



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # SB0260

Title: Generally revise related to property interests and transfer of businesses

Primary Sponsor: Fitzpatrick, Steve

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	Unknown	Unknown	Unknown	Unknown
Revenue:				
General Fund	Unknown	Unknown	Unknown	Unknown
Net Impact-General Fund Balance:	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

Description of fiscal impact: SB 260 revises laws relating to property interests subject to eminent domain/regulatory takings to include goodwill and going concern value of a business, license to pursue a business or livelihood, real property, water rights, and intangible property. This bill also expands ownership of property to include licenses and the ability of the holder to freely transfer or dispose of the license. SB 260 also affords this property the protections under Article II, section 29, of the Montana Constitution including compensation if a court determines that the property has been damaged or taken for a public use by means of eminent domain or a regulatory taking. Due to the many variables in SB 260, the fiscal impact to the state cannot be reasonably determined.

FISCAL ANALYSIS

Assumptions:

Montana Department of Environmental Quality

1. SB 260 does not impact the Department of Environmental Quality's issuance of licenses. The department will continue to conduct the appropriate private property taking and damaging assessments as required under 2-10-105, MCA, when licenses are issued.

Montana Department of Revenue

2. Specific to the department and the administration of alcohol licenses, this bill provides that ownership includes "licenses to pursue a business or livelihood, including state licenses that have been approved and issued and for which the holder has a legitimate claim of entitlement, and the property interests associated with licenses,

including any authorized ability to freely transfer or dispose of the license." The licenses described in this subsection are defined as protectable private property interests under the Montana Constitution.

- 3. SB 260 will have no fiscal impact to the department and would not create additional administrative costs, but it may have some legal implications due to conflict with current law. See the technical note below.

Montana Department of Transportation

- 4. The Montana Department of Transportation (MDT) must comply with federal regulations and Montana statutes and case law on items which are compensable during acquisition.
- 5. SB 260, Section 1, enlarges the list of compensable items by amending 70-1-104 (a) through (i), MCA, to now include property interests such as loss of business income, license to pursue a business or livelihood, personal property and appurtenances, water rights, and intangible property.
- 6. Many of these items are currently non-compensable under statute, rule, or case law.
- 7. Additional costs would be incurred by MDT for highway acquisition of any of these new property interests. However, these costs cannot be determined at this time.
- 8. Federal statutes require Fair Market Value (FMV) be established for all highway acquisition, which is done by licensed appraisers.
- 9. By adding a list of property interests and stating in Section (2)(a) taking occurs if there is a 25% or greater diminution in the private property’s FMV, additional costs will be incurred to attempt to establish values of these new property interests, many of which are not real property subject to appraisal processes.
- 10. Any evaluation of business loss would require fiscal analysis and consultation with experts, resulting in additional costs incurred by MDT for highway acquisition.
- 11. Outdoor Advertising Control (OAC) permits are issued by MDT and may become a “property right” if defined as an entitlement, for which permit revocation or suspension would now require compensation. This would have a fiscal impact on MDT’s OAC program.

Technical Notes:

Montana Department of Justice

- 1. The Department of Justice’s Motor Vehicle Division issues and regulates automobile dealer licenses in compliance with the Montana Administration Procedures Act (MAPA) when action is taken against a licensed dealer. As authorized by 61-4-106, MCA, dealer licenses can be transferred and sold. As such, dealer licenses would fall under this bill which creates a separate cause of action which is not covered by MAPA.

Montana Department of Revenue

- 2. SB 260 appears to create a property right in alcoholic beverage licenses. This is in conflict with existing language in 16-4-401(1), MCA, which states "A license under [the Montana Alcoholic Beverage Code] is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled."

Montana Department of Transportation

- 3. SB 260 creates internal conflicts within Montana Code Annotated and with existing case law. By attempting to re-define and expand “property rights” and specifically stating these new property interests are “protectable private property interests under the Constitution, Art. II, Section 29,” MDT’s ability to invoke eminent domain for highway purposes will be impacted with unknown additional costs to cover the unlimited new “property interests,” in conflict with Title 60 Eminent Domain authority for highway purposes.

Office of the Secretary of State

- 4. This bill, if passed, has the potential to create unknown fiscal liabilities to the Office of the Secretary of State for business entity filings.

NO SPONSOR SIGNATURE

_____ 2/23 _____ KA _____ 2/22/21
 Sponsor’s Initials Date Budget Director’s Initials Date