



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill # SB0284

Title: Establish the property fairness act

Primary Sponsor: Rosendale, Matthew M

Status: As Introduced

- | | | |
|------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" 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 | <i>Approximately \$600 million over 6 years to Montana local and state governments</i> | | | |
| Revenue: | | | | |
| General Fund | \$0 | \$0 | \$0 | \$0 |
| Net Impact-General Fund Balance: | <u><u>\$0</u></u> | <u><u>\$0</u></u> | <u><u>\$0</u></u> | <u><u>\$0</u></u> |

Description of fiscal impact: Fiscal impacts to both state and local governments will result from takings claimed and compensation sought from governmental entities for potential violations of the initiative. Suit would be brought on behalf of a property owner for diminution of property value or to invalidate the government action. Costs to the governmental entities would include: damages (compensation) payable to the property owner; legal defense costs, including expert witnesses, for the government entity; court costs; and payment of attorneys' fees if the property owner prevails.

FISCAL ANALYSIS

Assumptions:

Based on fiscal analysis from initiative prepared in November 2009

1. This fiscal impact is based on a fiscal analysis done for the "Fair Compensation for Private Property Takings" initiative prepared in November 2009. Both the initiative and SB 284 cover essentially the same areas under the concept of a 'takings' but SB 284 has a major difference that would argue for an even higher fiscal impact: SB 284's threshold for enabling a 'taking's action is a 10% loss of value; the initiative contained a 25% threshold of a loss of value.

2. The State of Montana and local governments in Montana can reasonably expect takings claims in a broad variety of service and regulatory areas including but not limited to: metal mine or opencut mine permits; septic pumper permits; major facility siting decisions; sanitation in subdivision decisions; local government subdivision decisions; issues before the Montanan Public Service Commission; hunting, fishing, and recreational floating rules and/or restrictions; water rights decisions; trust land management and fire protection decisions; and licensing decisions from a large number of state agencies. There would also be significant impacts to the Department of Justice in defending the state for the claims and to the Judicial Branch in increased judicial workload.
3. The States of Washington and Oregon each have had similar private property rights initiatives. Washington had a fiscal analysis prepared under the auspices of state government for I-933 and Oregon has had actual experience in claims made for Measures 37 and 49. Both of these states have estimated dramatically high costs for the respective initiatives.
4. A reasonable fiscal impact to Montana can be estimated by general comparisons to the analysis and experience of both Washington and Oregon, with adjustments to account for differences in Montana's smaller population.
5. It is assumed that the propensity for disputes in Montana is equivalent to Washington or Oregon.
6. It is assumed that these three states have a sufficiently similar economic composition; no controls for industry, land use, or other regulatory differences are included in this analysis.
7. No present values or timing of events scenarios are used in this analysis.
8. Scenario #1: Comparison to Washington
 - a. Washington's estimate as to the fiscal impact of I-933, made by the State of Washington Office of Financial Management, ranged from \$7.29 to \$8.99 billion. The estimate included state government and local governments including cities and counties. The average estimated impact was \$8.15 billion.
 - b. According to the U.S. Census Bureau, Washington's 2010 population is estimated to be 6.753 million people.
 - c. According to the U.S. Census Bureau, Montana's 2010 population is estimated to be 0.994 million people.
 - d. Adjusting the \$8.15 billion Washington estimate for Montana's population versus Washington's population equates to \$1.20 billion.
 - e. The Washington property rights initiative applied to real property. The Montana initiative has a greatly expanded scope of what constitutes a property right including all regulatory actions and intangibles, such as copyrights. Consequently, the above analysis substantially understates the costs to Montana state and local governments.
 - f. The Washington initiative has very similar but not identical language as to how the respective initiatives apply to local and state governments. These differences may or may not be material; however, it is reasonable to use a discount to the Montana impact to account for them.
9. Scenario #2: Comparison to Oregon
 - a. After passage of a similar initiative, Oregon received 6,857 claims through December 5, 2007. Oregon estimates the potential cost of these claims to be \$19.8 billion.
 - b. According to the U.S. Census Bureau, Oregon's 2008 population is estimated to be 3.79 million people.
 - c. Adjusting the \$19.8 billion impact for Montana's population versus Oregon's population equates to \$5.05 billion.
10. Because the Oregon initiative was retroactive, and therefore includes more claims than Montana may be able to expect, it is more reasonable to use the comparison to Washington for this analysis.
11. Using the comparison to the analysis done for the Washington initiative and taking into account the uncertainties that exist because of the differences between the Montana and Washington initiatives; a 50% discount has been applied to this analysis. \$1.20 billion adjusted by 50% is a \$600 million impact.

