



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill # SB0035

Title: Revise laws related to navigable river beds

Primary Sponsor: Hamlett, Bradley

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>
Expenditures:				
General Fund	(\$2,593)	(\$7,798)	(\$11,709)	(\$15,628)
State Spec Rev (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
State Spec Rev (02) CS Trust Admin Acct	\$1,540	\$0	\$0	\$0
State Spec Rev (02) CS Guarantee Acct	\$2,593	\$7,798	\$11,709	\$15,628
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Spec Rev (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
State Spec Rev (02) CS Trust Admin Acct	\$1,540	\$0	\$0	\$0
State Spec Rev (02) CS Guarantee Acct	\$2,593	\$7,798	\$11,709	\$15,628
Common Schools Perm Fund (09)	\$100,217	\$100,628	\$101,244	\$102,067
Net Impact-General Fund Balance:	<u>\$2,593</u>	<u>\$7,798</u>	<u>\$11,709</u>	<u>\$15,628</u>

Description of fiscal impact: SB 35 defines the methodology to assess full market value for limited use of navigable rivers. Navigable riverbeds are considered land belonging to, and benefitting the common schools trust. SB 35 provides for an application fee and revenue for the common schools.

FISCAL ANALYSIS

Assumptions:

Department of Natural Resources (DNRC)

1. The beds of navigable rivers have been determined by a court of law to be public trust land per PPL Montana, LLC v. State, 355 Mont. 402 at 444, 229 P.3d 421 at 450 (2010) (Riverbeds are public trust lands pursuant to Article X, Section 11(1) of the Montana Constitution.)
2. New Section 2(2). "Full market value" means the Board of Land Commissioners ("Land Board") has discretion in determining compensation for uses in navigable waters.

3. Nine rivers or lands have been adjudicated in a court of competent jurisdiction, meeting the definition in Section 2(3). These adjudicated navigable waterways stretch approximately 1,873 miles in Montana.
4. Section 3 specifically refers to the lease, license, or easement for a “footprint” on the bed of a navigable river. Therefore, SB 35 does not impact the leasing or licensing of minerals below the riverbed pursuant to Title 77, Chapter 3.
5. The bill does not preclude the DNRC from issuing leases, licenses, and easements on rivers where the department had actual historic evidence (navigable in fact) that the river was used for commerce at the time of statehood. Since 2005, eight out of ten permanent easements issued have been across non-adjudicated waterways, and the department has averaged \$25,000 annually for those easements on non-adjudicated waterways.
6. Per 77-1-103, MCA, SB 35 would increase the fund balance of the common schools permanent fund for easement revenue, and as a result, the interest revenue generated would be increased as well. The Board of Investment long-term interest rates of 4.35% for FY 2012 and 4.1% for FY 2013 through FY 2015 were assumed for this fiscal note.
7. The interest from the common schools permanent fund is 95% distributable to the common schools guarantee account as public school base aid. The remaining 5% is reinvested in the permanent fund.
8. The assumption is that the department would process an average of 200 easement applications per year, which would include a \$50 application fee for each application. The application fees would be deposited into a new state special revenue account (historic riverbed use account) to fund the processing of the applications. The department would utilize \$10,000 for contracted services each year to assist with the processing of applications.
9. Easement revenue for common schools is based on the following:
 - a. the average appraised value per acre of an adjacent upland parcel is \$2,000. Therefore, the value of the navigable riverbed is 50% of the value of an adjacent upland acre of \$1,000/acre;
 - b. the area of an average easement is approximately 0.50 acres (\$1,000 per acres x 0.50 acres = \$500); and
 - c. two hundred easements at \$500 per easement would generate approximately \$100,000 for the common schools permanent fund each year.
10. Section 6. Notice Required. The section states that the department will provide notice of the requirements of this bill to owners of property adjacent to navigable rivers. The names and addresses of property owners will be obtained from the Department of Revenue. An estimated 1,000 property owners will be notified, and advertisements placed in approximately 11 newspapers for two weeks during FY 2012 only. The cost of notification will be approximately \$1,540 (postage costs for 1,000 letters = \$440; and 11 newspaper advertisements at \$50 per ad x two ads = \$1,100). These costs would be paid from the trust administration account on behalf of common schools.
11. State agencies that place portable, temporary monitoring devices (such as a water quality monitoring device by the Department of Environmental Quality) are not required to make payments since the monitors are not considered “structures”.
12. The guarantee account is the first funding source for K-12 BASE aid. When the guarantee account revenue increased, general fund expenditures are offset by a like amount. The reduction of K-12 BASE aid expenditures due to SB 35 are \$0.012 million in the 2013 biennium and would double in the following biennium.

Office of the Secretary of State

13. There will be minimal cost for postage and administrative duties to make the tribal notifications required by the bill. Since the Office of the Secretary of State does not receive any general fund appropriations, the costs will be covered from the agency enterprise fund.

