



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill # SB0273

Title: Revise cultural and historical preservation laws

Primary Sponsor: Stewart-Peregoy, Sharon

Status: As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
Expenditures:				
General Fund	\$483,487	\$598,115	\$607,621	\$614,305
State Special Revenue - Guarantee Acct-SA	(\$57,352)	(\$55,056)	(\$55,905)	(\$56,427)
State Special Revenue - Oil & Gas ERA	\$35,000	\$35,000	\$35,525	\$36,058
State Special Revenue - Trust Admin. Acct.	\$66,375	\$63,475	\$64,372	\$64,910
State Special Revenue - (FWP)	\$4,000	\$0	\$0	\$0
Perm Fund - Common Schls Trust	\$0	\$0	\$0	\$0
University Trusts	\$0	\$0	\$0	\$0
Other Trusts	\$0	\$0	\$0	\$0
Public Buildings	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue - Guarantee Acct-SA	\$66,375	\$63,475	\$64,372	\$64,910
State Special Revenue - Oil & Gas ERA	(\$57,352)	(\$55,056)	(\$55,905)	(\$56,427)
State Special Revenue - Trust Admin. Acct.	(\$3,018)	(\$2,898)	(\$2,942)	(\$2,970)
State Special Revenue - (FWP)	\$0	\$0	\$0	\$0
Perm Fund - Common Schls Trust	(\$1,369)	(\$1,310)	(\$1,328)	(\$1,339)
University Trusts	(\$2,403)	(\$2,298)	(\$2,331)	(\$2,350)
Other Trusts	\$0	\$0	\$0	\$0
Public Buildings	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	(\$483,487)	(\$598,115)	(\$607,621)	(\$614,305)

Description of fiscal impact: If SB 273 becomes law, agencies would consult with tribes and develop memorandums of understanding (MOU) with each of the eight tribal governments identified in the bill, when appropriate, to define and clarify proper authority and procedures for consultation on tribal traditional cultural properties. It is unknown at this time what costs of developing mitigation plans as required in Section 3 would be.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

1. Tribal cultural property is property within a tribe's historic range or ancestral homeland that is significant to the tribe. Given the potential extent of such land, the Department of Environmental Quality (DEQ) would err on the side of more consultation rather than less.
2. Consultation includes but is not limited to tribes based within Montana.
3. Direct action by the DEQ includes environmental cleanup of abandoned mine lands and state superfund sites.
4. Indirect action by the DEQ includes issuance of permits, licenses, or certificates in which land will be disturbed. This includes permits for hard rock, coal, and opencut mines; certificates for major pipelines and transmission lines; approvals of subdivisions; and approvals of water and wastewater treatment facilities.
5. State-assisted action by the DEQ includes approval of grants and loans for water and wastewater treatment facilities.
6. Activities required by this bill include consultation, site visits, mitigation, and reporting.
7. The department would hire one tribal consultation specialist in each of the following program areas:
 - a. coal mining
 - b. hard rock mining/major facility siting
 - c. environmental cleanup, and
 - d. infrastructure, including subdivisions, public water supply systems, and state revolving fund loans
8. The DEQ would hire two tribal consultation specialists for opencut mining activities.
9. This workforce is comparable or slightly less than statewide tribal consultation workforces for federal land management agencies in Montana. While the federal agencies often also have archaeological responsibilities, their geographic purview is considerably less than the statewide purview required by this bill.
10. The tribal consultation specialists would be classified as Environmental Science Specialists.
11. Between site visits and consultation visits, each coordinator would average 15 in-state trips per year (five consultation visits, ten site visits).
12. The DEQ would offer an honorarium to tribal elders for their knowledge during site visits. Assume ten site visits per year per consultation specialist = 60 site visits total for the DEQ. Assume honoraria for tribal elders up to \$150 per visit = \$9,000 (60 x \$150 = \$9,000).
13. Personal services costs are for 6.00 FTE Environmental Science Specialists with staggered employment in FY 2014. Two employees are assumed to be hired in July, two more in October and two more in December. The costs are \$281,361 in FY 2014, \$388,978 in FY 2015, \$395,324 in FY 2016 and \$399,140 in FY 2017.
14. Operating costs include the honoraria, lab, legal fees, data network, printing, supplies, communications, travel, training, and indirect costs. Costs in FY 2014 are prorated according to the staggered employment and include the office setup and computers. The costs in FY 2016 and FY 2017 are inflated by 1.5%. Relocation is assumed for half of the employees in FY 2014 only. Travel is calculated at 15 trips per year per employee with average miles per trip of 325. All trips are designated as overnight. The operating costs for these assumptions are \$144,774 in FY 2014, \$154,081 in FY 2015, \$156,392 in FY 2016, and \$158,738 in FY 2017.
15. Since the bill is silent on the funding, the general fund is assumed.