12. It is reasonable to assume that the combined impact to Montana state government and local governments could be at least \$600 million.

Legislative Branch

13. Under section 3 of SB 284, owners of private property are entitled to just compensation if the owners' existing rights to possess, use, modify, develop, sell, or otherwise freely transfer property are affected by an action of a governmental entity, and that action results in diminishing the fair market value of the property at least 10%.
14. Legislative immunity from suit for actions that result in the creation of law or declaration of public policy is provided in 2-9-111, MCA. Section 3 of SB 284 waives and abolishes that immunity to the extent of the liability created in Sections 2 through 11 of the bill.
15. Constitutional legislative immunity is provided under Article V, section 8, of the Montana constitution. The clause is known as the "speech or debate" clause and shields individual legislators from being civilly or criminally liable for legislative acts. The scope of the protections offered by the "speech or debate" immunity is not entirely clear. Courts interpreting the federal speech or debate clause, and similar clauses in other states' constitutions, have held that legislative immunity is personal and belongs to the members of the body. However, courts have also held that the privilege does not belong to the body as a whole. It appears that SB 284 opens the door to claims against the legislature as a whole for an action resulting in the diminution of property values of at least 10%.
16. "Actions of a governmental entity" under SB 284 could include: a) Laws enacted or statutes revised by the Montana Legislature; b) Promulgation of administrative rules by an agency following delegation of rulemaking authority from the legislature, or any other action taken by a state agency under authority provided by the legislature; or c) Action taken by a county or local governmental entity under authority provided by the legislature in law.
17. It is assumed the legislature would be a named governmental entity in any claim brought against state or local entities acting under authority provided by the legislature in law.
18. Since laws enacted by the legislature affect Montana's population as a whole, it is assumed that a law, if it can be found to affect property rights and diminish the property value of a single property owner, would also affect property rights and diminish the property value of multiple property owners.
19. Section 4 of this bill defines the process by which a property owner submits a claim for compensation and suggests methods the governmental entity may use to bring a claim to a final determination. If the specific "action" taken by the legislature is the enactment of law, many of the suggested methods would not be available to the legislature. Options which would be available include the payment of compensation to the claimant, defending a court action, and/or repeal of the law.
20. The cost of repealing a law, if done in a one-day special session, would be approximately \$80,000.
21. In the event of a court action, it is assumed that in-house counsel, in combination with outside counsel, would defend the legislature. Outside counsel would provide a local presence since section 4 of the bill requires a court action to be filed in the county where the property is located. A reasonable estimate of the cost of outside counsel varies from \$95.50 per hour (the 2015 biennium rate established by the Department of Justice for the agency legal services office) to \$160 per hour. Under Section 9 of the bill, the governmental entity would be unable to recapture any attorney fees or costs related to the claim regardless of whether it prevails in a court action. The cost to the legislature of attorney fees and court costs cannot be determined at this time.
22. If the property owner prevails in an action, the property owner may be awarded costs, expenses and reasonable attorney fees in addition to the award of compensation provided in section 8 of the bill. The cost to the legislature of awards for damages and costs cannot be determined at this time.
23. The legislature passes an average of 570 bills each session. If 1% of the laws enacted by the legislature each session result in claims which can be brought to suit under this bill, the legislature would be required to defend against, or settle, lawsuits relating to 5 or 6 bills. It cannot be determined at this time the number of

legislative actions which may result in claims under this bill, nor the number of property owners who would seek just compensation.

24. Section 8 of the bill requires payment of any judgment within 30 days. If damages are awarded in a suit brought against the legislature, a special session may be required to appropriate funds- neither the legislature's budget in HB 1 nor legislative divisions' budgets in HB 2 are appropriated funds for legal judgments.
25. There is insufficient information available to draw a reasonable conclusion about the cost of this bill to the Legislative Branch. Variables include the actions that future legislatures might take, the effect of those actions on personal property rights or value, the number of property owners that would claim just compensation, the complexity and cost of defending court actions, and the amount of judgments awarded by the court.

