# Fiscal Note 2023 Biennium

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

| Bill # | SB0260 | Title: | Generally revise related to property interests and transfer of businesses |
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| Primary Sponsor: | Fitzpatrick, Steve | Status: | As Amended |
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☐ 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 2022 Difference | FY 2023 Difference | FY 2024 Difference | FY 2025 Difference |
|---|---|---|---|---|
| **Expenditures:** |  |  |  |  |
| General Fund | Unknown | Unknown | Unknown | Unknown |
|  |  |  |  |  |
| **Revenue:** |  |  |  |  |
| General Fund | Unknown | Unknown | Unknown | Unknown |
|  |  |  |  |  |
| **Net Impact-General Fund Balance:** | Unknown | Unknown | Unknown | Unknown |

**Description of fiscal impact:** SB 260 as amended in the House, 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. The bill would expand ownership of property to include licenses and the ability of the holder to freely transfer or dispose of the license. SB 260 affords designated 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. SB 260, as amended, 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.

3. 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.

4. This bill as amended, does not apply to licenses for the growing, manufacturing, distribution or sale of marijuana or marijuana products.

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

**Montana Department of Transportation**

6. As amended, SB 260 exempts MDT from the bill's language, thus there is no fiscal impact to MDT

## 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."

**NO SPONSOR SIGNATURE**  3.12

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| *Sponsor's Initials* | *Date* |

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| *Budget Director's Initials* | *Date* |