Fiscal Note 2015 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	HB0326	**Title:**	Require state coordination with local governments when requested
Primary Sponsor:	Flynn, Kelly	**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

	FY 2014 Difference	FY 2015 Difference	FY 2016 Difference	FY 2017 Difference
Expenditures:				
General Fund	$3,072,758	$2,974,235	$3,019,902	$3,064,450
State Special Revenue	$167,148	$155,412	$160,717	$165,904
Federal Special Revenue	$0	$0	$0	$0
Other	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
State Special Revenue	($326,951)	($330,337)	($336,026)	($341,772)
Federal Special Revenue	$0	$0	$0	$0
Trust Funds	($69,546)	($69,722)	($71,604)	($73,161)
Public Buildings	($24,779)	($24,464)	($24,840)	($25,175)
Net Impact-General Fund Balance:	($3,072,758)	($2,974,235)	($3,019,902)	($3,064,450)

Description of fiscal impact: HB 326 requires agencies to coordinate with counties that declare coordinating status and calls for varying levels of agency coordination with counties which includes permitting, regulatory activity, land management, travel, meetings, and personal services funds for additional staff to manage increased workload.

FISCAL ANALYSIS

General Assumptions:

Department of Fish, Wildlife & Parks (FWP)

1. All 56 counties will declare coordinating status under HB 326.
2. 50% of counties, 28 counties, will require coordination on agency proposed actions.

3. FWP estimates 20 actions that will trigger coordination requirements and a mandatory county scoping meeting for a total of 20 actions x 28 counties = 560 meetings.
4. Average meeting costs are estimates at $341.50/meeting.
5. Total estimated costs are 560 x $341.50 = $191,240.

Department of Environmental Quality (DEQ)

6. DEQ assumes that coordination is to occur when a policy or regulation is implemented through a permitting or enforcement action, not when the policy or regulation is adopted.
7. DEQ assumes that policies and regulations in place as of the effective date of the bill do not constitute an increase and thus implementing existing policies will not trigger this act.
8. DEQ assumes that for those policies and regulations that trigger this act, they only do so the first time they're implemented in that county.
9. DEQ assumes 50%, or 28 counties, will declare coordinating county status.
10. DEQ assumes coordinating counties will choose to coordinate on 10% of those actions taken in those counties.
11. DEQ assumes it has a statewide total of approximately 42 actions per year significant enough for the counties to choose to coordinate. This baseline data was determined by agency divisions and is approximated:
    a. Enforcement Division – 3 actions
    b. Remediation Division – 11 actions
    c. Permitting & Compliance Division – 28 actions
12. The coordination requirement consists of seeking assistance and comment from elected and appointed county officials, conducting at least one public meeting before initiating a public comment period, seeking comment from the public on the proposed policy or regulation, considering any established county natural resource or land management plans, regulations etc., assisting in resolving any inconsistencies between the county's plans, etc. and the agency's proposed policy or regulation, and if an inconsistency is identified, providing the county a written statement that establishes the rational basis for DEQ's implementation of the proposed policy or regulation. .
13. Department coordination costs include:
    a. Personal Services Costs – The department will meet the increased workload through a combination of new staff and compensatory time earned by existing staff depending on the degree of increase which varies by work unit.
        i. Personal Service costs for existing staff earning compensatory time are $520 in FY 2014 and FY 2015, $528 in FY 2016, and $536 in FY 2017.
        ii. A total of 1.00 new FTE is also needed for the activities listed in assumption 12 above. Personal Services costs for the new FTE are $56,275 in FY 2014 and FY 2015, $57,700 in FY 2016, and $58,246 in FY 2017.
    b. Operating Costs
        i. Other Services include data network; supplies include office set-up and computer for FY 2014 only; communication includes postage and mailing, advertising public notices, and cell-phones. Travel is based on the number of trips to the counties calculated by each of the affected DEQ programs. Rent and other include rental for public meetings, and education/training.

c. Following is a table from the assumptions above. Personal Services base pay and operating costs are increased by 1.5% in FY 2016 – FY 2017:

