards would fall under public nuisances. The Department of Transportation under these assumptions would be exempt.

### EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill could have financial impact on all government entities that enforce or regulate.

### LONG-RANGE IMPACTS:

#### **Department of Environmental Quality (DEQ)**

1. If the referendum passes in November 2006, the department will come to the 2007 legislature and request additional FTE if deemed necessary and appropriations for potential claims.

#### **Department of Fish, Wildlife and Parks (DFWP)**

2. Any future legislation, comprehensive growth plan, zoning regulation, or subdivision regulation that is enacted or enforced could be construed as reducing the fair market value of land.

### TECHNICAL NOTES:

#### **Department of Environmental Quality (DEQ)**

1. The last sentence in paragraph (3)(b) provides that certain categories of statutes and rules are not land use regulations "unless a compelling state interest can be shown." The purpose and meaning of this clause in this context is not discernible.

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### **Department of Fish, Wildlife and Parks (FWP)**

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. FWP assumes there could be an undetermined amount of claims by landowners requesting fair market value for losses incurred by what they may feel 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 it 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.
4. The question of whether land use regulations are in place for the protection of public health and safety could result in an extensive amount of litigation.