GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:	
SB0303 - Revise withholding penalties for certain taxes (Hertz, Greg)	
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

	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$892,500	$892,500	$892,500	$892,500
Net Impact-General Fund Balance:	$892,500	$892,500	$892,500	$892,500

Description of fiscal impact: SB 303, as passed out of the Senate increases fines for not filing necessary wage withholding or mineral-royalty withholding annual statements with the Department of Revenue. The Senate Taxation Committee amendments provide conditions for waiving penalties for first-time omissions and for rapid compliance. The Senate floor amendments reduce the level of minimum fines from the Senate Taxation levels. The proposed fee change will increase general fund revenue by about $892,500 per years starting in FY 2024.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. Under current law, employers that fail to furnish the department with the annual wage and tax statement for each of their employees by January 31, are subject to a $5 penalty for each failure, there is a minimum penalty of $50. There is a penalty of $50 for each failure by a mineral royalty holder to file their required annual statement to the department by January 31 of each year. The minimum penalty for the royalty holder is $1,000.
2. As amended on the Senate floor, SB 303 changes the penalties for employers who fail to provide the annual withholding statement for each employee from $5 per failure to $50. The minimum penalty was changed from $50 to $250 (was $1,000). The minimum penalty for failing to file mineral royalty withholding report was set at $1,000 (was $3,000).
3. The fine for each failure to file increased from $50 to $150, as in the introduced bill.

4. As previously amended in the Senate Taxation committee, SB 303 extends the grace period for employers and mineral royalty holders to 30 days before penalties are imposed.
5. The Senate Taxation Committee amendments also allow employers who had not previously been assessed a penalty by the department to have their penalties waived if they provide the necessary wage and tax statements within 30 days of receiving the department's notification statement. For employers who have been assessed a penalty, the department can waive the penalty only if the employer submits the wage and tax statements within 15 calendar days of the statement due date, or if the employer demonstrates reasonable cause. Similar waiver requirements apply to mineral royalty holders.
6. Under SB 3030, prior instances of penalties by the DOR for failure to file wage and tax statements or royalty and tax statements are not relevant when making a determination of the penalties imposed.
7. SB 303 is effective upon passage and approval l (TY 2023 reports due January 31, 2024, which is in FY 2024).
8. As the department currently waives penalties for first-time offenders and expects to waive penalties for first-time offenders under SB 303 (Assumption 26), the amendments are not expected to have significant impact.

Calculating withholding penalties

9. In TY 2020, the Department of Revenue received approximately 1,200 MW-3s (annual withholding report) from businesses with no corresponding W-2s. These businesses reported approximately 14,300 employees with missing W-2 statements. In TY 2021, the department received 890 MW-3s from businesses, but the reports did not include the W-2s that should have been sent for approximately 17,300 employees.
10. The average number of missing W-2s for each of the received MW-3s was 11.8 (14,300 / 1,200) in TY 2020 and 19.4 (17,300 / 890) in TY 2021.
11. The DOR received no MW-3s or W-2s from around 11,000 businesses in TY 2020 and 8,200 in TY 2021.
12. It is assumed that the businesses not filing an MW-3 or any W-2s, will have the same average number of missing W-2s each tax year.
13. With 11,000 missing MW-3s in 2020, and an average number of missing W-2s of 11.9, it is assumed that a total of 130,900 W-2s were not reported by these employers in 2020.
14. In 2021, 8,200 missing MW-3s, represent a total of 159,080 W-2s the were not reported (19.4 per MW-3).
15. In total, 12,200 employers are assumed to not have filed W-2s in TY 2020 and 9,090 not filed in TY 2021. The number of missing W-2s is assumed to be 145,200 in TY 2020 and 176,380 in TY 2021.
16. Under current law about half of non-filing employers pay the minimum penalty on an average of 5 employees.
17. With 145,200 missing W-2s in TY 2020, the 12,200 employers would be subject to $878,500 ((12,200 X 0.5 X $50) + ((145,200 – (12,200 X 0.5 X 5)) X $5)) in fees under current law.
18. With 176,380 missing W-2s in TY 2021, the 9,090 employers would be subject to $995,525 ((9,090 X 0.5 X $50) + ((176,380 – (9,090 X 0.5 X 5)) X $5)) in fees under current law.
19. SB 303 changes the threshold employer are subject to the minimum penalty from 10 ($50 / $5) s to five ($250 / $50) employees. It is assumed that a quarter of employers will pay the minimum penalty on an average of three employees, while the remaining employers will pay the regular penalty for all other employees.
20. The same employers in TY 2020 would have been subject to $7,565,000 (((12,200 X 0.25) X $250) + ((145,200 – (12,200 X 0.25 X 3)) X $50)) in fees if of SB 303 had been in place for the tax year.
21. The same employers in TY 2021 would have been subject to $9,046,250 (((9,090 X 0.25) X $250) + ((176,380 – (9,090 X 0.25 X 3)) X $50)) in fees if the provisions of SB 303 had been in place for the tax year.
22. The Department of Revenue assumes that increasing the penalties for non-filing will decrease the number of missing MW-3s and W-2s. It is assumed that the higher fees will reduce non-filing by 70%.
23. With a reduction in non-filing of 70%, the total number of fees that would have been collected in TY 2020 and TY 2021 if the provisions of SB 303 were in place decreases to $2,269,500 and $2,713,875, respectively.
24. Based on the fees that are assumed to have been collected under current law in 2020 and 2021, and the estimated fees under the proposed law for the two years, the Department of Revenue would have collected $1,391,000 in additional fees in TY 2020 and $1,718,350 in TY 2021.
25. It is assumed that the Department of Revenue would have collected the average additional revenue collected in TY 2020 and TY 2021 in future tax years, which is $1,554,675.