Category	FY 2014	FY 2015	FY 2016	FY 2017
FTE	1	1	1	1
Total Personal Services	**$56,796**	**$56,796**	**$57,700**	**$58,246**
Operating				
Other Services, Supplies, Communication	$10,737	$6,562	$6,660	$6,760
Travel	$5,461	$5,335	$5,414	$5,494
Rent, Other, Indirects	$15,743	$15,571	$15,818	$15,979
Total Operating	**$31,941**	**$27,468**	**$27,892**	**$28,233**
Total (Personal Serivces & Operating)	**$88,737**	**$84,264**	**$85,592**	**$86,479**

Department of Transportation (MDT)

14. Delaying the adoption of these rules could jeopardize future federal funding.
15. Each change in policy or regulations would result in 56 separate public meetings.
16. Possible impacts include: outdoor advertising signs, access control, excess land management, encroachments, utility installation and relocations, property leases, excess property sales, maintenance actives (e.g. salt, sand, de-icer), sign changes, signal repairs, weed spraying, water resources, modifications to irrigation facilities, drainage, flood plain permitting, change in design standards, environmental permitting, etc.
17. The term “regulation” includes state law.
18. HB 326 applies to federal laws as well. Funding will impact both state and federal funds since engineering is primarily federal aid funded.
19. Funding impacts are dependent upon specific projects and participating funding splits.
20. The bill applies where state law directs an agency to establish policy.
21. Monetary value cannot be determined due to various unknown contingencies.

Department of Livestock (Livestock)

22. It is assumed that 16 additional meetings throughout Montana would be required to respond to coordinating county status requests.
23. The per capita fee would be required to pay for these additional meetings.
24. The projected meetings would require travel, and per diem cost. It is assumed that each meeting will cost $341.50. The total cost each year is $5,464 per capita fee.

Department of Natural Resources/Conservation (DNRC)

25. HB 326 requires DNRC coordination with each of the 56 counties on division policies and regulatory activities in its Water Resources Division (WRD), Trust Land Management Division (TLMD), Conservation and Resource Development Division (CARDD), and the Board of Oil and Gas Conservation (BOGC).
26. 34.00 additional DNRC FTE would be required. Specifically, FTE would be needed in the following divisions: WRD (28.00 FTE), TLMD (3.00 FTE), CARDD (1.00 FTE), and BOGC (2.00 FTE). See the division-specific sections for further details on FTE calculations for each division.
    a. Expenditures for the new FTEs would include personal services and operating expenses, including an office package, computer, telephone services, supplies and materials transportation, rent, utilities, training, and travel expenses. Computers and setup costs would only be needed the first year while the other costs are ongoing.
27. In addition to the costs in (27)(a), operating costs would also increase due to travel and vehicle costs, per diem, and public notice and hearings.

28. There would be no costs for meeting facilities under the assumption that county facilities would be available for the required public meetings.

Specific DNRC Water Resources Division (WRD) Assumptions

29. WRD coordination activities with the counties could include: review of county plans; floodplain management; water right activity; adjudication of water rights; rehabilitation and management of state water projects; policy development regarding the conservation, development, utilization and sustainability of the state's water resources; water well activity; and dam safety. Coordinating county status could be continuous for some counties as long as water rights are being applied for, changed, or adjudicated; state projects or other dams are being operated; wells are being drilled; floodplain management activities are occurring.
30. 28.00 FTE Water Conservation Specialists would be needed to coordinate this effort statewide (0.50 FTE on average devoted to each county).