Department of Fish, Wildlife, and Parks (FWP)

16. If SB 273 passes, Section 7 suggests agencies develop MOUs to define and clarify proper authority and procedures for consultation on state actions or state-assisted actions that impact cultural properties. In FY 2014, the Department of Fish, Wildlife, and Parks (FWP) will develop MOUs with the seven federal and one state recognized tribes in Montana. The estimated operations costs for mileage, per diem, supplies and materials to develop eight MOU agreements would be \$4,000 (8 MOUs x \$500).
17. FWP cannot reasonably determine the cost of mitigation plans required in Section 3 of the bill. It is unknown how many tribal traditional cultural properties are associated with FWP owned-property statewide and the cost would be determined by the circumstances at each location.
18. The FWP does not receive general fund authority, so it is assumed this funding would have to come from FWP general licensing state special revenue.

Department of Natural Resources and Conservation (DNRC)*Trust Land Management Division (TLMD)*

19. TLMD manages approximately five million surface acres and six million subsurface acres on behalf of 14 trust beneficiaries. Land management activities on these acres include leasing, licensing, sales, exchanges, acquisitions, easements, and timber harvest in four programs: agriculture and grazing, real estate, minerals and forest management. Many of the activities involve environmental review to ensure good stewardship and protection of the school trust land. Due to the extent of statewide activities and land ownership, SB 273 will impact trust lands.
20. SB 273 defines Tribal Traditional Cultural Property as a property within an Indian tribe's historic range or ancestral homeland. As such, consultation would often be required with most or all tribes within Montana and potentially with tribes outside the state.
 - a. On average, TLMD currently prepares 250 environmental review documents annually that would require consultation under Section 2.
 - b. The consultation and mitigation process would require an additional 1.00 FTE archeologist and additional operating expenses, including office package, computer, per diem, travel, and vehicle costs. The additional expenditures would total approximately \$259,000 over the four-year period.
21. The division 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.
22. The increase in personal services and operations would be funded by using additional revenues from the trust beneficiaries' distributable revenue stream, which provides funding for TLMD. For fiscal note purposes, the surface acres as a percent of each trust were used to allocate costs to the trust beneficiaries.
23. 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.
24. 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.
25. When a reduction of common schools Guarantee Account revenue occurs, a general fund obligation for K-12 BASE Aid is created to offset the loss of K-12 BASE Aid to be paid for by the state special revenue Guarantee Account.
26. Interest on the common schools permanent fund is forecast 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. It is assumed that interest earnings would not be available for distribution until the beginning of FY 2015.
27. Reductions to the distributable funding stream, would also include the university system trusts (University of Montana, Montana State University – Second Grant, Montana Tech, and the State Normal School –

Eastern and Western), other trusts (School for the Deaf and Blind, State Reform School at Pine Hills, and the Veterans Home), and the Public Buildings Trust.

Board of Oil and Gas Conservation (BOGC)

28. \$35,000 in BOGC operating funds would be needed each year for contracted services to consult with the tribal authorities and historic preservation officers on oil and gas regulatory activities.

Water Resources Division (WRD)

29. This law will increase consultation and would require a mitigation plan for a state action. The exact fiscal impact is difficult to assess at present as it is unknown if consultations will delay projects or actions.

30. An inflationary factor of 1.5% was applied to expenses for FY 2016 and FY 2017.

Judicial Branch

31. This bill revises Montana’s antiquities laws; provides a definition of Tribal Traditional Cultural Property; requires state agencies to consult with Indian Tribes about actions affecting Tribal Traditional Cultural Property and allows for appeals in such cases to be filed in district courts.

32. The number of district court cases may increase as a result of this legislation; however, the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may eventually require additional judicial resources because court dockets currently are full in many judicial districts throughout the state.

Secretary of State

33. This bill will have minimal cost for postage and administrative duties related to tribal notifications in Section 8 of the bill. The Office of the Secretary of State does not receive general fund monies for office operations, but has agreed to assume the fiscal responsibility for this bill.