Department of Fish, Wildlife and Parks (FWP)

26. FWP can reasonably expect takings claims by private property stakeholders requesting just compensation for losses incurred by what they will claim is a result of an FWP regulation.
27. FWP regulations, rules, and statutes may restrict commercial fishing, recreational businesses, outfitting, and guiding in order to protect the natural resources. Some examples of these regulations include the Smith River permitting, commercial fishing regulations, changes in hunting, fishing and trapping regulations, restrictions on exotic species, and emergency closures enacted to protect not only natural resources but also to protect the health and safety of recreationists. FWP hunting and fishing regulations may restrict commercial outfitting that will have economic impacts to outfitting businesses, including outfitting on private land.
28. There is no way to reasonably estimate the fiscal impact of this legislation to FWP.

Montana Department of Transportation (MDT)

29. Under this legislation all property owners adjacent to MDT highway projects and property owners within the impacted vicinity could file a claim or impose litigation on MDT for impacts of highway projects when their property is devalued or the use is degraded.
30. Claims could be filed before, during or after construction.
31. MDT would need to pay the claim or proceed to litigation. Litigation could cause a project to be delayed or put on hold.
32. MDT staff would see an increased number of claims and record keeping and storage to maintain claims.
33. MDT would need to establish and implement a claims processing function to support the anticipated increase in claims and litigation.
34. Additional FTE would be required.
35. The fiscal impact for initial costs associated with this legislation and the staffing costs for claims process includes approximately 10.00 FTE, salaries and benefits and associated operating costs.
36. The MDT claims processing workload would include as many as 417 claims per year.
37. The larger costs from the legislation would come from financial awards that are unknown and cannot be reasonably determined at this time.

Department of Natural Resources and Conservation (DNRC)

- 26) The full cost of this legislation cannot be determined. Fiscal impacts to the Department of Natural Resources and Conservation (DNRC) will result from takings claimed and compensation for potential violations. Suit would be brought on behalf of a property owner for diminution of property value or to invalidate the government action. Costs to DNRC would include: (1) damages (compensation) payable to the property owner; (2) legal costs; and (3) increased personal services and operating expenses.

Conservation and Resource Development Division (CARDD)

38. There are exemptions in SB 284 involving actions required by federal law. A property owner can make a claim, have a cause of action, and get compensation from the local governments.
39. Estimated loans to local government for water and wastewater systems are \$40 million per year.
40. The state issues general obligation bonds are estimated at \$4 million per year to match federal funds.

41. If local governments receive claims from property owners against the local governments and litigation moves forward, some communities will not be able to repay their loans.

Trust Land Management Division (TLMD)

42. The state owns school trust lands totaling approximately 5.2 million acres of surface estate and 6.2 million acres of subsurface mineral estate, of which approximately 1.0 million acres are split-estate (i.e. lands where the state owns the mineral estate but not the surface estate). The majority of state school trust split-estate has private surface estate owners.

43. The primary type of mineral leasing of school trust minerals is for oil and gas exploration and production.

- a. Since the state school trust owns 1.0 million acres of split-estate out of a total 6.2 million acres of mineral ownership, approximately one out of six nominated parcels would be split-estate and may not be leasable under SB 284.
- b. DNRC issues an average of 533 oil and gas leases on state school trust lands each year. Due to the threat of a takings action by the surface owner, an estimated 89 nominated parcels per year may not be leased under SB 284.

44. The amount of rental and royalty revenue that would have been derived from the non-leased split-estate parcels cannot be determined, but a single productive oil and gas lease generates from tens of thousands to hundreds of thousands of dollars in royalty revenue per year.

45. DNRC also issues leases for exploration and development of coal and other minerals. The impacts described above for oil and gas would be applicable to all minerals.

Water Resources Division (WRD)

Compacts

46. Takings claims could be filed against the state when tribal and federal agency water rights are quantified through a compact.

47. Takings claims could be filed against the state when negotiations with tribal governments and federal agencies fail and their claims are filed in the Water Court.

Floodplains

48. If the assumption is made that floodplain delineations are always for the protection of public health and safety, there is no fiscal impact. However, if DNRC has to prove that floodplain delineation is a public health and safety concern, there would be legal costs that are not possible to estimate, as it is impossible to determine the number of times the argument would have to be addressed.

49. If the court determined that floodplain delineation does not fall under the definition of public health and safety, claims made under SB 284 would require an appraisal of the affected property both prior to, and following a floodplain study to determine the impact to fair market value.

- a. Since 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.
- b. 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.