Specific DNRC Timber Land Management Division (TLMD) Assumptions

31. TLMD manages approximately five million surface acres and six million subsurface acres on behalf of the numerous trust beneficiaries. Land management activities on these acres are in four programs: agriculture and grazing, real estate, minerals and forest management. The land management activities are diverse and statewide, including minerals management for oil, gas, and coal; real estate activities, including commercial development, rights-of-way, utility leases, land sales, exchanges, and acquisitions; agriculture and grazing leases, and recreational use; and forest management, including timber harvest, and forest improvement activities. The division has four bureaus, six area offices and numerous unit offices that are responsible for land management activities statewide.
32. TLMD coordination activities with the counties could include: holding public meetings and consulting with county officials prior to implementing all policies for management of all its trust lands.
33. The assumption is that every county where there are trust land management activities would declare coordinating status and request to coordinate with the division on most trust land management projects and planning processes
34. 3.00 FTE county coordination specialists would be needed to assist the bureaus and area offices statewide in the coordination effort. 1.00 FTE for the Northwestern and Southwestern Land Offices, 1.00 FTE for the Central Land Office, and 1.00 FTE for the Northeastern, Southern, and Eastern Land Offices. These positions would coordinate with the county governments and land office, unit offices, and bureaus.
35. There is also the potential for substantial loss of trust revenue as project timelines are lengthened and projects possibly delayed or canceled. The approximate cost over the four-year period is estimated to be approximately $2.7 million.
36. TLMD is funded by state special revenue in the trust administration account from a portion of the trust revenues generated each year from land management activities.
37. The increase in personal services and operating costs would be funded by using additional revenues from the trust beneficiaries' distributable revenue stream. For fiscal note purposes, the surface acres as a percent of each trust were used to allocate costs to the trust beneficiaries.
38. Additionally, the forest management program estimates that lengthening of time lines and cancellations of timber sale projects could result in a 5% loss of timber revenue, which is estimated to be $420,000 each year. For fiscal note purposes, the forest management program revenues were used as an example.
39. The largest trust beneficiary with 90% of the surface acres is the common schools (K-12). The reductions in revenues to the common schools trust would be split 95% from the distributable revenue stream and 5% from the common schools permanent fund.
40. Interest on the common schools permanent fund is forecasted at a rate of 4.10% for FY 2013, 3.75% for FY 2014, 3.40% for FY 2016, and 3.05% for FY 2017. Interest rates were provided by the Board of Investments, whose responsibility it is to manage the trust and legacy fund.
41. For the common schools, five percent of the interest is reinvested in the permanent fund and 95% distributed to the common schools guarantee account. The reductions in revenue would result in additional reductions to interest earnings on the common school trust.

Specific DNRC Conservation and Resource Development Division (CARDD) Assumptions

42. CARDD processes 400 contracts per year for water and wastewater loans, renewable resource grants or loans, reclamation grants, planning grants, and conservation district projects.
43. Assuming that counties met on half of those projects, coordination activities with the counties would include meeting, notices of meetings, and travel to meet with various parties is required.
44. 1.00 FTE would be needed to implement the coordination.

Specific DNRC Board of Oil and Gas Conservation (BOGC) Assumptions

45. 10% of oil and gas permits (400 total per year) would require a hearing in county each year.
46. A 1.00 FTE program specialist and 1.00 FTE administrative assistant would be needed to implement coordination.

Office of Public Instruction

48. The Guarantee Account (state special revenue fund) is the first source of revenue for BASE Aid school funding. A decrease in revenue, and therefore a decrease in expenditures, to the statutorily appropriated Guarantee Account would cause an increase in general fund expenditures for BASE Aid of a like amount.