	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$11,540	\$10,000	\$10,000	\$10,000
Local Assistance-K-12 BASE Aid	\$2,593	\$7,798	\$11,709	\$15,628
General Fund Expenditure Offset	(\$2,593)	(\$7,798)	(\$11,709)	(\$15,628)
TOTAL Expenditures	\$11,540	\$10,000	\$10,000	\$10,000

<u>Funding of Expenditures:</u>				
General Fund (01)	(\$2,593)	(\$7,798)	(\$11,709)	(\$15,628)
State Spec Rev (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
State Spec Rev (02) CS Trust Admin Acct	\$1,540	\$0	\$0	\$0
State Spec Rev (02) CS Guarantee Acct	\$2,593	\$7,798	\$11,709	\$15,628
TOTAL Funding of Exp.	\$11,540	\$10,000	\$10,000	\$10,000

<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Spec Rev (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Perm Fund (09)	\$100,217	\$100,628	\$101,244	\$102,067
State Spec Rev (02) CS Trust Admin Acct	\$1,540	\$0	\$0	\$0
State Spec Rev (02) CS Guarantee Acct	\$2,593	\$7,798	\$11,709	\$15,628
TOTAL Revenues	\$114,350	\$118,426	\$122,953	\$127,695

<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$2,593	\$7,798	\$11,709	\$15,628
State Spec Rev (02) Historic Riverbed Use Acct	\$0	\$0	\$0	\$0
State Spec Rev (02) CS Trust Admin Acct	\$0	\$0	\$0	\$0
State Spec Rev (02) CS Guarantee Acct	\$0	\$0	\$0	\$0
Common Schools Perm Fund (09)	\$100,217	\$100,628	\$101,244	\$102,067

Technical Notes:

1. New Section 2(3) defines which rivers are considered navigable. The department has actual historic evidence that 3,361 miles of rivers were used for commerce at the time of statehood and are, therefore, navigable in fact. According to the definition of navigable rivers in SB 35, the department would only require a lease, license, or an easement on riverbeds that have been adjudicated (approximately 1,873 river miles).
2. New Section 4(3)(e) limits the discretion of the Land Board to deny any easement on navigable rivers. The language states, “The authorization must be approved [by the board] if the requirements of this section are met”. The section infringes on Article X, Section 4 of the Montana Constitution, which states, “It [the board] has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted...., under such regulations and restrictions as may be provided by law”.
3. New Section 4(9)(c) for which the applicant can show an easement obtained from a state agency prior to [the effective date of this act] or prior to the date the river was deemed a navigable river. The department is unaware of any instance where any agency, other than DNRC and the State Board of Land Commissioners,

has issued an easement upon a navigable waterway. If another agency issued such an easement, it would not be effective. Only the Land Board can convey an easement in a state-owned waterway.

4. New Section 8(2)(b)(ii) allows the holder of a lease, license, or easement to increase the size of the footprint if the increase is necessary to accomplish the purpose for which the lease, license, or easement was granted, provided that the holder pay full market value. Section 8 conflicts with the constitutional authority of the Land Board to determine when to convey interests in state trust lands. The bill requires the Land Board to allow an increase in the size of a navigable river footprint if the applicant has secured the appropriate state or federal permits, which would consist of 310 permits issued by the conservation districts and/or 404 permits issued by the Army Corps of Engineers. The bill does not address the concern about disposing of interests in state lands without the Land Board’s consent.

Sponsor’s Initials

Date

Budget Director’s Initials

Date



Dedication of Revenue 2013 Biennium

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

17-1-507-509, MCA.

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay?**
No. Applicants will pay a \$50 fee to apply for the easement. Revenue from the fees will be placed in the Historic Riverbed Use Account to offset the costs of processing the applications. The revenue from the easements will be deposited in the Common Schools permanent fund, where it will generate interest, which is distributed to the Common Schools and also used to fund the Trust Land Management Division.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**
The application fees collected in the Historic Riverbed Use Account will be used to offset the costs of processing the easement applications for navigable rivers. Easement revenue for navigable rivers has been determined to benefit the Common Schools trust.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**
Yes.
- d) **Does the need for this state special revenue provision still exist? Yes No (Explain)**
Interest earned on the Common Schools permanent fund is used to fund a portion of the expenses used by the Trust Land Management Division to manage this trust and the remaining interest distributed to the Common Schools trust.
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**
No. The Legislature reviews and approves spending authority for the Trust Land Management Division and the Historic Riverbed Use Account will be a part of that request for spending authority.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**
Yes. Management of navigable rivers by the department is authorized in 77-1-102, MCA and 77-1-103, MCA.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**
The application fees for SB 35 will be separately accounted for on SABHRS (the state's accounting system). Revenues generated from navigable rivers are earmarked for the support of Montana Public Schools (K-12, Common Schools). The expenses could be adequately tracked through the general fund.