



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # SB0233

Title: Generally revise the board of environmental review

Primary Sponsor: Ankney, Duane

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

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$20,823</u>	<u>\$24,988</u>	<u>\$25,363</u>	<u>\$25,743</u>

Description of fiscal impact: SB 233 eliminates the Board of Environmental Review (BER). The BER's expenses would be eliminated or absorbed by the Department of Environmental Quality in the existing budget.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

- The BER is funded 100% by the general fund.
- The average annual costs for the last seven years for the BER are \$24,988.
- Of these expenses, approximately 68% are paid to the Department of Justice to provide attorneys for rulemaking hearings. These functions would be performed by department staff and would be absorbed in existing budget because elimination of the board would eliminate a portion of existing staff workload.
- The remainder of the expenses are for BER travel to Helena and honoraria for BER meetings. These expenses would no longer be incurred.
- The BER holds six meetings per year. One BER meeting will occur in FY 2022 before the SB 233 becomes effective.
- Operating costs are inflated by 1.5% per year for FY 2024 and FY 2025.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
TOTAL Expenditures	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
<u>Funding of Expenditures:</u>				
General Fund (01)	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
TOTAL Funding of Exp.	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

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

General Fund (01)	\$20,823	\$24,988	\$25,363	\$25,743
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Technical Notes:

1. DEQ suggests implementing a phase out period to account for ongoing contested cases currently before the BER. For example, language could be added throughout relevant sections that ensure the BER would continue to exist while completing pending litigation, and the BER would be finally dissolved when the last case reaches judicial finality. Rulemakings and new appeals could be assigned to DEQ immediately upon effective date of the statute.
2. All current BER rules must be able to transition to DEQ rules upon the effective date. A clarifying statement in the bill text, stating that DEQ has authority to do so with a simple administrative change, which is not subject to full MAPA procedures, would be helpful.
3. Sections 50-79-401 and 403, MCA: For regulation of ionizing radiation and radioactive substances, the bill changes BER to “Department” to conduct administrative hearings for appeals and emergency orders. It is unclear whether “Department” means DEQ or DPHHS. DPHHS is defined as “department” in the introductory sections.
4. Section 75-1-220, MCA, includes requirements for Environmental Impact Statements. Currently, Section 75-1-220(2), MCA, includes the BER as an “appropriate board” under the Montana Environmental Policy Act. An appropriate board is required to make a recommendation to an agency regarding a disputed time extension, and to hear/resolve certain disputes between a project sponsor and an agency, among others. Section 10 of the proposed bill amends 75-1- 220(2), MCA, by deleting the BER from the list. It does not replace the BER with DEQ. Thus, leaving no administrative body assigned to act as an appropriate board for DEQ MEPA matters, and potentially requiring DEQ to make recommendations to itself.
5. Section 75-5-313(2)(b), MCA, requires DEQ to recommend base numeric nutrient standards to the BER. Section 61 eliminates the BER from the paragraph but retains the duty for DEQ to make a recommendation. Therefore, this provision requires DEQ to make a recommendation to itself. DEQ suggests amending the proposed language to: “(b) The department shall consult with the nutrient work group prior to ~~recommending~~ adopting base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing 28 individual nutrient standards variances.”
6. Section 82-4-422(2)(b)(iii), MCA: The bill suggests changing the language to: “providing other administrative requirements ~~that the board considers necessary to implement this part;~~” As amended, it is unclear which

entity makes the determination as to what is “necessary.” DEQ suggests revising the proposed language to say: “providing other administrative requirements that the ~~board~~ department considers necessary...”

7. Section 82-4-427(5), MCA: The bill suggests changing the language to: “A petition for judicial review of a ~~board~~ department decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or . . .” DEQ suggests adding clarifying language as to what type of “department decision” may be appealed to judicial court since a department decision could be construed as the permitting decision (as it is elsewhere within this same section – the appeal section). Unlike BER decisions, DEQ permitting decisions may not be appealed directly to district court.

NO SPONSOR SIGNATURE

Sponsor's Initials

2/18

Date

KA

Budget Director's Initials

2/17/21

Date