50. Given the extensive cost, it is likely that no floodplain studies would be conducted or adopted by DNRC or political subdivisions. Without a 100-year floodplain identified, anyone applying through a bank for a loan would have to hire an engineer and surveyor to show that the property is not in a 100-year floodplain or buy flood insurance in order to get loan approval (in order for a bank to sell a mortgage on the secondary market, flood insurance or a flood appraisal has to be completed).

51. Determining the number of appraisals that might be required is not possible. Therefore, the fiscal impact this legislation would have cannot be estimated with any degree of accuracy, but the compensation could be in the millions.

Water Rights

52. SB 284 sets up a potential situation where the DNRC could have claims filed against it by both parties in any water right permit or change proceeding for damages and attorney fees.
- This bill would allow a takings claim to be brought against DNRC if a permit is denied for either a new appropriation of water or a change in a water right, even if done to protect other water users.
 - If a change to a water right is granted by DNRC for less than the claimed amount of water after applying the required statutory criteria, including lack of adverse effect to other water right holders, then a taking claim could be brought against DNRC.
 - If through permit verification DNRC finds the water user only developed half of the water appropriated in a permit and the permit is subsequently reduced, as required by law, then a claim could be brought that the claimant's land or water right value is reduced.
 - If DNRC designates a controlled groundwater area after following the provisions under 85-2-506, MCA, then a land owner in that area could claim the department has taken the right to further develop water, and subsequently devalued the property.
 - If DNRC adopts administrative rules that limit water use in order to carry out statutory mandates under the Water Use Act, a land owner could claim the land has been devalued.
 - DNRC will need to have access to new general fund revenue to pay for any claims where it is found to have diminished fair market value while carrying out statutory duties under the Water Use Act. The amount cannot be determined at this time.
53. An indeterminate number of FTE will have to be hired within the Water Resources division to deal with the added work load and legal issues.

State Water Projects

54. The broad definition of “government action” in Section 2 (1) of this draft bill could include most actions the State Water Projects Bureau takes with regards to operations, maintenance actions, and/or repairs. Potential fiscal impacts cannot be reasonably determined.

Department of Commerce (DOC)

55. New Section 4 of the bill would require the department to establish an administrative process for accepting claims for compensation, determining the completeness of such claims, analyzing such claims, and providing a settlement offer of such claims to the affected property owner within specified deadlines. The department would require unquantifiable additional staff and resources to administer this new statutorily required review process. In addition, in order to limit liability, the department would need to establish a risk assessment process prior to taking any action related to the implementation or enforcement of any rule, guideline, policy, grant funding, or technical assistance by the department. This risk assessment process would also require unquantifiable additional staff and resources.
56. Department programs that would be affected by the bill include but are not limited to economic development grants and loans; grants for feasibility studies federal guarantee loans for real property; tax credits for providing low income housing; grants for community and school facility infrastructure, planning, and emergencies; grants for redevelopment of foreclosed properties; and technical assistance to local governments regarding land use planning and development codes, ordinances, and regulations.

Department of Labor and Industry (DOLI)

57. The possibility exists that there may be individuals licensed in professional occupations who would claim that disciplinary action of, suspension of, or revocation of their professional license would constitute taking or damaging their property. Claims against state licensing boards and programs could be significant and result in substantial litigation. It is not possible to assess the possible fiscal impact of this legislation to licensing boards.

Department of Environmental Quality (DEQ)

58. This bill would affect approximately 150 of the approximately 9,500 permits or related actions issued each year by the DEQ. In order to meet the provisions of this bill and also continue to meet statutory permit