	FY 2014 Difference	FY 2015 Difference	FY 2016 Difference	FY 2017 Difference
Fiscal Impact:				
FTE (DEO)	4.34	6.00	6.00	6.00
FTE (DNRC)	1.00	1.00	1.00	1.00
FTE Total	5.34	7.00	7.00	7.00
Expenditures:				
Personal Services (DEO)	\$281,361	\$388,978	\$395,324	\$399,140
Operating Expenses (DEO)	\$144,774	\$154,081	\$156,392	\$158,738
Personal Services (DNRC)	\$56,275	\$56,275	\$57,172	\$57,710
Operating Expenses (DNRC)	\$45,100	\$42,200	\$42,725	\$43,258
Operating Expenses (FWP)	\$4,000	\$0	\$0	\$0
K-12 BASE Aid (General Fund)	\$57,352	\$55,056	\$55,905	\$56,427
K-12 BASE Aid (Guarantee Acct-SA)	(\$57,352)	(\$55,056)	(\$55,905)	(\$56,427)
TOTAL Expenditures	\$531,510	\$641,534	\$651,613	\$658,846
Funding of Expenditures:				
General Fund (01)	\$483,487	\$598,115	\$607,621	\$614,305
SSR (02) Guarantee Acct-SA	(\$57,352)	(\$55,056)	(\$55,905)	(\$56,427)
SSR (02) Oil & Gas ERA (DNRC)	\$35,000	\$35,000	\$35,525	\$36,058
SSR (02) Trust Admin. Acct. (DNRC)	\$66,375	\$63,475	\$64,372	\$64,910
SSR (02) - Operating Exp. (FWP)	\$4,000	\$0	\$0	\$0
Perm Fund (09) - Common Schls Trust	\$0	\$0	\$0	\$0
University Trusts	\$0	\$0	\$0	\$0
Other Trusts	\$0	\$0	\$0	\$0
Public Buildings	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	\$531,510	\$641,534	\$651,613	\$658,846
Revenues:				
General Fund (01)	\$0	\$0	\$0	\$0
SSR (02) Guarantee Acct-SA	(\$57,352)	(\$55,056)	(\$55,905)	(\$56,427)
SSR (02) Oil & Gas ERA	\$0	\$0	\$0	\$0
SSR (02) Trust Admin. Acct.	\$66,375	\$63,475	\$64,372	\$64,910
SSR (02) - Operating Exp. (FWP)	\$0	\$0	\$0	\$0
Perm Fund (09) - Common Schls Trust	(\$3,018)	(\$2,898)	(\$2,942)	(\$2,970)
University Trusts	(\$2,233)	(\$2,136)	(\$2,166)	(\$2,184)
Other Trusts	(\$1,369)	(\$1,310)	(\$1,328)	(\$1,339)
Public Buildings	(\$2,403)	(\$2,298)	(\$2,331)	(\$2,350)
TOTAL Revenues	\$0	(\$223)	(\$300)	(\$360)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	(\$483,487)	(\$598,115)	(\$607,621)	(\$614,305)
SSR (02) Guarantee Acct-SA	\$0	\$0	\$0	\$0
SSR (02) Oil & Gas ERA	(\$35,000)	(\$35,000)	(\$35,525)	(\$36,058)
SSR (02) Trust Admin. Acct.	\$0	\$0	\$0	\$0
SSR (02) - Operating Exp. (FWP)	(\$4,000)	\$0	\$0	\$0
Perm Fund (09) - Common Schls Trust	(\$3,018)	(\$2,898)	(\$2,942)	(\$2,970)
University Trusts	(\$2,233)	(\$2,136)	(\$2,166)	(\$2,184)
Other Trusts	(\$1,369)	(\$1,310)	(\$1,328)	(\$1,339)
Public Buildings	(\$2,403)	(\$2,298)	(\$2,331)	(\$2,350)

Technical Notes:

Department of Environmental Quality (DEQ)

1. Many of the DEQ’s permitting statutes contain deadlines that require the DEQ to grant or deny a permit application within a certain time after receipt of an application. Some of these deadlines would not give the department sufficient time to conduct the consultations required by this bill before the department is required to act on the application.

Department of Natural Resources and Conservation (DNRC)

2. The definition of “Tribal traditional cultural property” in SB 273 is much broader than the definitions and guidelines of traditional cultural property in National Register Bulletin 38 used in the evaluation of sites eligible for inclusion on the National Register of Historic Places. For example, those guidelines specify that properties are always places, and not intangible. The property must have been important to maintaining traditions for at least 50 years. Also, properties must have some kind of boundaries. The definition in the bill does not limit Tribal traditional cultural properties to any of these criteria.

Sponsor’s Initials

Date

Budget Director’s Initials

Date