	FY 2014 Difference	FY 2015 Difference	FY 2016 Difference	FY 2017 Difference
Fiscal Impact:				
FTE - DEQ	1.00	1.00	1.00	1.00
FTE - DNRC	34.00	34.00	34.00	34.00
FTE Total	35.00	35.00	35.00	35.00
Expenditures:				
Personal Services - DEQ	$56,796	$56,796	$57,700	$58,246
Personal Services - DNRC	$2,162,909	$2,162,909	$2,195,606	$2,226,920
Operating Expenses - FWP	$191,240	$191,240	$200,802	$210,842
Operating Expenses - Livestock	$5,464	$5,464	$5,546	$5,629
Operating Expenses - DEQ	$31,941	$27,468	$27,892	$28,233
Operating Expenses - DNRC	$791,556	$685,770	$693,073	$700,484
TOTAL Expenditures	$3,239,906	$3,129,647	$3,180,619	$3,230,354
Funding of Expenditures:				
General Fund (01) - DEQ	$88,737	$84,264	$85,592	$86,479
General Fund (01) - DNRC	$2,392,678	$2,303,942	$2,338,501	$2,373,578
General Fund (01) - OPI	$591,343	$586,029	$595,809	$604,393
State Special Revenue (02) - FWP	$191,240	$191,240	$200,802	$210,842
State Special Rrevenue (02)-Livestoc	$5,464	$5,464	$5,546	$5,629
State Special Revenue (02) - DNRC	$297,395	$289,045	$290,395	$291,205
SSR (02) - Com. Schools Guar. Acct.	($591,343)	($586,029)	($595,809)	($604,393)
SSR (02) Trust Admin Acct. - DNRC	$264,392	$255,692	$259,783	$262,621
TOTAL Funding of Exp.	$3,239,906	$3,129,647	$3,180,619	$3,230,354
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02) - FWP	$0	$0	$0	$0
State Special Revenue (02)-Livestock	$0	$0	$0	$0
State Special Revenue (02) - DNRC	$0	$0	$0	$0
SSR (02) Trust Admin Acct. - DNRC	$264,392	$255,692	$259,783	$262,621
SSR (02) - Com. Schools Guar. Acct.	($591,343)	($586,029)	($595,809)	($604,393)
Trust Funds (09) - DNRC	($69,546)	($69,722)	($71,604)	($73,161)
Public Buildings - DNRC	($24,799)	($24,464)	($24,840)	($25,175)
TOTAL Revenues	($421,296)	($424,523)	($432,470)	($440,108)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($3,072,758)	($2,974,235)	($3,019,902)	($3,064,450)
State Special Revenue (02) - FWP	($191,240)	($191,240)	($200,802)	($210,842)
State Special Revenue (02)-Livestock	($5,464)	($5,464)	($5,546)	($5,629)
State Special Revenue (02) - DNRC	($297,395)	($289,045)	($290,395)	($291,205)
SSR (02) Trust Admin Acct. - DNRC	$0	$0	$0	$0
SSR (02) - Com. Schools Guar. Acct.	$0	$0	$0	$0
Trust Funds (09) - DNRC	($69,546)	($69,722)	($71,604)	($73,161)
Public Buildings - DNRC	($24,799)	($24,464)	($24,840)	($25,175)

Effect on County or Other Local Revenues or Expenditures:

1. Counties may incur costs related to declaring coordinating county status and coordination on proposed actions including attendance at meetings with the agency.

Long-Term Impacts:

1. Delays and cancellation of work projects could have the potential to reduce school trust revenues and decrease revenue generating opportunities for TLMD. However, it is not possible at this time to calculate the total reduction in revenue due to the number of variables.

Technical Notes:

1. HB 326 is unclear in that it does not indicate whether the proposed action that the agency is required to coordinate on is (1) adoption of policies and regulations or (2) implementation of policies and regulations through issuance of permits and enforcement actions. Sections 1(b), 2(a), and 3(b), by use of the term "implementation of a regulation or policy," indicate that coordination is on issuance of permits and enforcement. Sections 3(a), 3(c), 3(d), 3(e), and 3(f), by use of the term "proposed policy or regulation," indicate that consultation is to occur on adoption of the rule or policy.
2. If HB 326 requires coordination on permit issuance, a timing issue arises. The bill sets no deadline for counties to determine they wish to coordinate. However, many statutes governing issuance of permits by state agencies require agencies to act on an application within a prescribed period. Some actions are required within 30 days. If an agency receives a request to coordinate late in a period, the agency may be faced with violating either HB 326 or statutory deadline.
3. If HB 326 requires coordination on permit issuance, HB 326 is not clear in that it does not clearly indicate whether it applies only to the first implementation of a new policy or regulation to every implementation.
4. HB 326 does not provide counties with a mechanism by which to notify an agency it wishes to coordinate.
5. The term "natural resource" is not defined either in the bill or in Title 7, chapter 1, MCA.
6. Per 75-1-201, MCA, for projects that require MEPA, state agencies are already directed to contact and obtain comments from local governments. For projects and planning processes, the trust land programs solicit comments from counties through the current scoping process.

Sponsor's Initials *Date* *Budget Director's Initials* *Date*