- deadlines, DEQ would have to hire significant new FTE. Also, DEQ may reasonably have to pay out additional costs to landowners. These costs could be significant.
59. An average of 400 permits per year from DEQ would be affected by SB 284. Half of these, 200 permits, would come from open cut permits. Another 30%, 118 permits on average, would come from subdivision reviews. An estimated 72 would come from metal mines permits, and 10 from ground water permits.
 60. An average of approximately 9,100 of DEQ permits or related actions would be excluded from this bill because they are required by federal law and/or because they are taken in response to a real, substantial, and verifiable threat to public safety. For example, 90% of subdivisions permits on average, along with all permits from DEQ's Waste and Underground Tank Management Bureau (junk vehicle, methamphetamine cleanup, asbestos cleanup, and septic pumpers), would be excluded from SB 284 because they protect human health and safety. Also, as an example, air quality permits would be excluded because they are required by federal law in addition to protecting health and safety.
 61. DEQ assumes it could receive takings claims on as many as 150 of the 400 affected actions (permits).
 62. These claims would have to undergo an impact analysis of whether a state action (e.g. DEQ permit) caused a diminution of at least 10% in fair market value in order for DEQ to determine whether a claim is approvable. Some could lead to payouts, others may be appealed to District Court.
 63. The work required for such claims would include analysis by additional real estate appraisers, Environmental Specialists, and legal staff. This staff may need to be hired by DEQ. Some cases would be complex enough to require an additional trip to the property in question. An economist would need to write an impact assessment report.
 64. Although unable to specifically determine, the work above would result in significant costs including but not limited to hourly and/or contract wage for legal and professional staff, advertising and other public notices, travel and hotel expenses, and other costs which cannot be reasonably determined.
 65. DEQ assumes the electronic e-mail lists, postal mail lists, and website would be established at the Department of Administration (DofA) for the use of all interested parties notifying them of impact assessments of all state agencies. DEQ would update the information on the lists and site whenever an impact assessment was completed. It is unknown how much the DofA would charge the agencies to provide this service.
 66. Section 3(3)(a)(i) of SB 284 provides that the bill does not apply to actions, including passage of statute and adoption of rules, that occurred before the effective date of the bill. However, SB 284 would apply to permit denials and to permit conditions imposed after the effective date to comply with rules adopted before the effective date of the act. This has the practical effect of applying SB 284 to statutes passed and rules adopted before the effective date of SB 284.
 67. The Opencut Mining Act and the Metal Mine Reclamation Act require that land mined for sand, gravel, hard rock minerals, and certain other minerals be reclaimed to productive use. Generally, this requires sites to be re-graded, covered with adequate soil, and re-vegetated.
 68. In perhaps the majority of mines, this reclamation is not necessary to protect public health or safety.
 69. Should a permit applicant submit an application without a reclamation plan that provides for re-grading, soiling, and re-vegetation, DEQ would be required to deny the application.
 70. Should the applicant then choose to submit a claim under SB 284, DEQ could not waive the reclamation requirement. The Montana Constitution requires that all land disturbed by the taking of natural resources be reclaimed. Because the Opencut Mining Act and the Metal Mine Reclamation Act implement this constitutional provision, it is assumed that permit applicants would choose to submit claims so that the state would pay the costs of reclamation.
 71. Because SB 284 requires payment of just compensation for reduction in value of a portion of property. A mineral estate is a portion of property. Therefore, if the reclamation requirement reduces the value of the mineral estate by 10% or more, DEQ would be required to compensate the landowner.

72. In approximately 70 opencut mining permit actions per year, the cost of reclamation would exceed 10% of the value of the sand and gravel being mined plus the amount that the value of the surface estate of the land is increased by reclamation. The cost of the reclamation would likely be significant.
73. In approximately 20 metal mining permit actions, the cost of reclamation would exceed 10% of the value of the mineral being mined plus the amount that the value of the land is increased by reclamation. The cost of the reclamation would likely be significant.
74. On average, 118 subdivision applications would be affected by SB 284 as subject to restrictions that are not directly related to human health or safety. For example, sewage disposal on lots adjacent to surface water may be restricted because it will cause violations of water quality limitations for phosphorus, which is related to loss of fish habitat. The costs associated with this would likely be significant.
75. Overall, on-going costs described in the assumptions above would likely be significant but cannot be reasonably determined.

Effect on County or Other Local Revenues or Expenditures:

1. New Section 4 of the bill would require local governments to establish an administrative process for accepting claims for compensation, determining the completeness of such claims, analyzing such claims, and providing a settlement offer of such claims to the affected property owner within specified deadlines. Local governments would require unquantifiable additional staff and resources to administer this new statutorily required review process. In addition, in order to limit liability, local governments would need to establish a risk assessment process prior to taking any action related to the implementation or enforcement of any ordinance, regulations, provision of services, funding, and legislative and quasi-judicial decisions by local governments. This risk assessment process would also require unquantifiable additional staff and resources.
2. If passed, this bill would place the local governments at unquantifiable risk for payment of public funds to private property owners as compensation for diminishing the value of real or personal property by 10% or more. Local governments would require unquantifiable local funds to provide compensation to pay such claims.

Long-Term Impacts:

1. It is not possible to predict the number and scope of claims for damages that could be made against state and local governments under SB 284. The long term fiscal impact could be significant.

