GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	SB0312	**Title:**	Generally revise USB laws
Primary Sponsor:	Phillips, Mike	**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 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
Expenditures:				
General Fund	$265,000	$0	$0	$0
State Special Revenue	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
State Special Revenue	$10,000	$0	$0	$0
Net Impact-General Fund Balance:	($265,000)	$0	$0	$0

Description of fiscal impact: The bill provides for penalties for large customers who are reimbursed for projects from Universal System Benefits (USB) funds but do not report on their projects as directed under state law. An estimated $10,000 in penalties is expected to be assessed in the first year of implementation which will be deposited in the state special revenue account for universal low-income energy assistance. Implementing provisions of the bill will require contracted information technology services costing $265,000 general fund in FY 2016.

FISCAL ANALYSIS

Assumptions:

Department of Revenue (DOR)

1. The legislature established the Universal System Benefits (USB) program in 1999 (HB 377) after the 1997 deregulation of Montana's electric and natural gas industries. At that time there were projects being conducted by utilities that were considered to have benefits for all Montanans and the USB program was developed in order to continue these efforts. The funding mechanism for USB program is through a surcharge on each utility customer's bill. The surcharge is collected by the utilities and used to fund the utility's internal USB program. Customers identified as "large customers" (averaging over 1,000 kV per

month during the prior calendar year), if they have internal projects that meet the intent of the USB statutes, can have their project costs reimbursed by the utility from their USB electric charges. If the project costs are greater than the annual USB contributions made by the large customer, the reimbursement can extend over multiple years. In exchange for the reimbursement, these customers must file annual reports on their qualifying projects with the Department of Revenue (DOR). Under current law, DOR must provide notice to the public that the reports are available for review, and if there is a challenge to the use of the funds for the projects by a member of the public, DOR must review the challenge. DOR has rules in place for the filing process, notice, and challenges (ARM 42.29.101-112).

2. A 2014 performance audit report by the Legislative Auditor found that a number of large customers who received reimbursements for their internal USB projects did not file a report with DOR as required under state law. The Legislative Auditor made two recommendations for the Department of Revenue. First, that DOR request information from the electric utilities on all large customers who receive USB credits for their own internal projects. Second, that there be procedures implemented to review and compare annual universal systems benefits reports provided by utilities and large customers to identify large customers who are not in compliance with reporting statutes. These have already been addressed or are in the process of being addressed. The report also addressed the current lack of specific quantitative standards on which to evaluate these large customer projects and suggested other improvements. SB 312 addresses the issues and suggestions made in the performance audit concerning the part of the USB program that DOR administers.
3. SB 312 requires the annual summary report by the electric utilities to the Energy and Telecommunications Interim Committee (ETIC) and DOR to also include information on all large customers who received a reimbursement from the utilities for USB related expenditures during the previous reporting year.
4. The bill requires the ETIC review the annual USB reports provided by utilities in accordance with statute and compare those reports with the reports provided by large customers to DOR and identify any large customers who have not reported as required under state law.
5. The bill requires DOR adopt rules defining qualifying standards to be used by large customers in order to comply with existing state law. DOR is to adopt rules specifying how the department will evaluate credits (reimbursement from USB charges) claimed by large customers, and if necessary, deny the credits, and, the process by which a large customer can challenge the denial.
6. DOR shall review the large customer credits in accordance with the adopted rules, in order to determine if those comply with the universal service benefit program. The department can consult with the Department of Environmental Quality, the Public Service Commission, or any other state agency in evaluating credits submitted by large customers.
7. The bill establishes penalties for large customers who fail to file a report as required by state law, of not less than $1,000 or more than $5,000. Any penalties collected are to be deposited in the universal low-income energy assistance fund.
8. Currently, DOR receives the annual reports and makes the reports available to anyone who wishes to review the reports. The reports are maintained in paper files and any payments are entered directly into the state accounting system. DOR publishes notices in the appropriate newspaper in the large customer’s location notifying the public that the report has been filed and is available for review.
9. DOR will need to create a module in the Gentax system in order to track these filings and any associated penalties. Concurrent with this, DOR may create a standard form available for all large customers to use, rather than the current system where large customers provide their own report which can vary substantially in content.
10. This bill proposes penalties for those large customers who do not file their reports with DOR by the statutory deadline of March 1. The bill’s language does not contain penalty waiver language. The Legislative Audit report identified the number of non-reporting large customers for each of the last six years. The numbers ranged from 13 up to 28 large customers, with the average being just over twenty, who did not file. DOR has, and will continue, to inform large customers of the need to file their reports with DOR; however, there is expected to be some initial noncompliance under the new requirements.

11. For purposes of this fiscal note, it is assumed that half of the average number of non-reporting large customers, or 10, will end up paying the minimum penalty of $1,000 in the first year. No revenues from penalties are estimated for subsequent years. These penalties will be deposited in the state special revenue account for universal low-income energy assistance.
12. In order to implement provisions of the bill, DOR will need to contract services for IT development (assumption 9) which at a cost of $265,000 in FY 2016.
13. The provisions of SB 312 will apply to reimbursements or credits claimed by large customers on or after January 1, 2016. Annual reports filed with DOR and the ETIC on or after March 1, 2016 will be affected by the provisions of the bill.

	FY 2016 Difference	**FY 2017 Difference**	**FY 2018 Difference**	**FY 2019 Difference**
Expenditures:				
Personal Services	$0	$0	$0	$0
Operating Expenses	$265,000	$0	$0	$0
TOTAL Expenditures	$265,000	$0	$0	$0
Funding of Expenditures:				
General Fund (01)	$265,000	$0	$0	$0
TOTAL Funding of Exp.	$265,000	$0	$0	$0
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$10,000	$0	$0	$0
TOTAL Revenues	$10,000	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($265,000)	$0	$0	$0
State Special Revenue (02)	$10,000	$0	$0	$0

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