26. The Department of Revenue expects to waive 50% of the fees due each tax year. With $1,554,675 in potential fines and 50% waived, $777,000 in income withholding penalties are expected to be collected each tax year.

Calculating royalty withholding penalties

27. From TY 2018 through TY 2021, the department collected an average of $231,000 in royalty withholding penalties each year. With a penalty amount of $50 under current law, an average of 4,620 royalty and tax statements were not filed in the necessary time frame and were assessed a fee.
28. It is assumed that 4,620 royalty and tax statements will continue to be subject to a fee in future tax years.
29. Under SB 303, the fee assessed to not filing a royalty and tax statement is increased to $150.
30. With 4,620 statements subject to the $150 fee, a total of $693,000 in fees will be collected each tax year.
31. The DOR assumes increased penalties will reduce the number of missing royalty and tax statements by 50%.
32. With $693,000 in royalty fees under the new fee amount, and a reduction of 50% in non-filed statements, it is assumed that total royalty fees collected each year will be $346,500 under SB 303 as amended.
33. With $346,500 in royalty fees each year under SB 303, and $231,000 in fees under current law, the proposed bill will increase royalty fee collections by $115,500 each tax year.

Combined effects

34. With $777,000 in additional wage withholding penalties, and $115,500 in additional royalty fee collections, it is assumed that SB 303 as amended will increase revenue collections by $892,500 each tax year.
35. The January 31 filing deadline means penalties will be collected the fiscal year following the tax year.
36. With $892,500 in fees each tax year, and an implementation date during TY 2023, the proposed bill will increase general fund revenue by $892,500 in FY 2024, FY 2025, FY 2026, and FY 2027.

DOR Administrative Costs

37. The changes made by SB 303 as it leaves the Senate can be made as part of the department's annual change processes. The department does not expect to incur significant additional costs because of this bill.

Fiscal Impact:	**FY 2024 Difference**	**FY 2025 Difference**	**FY 2026 Difference**	**FY 2027 Difference**
Department of Revenue				
FTE	0.00	0.00	0.00	0.00
Expenditures:				
Personal Services	$0	$0	$0	$0
TOTAL Expenditures	$0	$0	$0	$0
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
TOTAL Funding of Exp.	$0	$0	$0	$0
Revenues:				
General Fund (01)	$892,500	$892,500	$892,500	$892,500
TOTAL Revenues	$892,500	$892,500	$892,500	$892,500
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$892,500	$892,500	$892,500	$892,500

NO SPONSOR SIGNATURE 3.20.23 3-17-23

Sponsor's Initials *Date* *Budget Director's Initials* *Date*