



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # SB0392

Title: Providing for energy and fiber right-of-way along interstate highways

Primary Sponsor: Vance, Gordon

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</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>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: The Montana Department of Transportation (MDT) does not anticipate a fiscal impact with the passage of SB 392.

FISCAL ANALYSIS


Assumptions:

Montana Department of Transportation

1. The State has no inherent authority to manage the Interstate right of way (R/W), that authority lies with the Federal Highway Administration (FHWA) under 23 CFR 710.403.
2. Section 23 CFR 710.403 and 645.205 require review and approval from FHWA Legal as well as the FHWA Administrator for a non-public utility facility, including those defined as "eligible project" in SB 392, installed longitudinally within the Interstate R/W.
3. Neither FHWA approvals, nor required fair market value appraisals can be completed within the 90-day limitation, resulting in MDT denying any applications submitted by owners of eligible projects.

Technical Notes:


1. Section 23 CFR 645.105 does not identify hydrogen pipeline as a utility.
2. Consistent with federal law, MDT’s rules and FHWA approved Utility Accommodation Policy define which public utilities are currently allowed to perpendicularly cross MDT’s Interstate R/W.
3. SB 392 would require MDT to allow non-utility pipelines longitudinally within this R/W, in violation of MDT’s current FHWA-approved Utility Accommodation Policy which does not allow for non-utility, private pipeline Interstate Longitudinal Placement.
4. Providing an easement within MDT R/W is contrary to Sections 23 CFR 710.105, 710.403, 645.203, 645.205 and 645.209.
5. SB 392 requirements to “grant an easement” within MDT R/W is prohibited by state (60-4-202, MCA) and federal statutes and regulation (23 CFR 710.403).
6. MDT cannot negotiate easement values without a fair market value determination and payment by the pipeline or fiber optic cable applicant of appropriate compensation for the use of R/W acquired with federal funds.
7. Pipeline or fiber optic cable placement would require many linear miles of “easement”, all at appraised fair market value.
8. Sections 23 CFR 710.403 and 23 CFR 710.105 use the term “public interest” instead of “public benefit”. Section 23 CFR does not provide for a definition of “public interest”, therefore FHWA will define and provide approval of “public interest” for private pipeline or fiber optic cable applicants.
9. Section 23 CFR 710.105 defines the R/W use agreements which may be used for non-highway use of R/W as leases, licenses or permits, not permanent easements as would be required by SB 392.
10. MDT currently issues utility permits in accordance with the federal regulation but cannot grant easements for use of federal-funded R/W.
11. New Section 3(a) references fees that the state provides to the federal government to maintain the interstate highways. MDT is unaware of what fees or payments this section is referencing for interstate maintenance activities.
12. The \$100 million dollar benefit to the Montana economy will be difficult for MDT to quantify and substantiate.
13. Allowing multiple pipelines to be installed within existing, narrow, finite R/W space will further impede MDT’s ability to operate and maintain the Interstate R/W; creating problems with lack of available space for later applicants or future Interstate expansion.



 Sponsor's Initials Date



 Budget Director's Initials



 Date