Montana Department of Transportation (MDT)

2. This legislation could impact MDT's ability to complete highway projects which could result in potential federal aid pay back due to failed project delivery.
3. The fiscal impact could decrease the amount of state special revenue and federal special revenue available for highway construction due to amount of funds spent on processing, litigating, and paying claims.
4. There could be a potential loss of federal participation on certain types of claims that not allowed by Federal aid rules.

Department of Natural Resources and Conservation (DNRC)

5. An increasing number of tracts of school trust land will be nominated for mineral lease, but could remain unleased based on the threat of a takings and compensation claim pursuant to SB 284. In addition, new oil and gas wells proposed on existing split-estate leases (see Technical Note 5 below) may expose the state to compensation claims. The amount of revenue lost from not leasing school trust lands cannot be quantified. However, a single productive well can generate from tens of thousands to hundreds of thousands of dollars in royalty revenue per year. A number of oil and gas wells may not be drilled over time from the enactment of SB 284, which could amount to millions of dollars in lost royalty revenue to the school trust permanent fund. Similar impacts could occur on coal and other mineral leases.

Technical Notes:**Department of Natural Resources and Conservation (DNRC)****Forestry Division**

1. In order to demonstrate that DNRC's fire and forest practice (Slash Hazard Reduction law and Streamside Management Zone [SMZ] laws) programs are exempt from this legislation per subsections(3)(a)(vi), DNRC would verify that each forest practices regulatory action and wildfire that it responds to represents a real and substantial threat to public health and safety.
 - a. A grant agreement could be construed as administratively enforceable action as defined in SB 284. If damage resulting from a DNRC sponsored grant occurred to a private landowner's property, the landowner could claim a taking of private property.
2. If forest practices are not determined to be exempt the following may result:
 - a. SMZ rules restrict certain timber harvesting activities within the SMZ that may increase costs and/or limit revenue. SB 284 will require DNRC to investigate restricted timber harvesting activities that may result in a claim against the department. For each claim supported by the courts, DNRC will be responsible for reimbursing additional costs and lost revenue; and
 - b. Under specific situations the Slash Hazard Reduction law allows DNRC to deny an agreement. A denial would result in the landowner not harvesting timber and not receiving the subsequent revenue. Therefore, this could be considered a taking for which DNRC could be responsible for reimbursing lost revenue.

Trust Land Management Division

3. New Section 4(1)(b)(iii) requires a property owner to provide a copy of a title company report identifying exceptions and encumbrances to the title. However, SB 284 does not clarify whether exceptions and encumbrances of record would bar a claim for compensation for a reduction in appraised value arising from a title exception or encumbrance. Applicable case law recognizes the mineral owner's property right to make reasonable use of the surface, which would bar a claim. However, uncertainty over the application of SB 284 generates potential exposure to the state.
4. New Section 8(3) requires payment for a successful claim to be made within 30 days after a final judgment or decision is issued. Existing statute (2-9-315 and -316, MCA) recognizes that funding and expenditure authority may not be available when a judgment or decision is issued, and provides for payment to be made by appropriation from the next legislative session.
5. New Section 17 makes SB 284 applicable to government entity actions taken on or after the effective date. This definition does not make clear whether new proposed exploration or production activity for oil and gas, coal, or other minerals on leases issued prior to the effective date would be subject to a claim under SB 284.
6. SB 284 establishes a property owner's right to a claim of a taking or reduction in the property's fair market value. New Section 4 establishes the information to be supplied to the government agency supporting a claim for compensation, including specific description of the property, evidence of ownership, title report, description of specific use of the property affected by the agency's proposed action, and an appraisal. Determination of whether a taking or reduction of the property's fair market value under SB 284 is therefore an issue of fact.

Water resources Division

7. The proposed bill conflicts with DNRC duties under the Water Use Act. DNRC is required by law to carry out the provisions of the Water Use Act, including making applicants prove by preponderance of the evidence the lack of adverse effect to other water users 85-2-311(1)(b) and -402(2)(a), MCA).

Department of Revenue

8. Under new Section 7, the district court decides based on the facts presented. However, under new Section 3(8), the question of taking is for a jury to decide or a court sitting without a jury. A jury must observe the fact finding and does not decide based upon a record, so an amendment is necessary.

Department of Administration (DofA)

9. There may be a competing statute if a state agency wants to provide the form of relief granted through purchase of real property because of 2-17-101(2) MCA – “A state agency may not lease, rent, or purchase real property without prior approval of the department.” Department here would primarily be the Department of Administration / General Services Division.

Sponsor's Initials

Date

Budget Director's Initials

Date