

DNRC 2015 Legislative Proposals

August 19, 2014

Conservation and Resource Development Division

Contracting Legislation for Conservation Districts: This bill establishes and clarifies the process conservation districts will follow for the procurement of engineering services, professional services, and construction contracts. It incorporates procurement procedures in Title 18 and in Title 7 and establishes a process for procurement based on contract amounts set in ARM's established by the Department of Administration.

Removal of Hearing Rules Requirement: Currently, MCA 76-15-208 (1) states that the Department shall adopt appropriate hearing and referenda rules for the creation and alteration of conservation districts. The Department has rules for referenda, but during an audit, it was noted that those rules did not include the conduct of hearings. The statutes and Department procedures clearly describe the procedures for the conduct of hearings making the rules unnecessary. This bill removes the requirement for rules on hearings but keeps the requirement for referenda.

Board of Adjustments: This bill changes the way the Department appoints boards of adjustment to address variance requests to land use ordinance adopted by conservation districts. Currently, a board of adjustments must be appointed for each conservation district that has an ordinance, with members being appointed every year. Since the inception of this law, no board of adjustments have been called, so rather than keep a board appointed at all times, this bill would require the appointment of the board as needed when and if a variance request has been filed.

Act amending the laws related to Premiums in State Bond Sales: Current law allows premiums earned on bond sales to be used only to pay cost of issuance. This bill would allow premiums paid to be used for debt service payment or to pay project costs. This adjustment in state statute would save the state money when General Obligation Bonds or Coal Tax Bonds are sold. This change in statute was recommended by the State Financial Advisor and Bond Counsel.

Act amending State Revolving Fund: This Act amends the State Revolving Fund Program to eliminate loan conditions that are no longer in effect due to change in Federal Statute.

Forestry Division

Revising assessments on owners of classified forest land: DNRC's fire and aviation efforts have broadened because of more fire activity in Montana. Because of the increase in fire the maximum limits in statute are no longer adequate to support the traditional 2/3, 1/3 funding split between general fund and special state revenue. This legislation will adjust landowner fees by \$5 for each landowner in a protection district and 5 cents per acre per year for each acre in excess of 20 acres.

Water Resources Division

Extend and modify the Water Adjudication Account and benchmarks. In order to allow DNRC and the Water Court to finish the next phase of the water rights adjudication. This bill is the product of both DNRC and the Court System. It would modify MCA 85-2-71, -280, and -281. The bill would extend the sunset for the Water Adjudication Account through June 30, 2021. It would also include new benchmarks for DNRC claim examination of exempt from filing claims and reexamination of claims in verified basins and new reporting requirements for both DNRC and the Water Court.

Provide flexibility for water right notices of completions. Currently, if a water right permit or change holder does not file a notice of completion or an extension for their notice of completion within the perfection period on their water right then the permit or change is automatically voided by function of law. This bill would modify MCA 85-2-312. This bill would create a process that would allow a water right holder to file a request to DNRC to have their permit or change reinstated within one year of their notice of completion deadline. The applicant would need to provide evidence that they did not file a notice of completion or an extension as a result of an excusable neglect.

Revise Water Right Public Notice Provisions. This bill would eliminate provisions of the law that conflict with the public notice requirements and timelines for water right application review established in 2009 HB 40. The bill would strike MCA 85-2-307(4). The bill would not change MCA 85-2-307(3) that provides DNRC with the flexibility to require between 15-60 days for public notice.

Trust Lands Division

Allow electronic funds transfer: Current statute only allows for certified checks or cashier's checks to pay for certain lease payments and bid deposits. The Department has taken electronic funds transfers in the past and the Legislative Audit Division has suggested a statutory change is needed to allow for them.

Facilitate cabin and home site sales: After working on the cabin and home site pilot project, the Department discovered the need for several clarifications in statute to facilitate future sales. The bill would allow lessees to fund necessary surveys, clarify issues related to conveying legal access to the sale parcels, and distinguishing the difference in the process of settling the values of improvements between residential and agricultural improvements.

Amend reporting requirements: Change statute to simplify and expand reporting on fiscal performance of trust land assets. Current law requires the production of a report specific to forest management, and contains requirements that lead to a complex series of tables that are not meaningful to the trust beneficiaries or the general public. Changes would call for a report on all asset types rather than only forest management and would utilize the best available economic methodology.

Amend the liability for unauthorized construction of improvements: Recent trespass uses of school trust land have shown that existing penalties for illegal uses are not compensating the trust at full market value, much less providing a disincentive to those actions.

