



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # SB0354

Title: Revise laws related to land servitudes and easements.

Primary Sponsor: Hinebauch, Steve

Status: As Amended in Senate Committee

- 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	\$77,534	\$33,344	\$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>(\$77,534)</u>	<u>(\$33,344)</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: SB 354, as amended, will have a fiscal impact on the Department of Natural Resources and Conservation (DNRC) of one FTE as well as other potential unknown financial impacts.

FISCAL ANALYSIS

Assumptions:

Department of Natural Resources and Conservation (DNRC)

- The DNRC does not have jurisdiction to adjudicate claimed prescriptive rights filed with DNRC or objections to claimed prescriptive rights filed with the DNRC. Therefore, it is assumed that the DNRC functions performed pursuant to SB 354 are ministerial. DNRC is merely a repository for forms completed related to claims for prescriptive easements.
- The DNRC would be responsible for developing a form for notice of claims for prescriptive rights on land in Montana. The DNRC would receive and review forms, through December 31, 2022, and store, or coordinate storage, of original paper copies of forms in perpetuity.

3. One FTE administrative staff will implement the DNRC’s responsibilities under the bill, with those staff-related responsibilities ending on December 31, 2022. The department cannot use existing staff in the Trust Land Management Division since they are funded using deductions from the revenues generated on state trust lands. The department would need to request the additional FTE and funding from the general fund.
4. There are 3.08M acres of inaccessible public land in Montana, resulting in 4,800 potential claims for prescriptive easements to otherwise inaccessible public land (3.8M/640). The bill does not exclude claims for prescriptive easements to private land, and therefore there is an indeterminant number of potential claims.
5. The DNRC will not be responsible for ensuring the correctness or legality of any form, and will not be responsible for defending any claim, or administering any conveyance or any process related to conveyance, of any right related to a claim.
6. SB 354, as amended, could make the DNRC a party to litigation over easements unrelated to state land and/or create liability for the DNRC related to the role the requisite form plays in claims for prescriptive rights. The fiscal impact of this potential is unknown.

	<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>				
FTE	1.00	0.50	0.00	0.00
<u>Expenditures:</u>				
Personal Services	\$63,734	\$27,844	\$0	\$0
Operating Expenses	\$13,800	\$5,500	\$0	\$0
TOTAL Expenditures	<u>\$77,534</u>	<u>\$33,344</u>	<u>\$0</u>	<u>\$0</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$77,534	\$33,344	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	<u>\$77,534</u>	<u>\$33,344</u>	<u>\$0</u>	<u>\$0</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$ (77,534)	\$ (33,344)	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0

Technical Notes:

1. The bill does not limit prescriptive easement claims filed with the Department to those facilitating access to public land and requires that all prescriptive easements be filed with the DNRC. The DNRC does not otherwise manage easements where the dominant tenement is private land.
2. The bill does not address the record keeping for claims, or the means for a claimant to perfect a right after a claim is filed with the DNRC, nor does it establish the purpose of receiving claims that on their own do not create any right.
3. The process and expectations for the department are unclear after December 31, 2022.
4. In 2019, attorneys for the DNRC spent approximately 700 hours litigating one prescriptive easement claim.
5. Land Board approval is required for all easement grants and acquisitions currently administered by the DNRC, including those rights established through the MT PLAN grant program.

NO SPONSOR SIGNATURE

Sponsor's Initials

4.8

Date

KA

Budget Director's Initials

4-6-21

Date