Provide for a limited valuation study to for set certain commercial lease rates: The Department and the Land Board occasionally set a commercial lease or license fee based on something other than an appraisal. In some instances such as a cell phone tower site, the appraised land value doesn't secure the full market value of the use. This change would allow for alternate information to be used when determining an appropriate lease rate such as fee schedules, revenue sharing, and comparable rents.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill # SB0369

Title: Revise state cabin site leasing laws

Primary Sponsor: Facey, Tom

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 checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>
Expenditures:				
General Fund	\$84,968	\$130,198	\$181,754	\$237,526
State Special Revenue	\$138,909	\$90,779	\$42,620	(\$10,135)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$138,909	\$90,779	\$42,620	(\$10,135)
Other	(\$100,149)	\$3,640,423	\$3,564,142	\$3,481,471
Net Impact-General Fund Balance:	<u>(\$84,968)</u>	<u>(\$130,198)</u>	<u>(\$181,754)</u>	<u>(\$237,526)</u>

Description of fiscal impact: SB 369 requires the Board of Land Commissioners (Land Board) to sell the cabin and home sites (cabin sites) on school trust lands by July 2035. The Department of Natural Resources and Conservation (DNRC) would need to sell approximately 40 sites per year to meet the deadline. SB would result in reduced distributable revenues to the trust beneficiaries of approximately \$1.5 million from FY 2014 through FY 2017.

FISCAL ANALYSIS

Assumptions:

1. The Trust Land Management Division (TLMD) of DNRC manages approximately 787 cabin sites. Of those:
 - a. 306 have been surveyed, with Certificates of Survey filed with county clerk and recorders offices. Those filed surveys are adequate to describe and transfer title of these sites; and
 - b. 481 cabin sites will require surveys and filed Certificates of Surveys in order to be sold. Survey costs are paid by DNRC.

2. The appraised value of the land and the improvements can be completed in one appraisal report and the land and improvements can be appraised by a Montana-certified general appraiser. In the case of multiple cabin sites processed for sale at one location in the same year, a single appraisal assignment and appraiser would be used.
3. The sale process will be conducted under the land banking administrative rules (ARM Title 36, Chapter 25, Subchapter 8), modified as necessary to accommodate cabin site sales.
 - a. The lessees are responsible for sale processing costs and the portion of appraisal costs that deal with the value of the improvements. Processing costs include legal advertising for the auction sale, document filing fees, water right transfer fees, and indirect costs.
 - b. DNRC pays the appraisal cost related to the land portion.
4. Cabin sites would be sold over a 20-year period starting in FY 2014. Approximately 5% of the cabin sites would be sold each year (40 cabin sites). The costs to sell the cabin sites are as follows, with some being paid by DNRC and others by the individual lessees of the parcels, as per ARM Title 36, Chapter 25, Subchapter 8:
 - a. \$1,500 per cabin site for appraisal of land and improvements;
 - b. \$3,530 per parcel survey and creation of certificate of survey of un-surveyed parcels; and
 - c. \$235 per parcel for sale processing costs.
5. Costs are as follows based on the estimates in assumption #4:
 - a. \$144,409 per year for DNRC (appraisal costs pertaining to land, not improvements; and, all of the survey/Certificate of Survey costs). These funds would be paid by TLMD's primary funding source, the TLMD trust administration state special revenue account. This account is funded by a portion of the revenues generated by land management activities from the trust beneficiaries' distributable revenue stream.
 - b. \$38,760 per year in revenue would be received by DNRC from lessees (appraisal costs that deal with the value of the improvements and the entire sale processing fee). These funds would be placed in the land banking private closing costs SSR account.
6. 1.00 FTE program manager would be necessary to process the 40 sales per year. Duties would include contracting surveys, appraisals, and appraisal reviews; conducting appraisal dispute hearings; preparing Land Board agenda items; marketing sales and conducting auctions; and preparing documents and closing sales. An inflation factor of 1.5% has been added to all costs for FY 2016 and FY 2017.
 - a. Expenditures for the 1.00 FTE would include personal services and operating expenses, including an office package, computer, communication services, supplies and materials, travel, and vehicle expenses. These costs would also be funded through the TLMD trust administration SSR account.
7. An increase in the TLMD trust administration account represents a reduction in the distributable revenue stream for the trust beneficiaries. The costs for fiscal note purposes were allocated based on cabin site parcels by trust. The trust beneficiaries with cabin sites are common schools, the university system (Montana State University, Montana Tech, and the state normal school [Eastern and Western], other trusts (School for the Deaf and Blind, State Reform School – Pine Hills) and the public buildings trust.
8. Reductions to the common schools distributable revenue are allocated 95% to the guarantee account and 5% to the common schools permanent fund.
9. The permanent fund generates interest for the trust beneficiaries. Interest for the common schools trust is distributed 95% to the common school guarantee account annually with 5% reinvested in the permanent fund. Interest on the common schools permanent fund is forecasted at a rate of 3.75% for FY 2015, 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.

Cabin site distributable revenue reductions and the land bank:

10. The cabin site rental revenues will not be impacted until FY 2015 when the first 40 sites are sold. The trust beneficiaries whose cabin site land is sold will have reduced annual revenues until such a time as new land may be purchased to replace their lost revenue streams.
11. Sale proceeds will be placed in trust beneficiaries' land bank funds to be used to purchase other parcels for the trusts. The total value of the cabin sites is estimated to be \$76.1 million based on Department of Revenue (DOR) assessments. The 40 sites sold each year are forecasted to bring in \$3.8 million each year to the land bank funds. The land bank funds generate distributable interest ("short-term investment pool" or "STIP") for the trusts. The current STIP rate is 0.25% which was held constant for the four-year period of this fiscal note.
12. The first purchases of replacement property are estimated to begin in FY 2018. Once suitable replacement property is located and purchased, revenues will again be generated for the trust beneficiaries.

Office of Public Instruction

13. The guarantee account is the first source of funding for K-12 Base Aid, the reduction in guarantee account revenue must be offset with general fund expenditures of a like amount for K-12 Base Aid.

	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$64,208	\$64,208	\$65,254	\$65,883
Operating Expenses FTE	\$6,500	\$3,600	\$3,654	\$3,709
Op Exp DNRC land sales	\$114,409	\$114,409	\$116,125	\$117,867
Op Exp Lessee costs	\$38,760	\$38,760	\$39,341	\$39,932
TOTAL Expenditures	\$223,877	\$220,977	\$224,375	\$227,391
<u>Funding of Expenditures:</u>				
General Fund (01) - Base Aid	\$84,968	\$130,198	\$181,754	\$237,526
SSR Trust Admin Acct	\$185,117	\$182,217	\$185,033	\$187,459
SSR Land Bank private	\$38,760	\$38,760	\$39,341	\$39,932
SSR Guarantee Acct - Base Aid	(\$84,968)	(\$130,198)	(\$181,754)	(\$237,526)
TOTAL Funding of Exp.	\$223,877	\$220,977	\$224,374	\$227,391
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
SSR Trust Admin Acct	\$185,117	\$182,217	\$185,033	\$187,459
SSR Land Bank private	\$38,760	\$38,760	\$39,341	\$39,932
SSR Com School Guar Acct	(\$84,968)	(\$130,198)	(\$181,754)	(\$237,526)
Perm Fund (09)-CS Trust	(\$4,472)	(\$7,020)	(\$9,900)	(\$13,001)
University Trusts Dist	(\$61,309)	(\$106,590)	(\$158,257)	(\$214,344)
Other Trusts Dist	(\$17,783)	(\$28,359)	(\$40,395)	(\$53,401)
Public Buildings Dist	(\$16,585)	(\$25,236)	(\$35,100)	(\$45,744)
Land Bank Sale Proceeds	\$0	\$3,807,628	\$3,807,794	\$3,807,961
TOTAL Revenues	\$38,760	\$3,731,202	\$3,606,762	\$3,471,336

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$84,968)	(\$130,198)	(\$181,754)	(\$237,526)
SSR Trust Admin Acct	\$0	\$0	\$0	\$0
SSR Land Bank private	\$0	\$0	\$0	\$0
SSR Com School Guar Acct	\$0	\$0	\$0	\$0
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Effect on County or Other Local Revenues or Expenditures:

1. As cabinsites are sold, the assessed value by DOR will be added to county tax roles.
 - a. If sale funds are deposited in the land banking fund, when replacement lands are purchased they will become tax exempt. Counties where lands are sold will gain taxable value, counties where replacement lands are purchased will lose taxable value, and the net effect would be tax revenue neutral statewide.
 - b. If sale funds are placed in the permanent fund there will be a net gain statewide in taxable value.

Long-Term Impacts:

1. Initially cabin site rental revenues will decrease, as approximately 40 cabinsites per year are sold. Sale proceeds will accumulate in the land bank funds until sufficient funds are pooled to purchase a qualifying land acquisition. As required by 77-2-364, MCA, "the board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return...". Therefore long-term impacts would be equal or greater revenue generation from replacement lands.

Technical Notes:

1. DNRC will convey the title and access that it has and can convey. Cabin sites will be sold "as is" with no warranty to title or access.

Sponsor's Initials

Date

Budget Director's Initials

Date