



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2011 Biennium

**Bill #** SB0507

**Title:** Use of river beds

**Primary Sponsor:** Story, Bob

**Status:** As Amended

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<b>Expenditures:</b>				
General Fund	\$5,264	\$46	(\$212)	(\$227)
State Special Revenue (02) Historic Riverbed Acct	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Guarantee Acct (02)	(\$5,264)	(\$46)	\$212	\$227
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue (02) Historic Riverbed Acct	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Guarantee Acct (02)	(\$5,264)	(\$46)	\$212	\$227
Com School Perm Fund (09)	\$99,723	\$99,983	\$100,269	\$100,558
<b>Net Impact-General Fund Balance:</b>	<u>(\$5,264)</u>	<u>(\$46)</u>	<u>\$212</u>	<u>\$227</u>

**Description of fiscal impact:** SB 507 defines the methodology to assess full market value for all use of navigable rivers. Navigable river beds are considered land belonging to and benefiting the Common Schools Trust. SB 507 provides for an application fee and revenue for the Common Schools Permanent Fund.

### FISCAL ANALYSIS

#### Assumptions:

1. The beds of navigable rivers have been determined by a court of law to be Common Schools trust land.
2. Section 2. (2) "Full market value" means the board has discretion in determining compensation for uses in navigable waters.

3. The department claims ownership of approximately 3,361 miles of navigable waterways on stretches of 38 streams, lakes, and rivers. Stretches of 19 rivers or lakes are meandered and stretches of 9 rivers or lakes have been adjudicated in a court of competent jurisdiction.
4. Currently, the department has executed 190 oil and gas leases on navigable waterways in Montana, which generate approximately \$1 million annually in rentals and royalties. Of those leases, all but 17 are located on rivers that are meandered or adjudicated. It is assumed that if SB 507 were to pass that the 173 leases on rivers that have been adjudicated or meandered would continue to be in force and managed by the department. For the 17 leases on the Teton River, which is not fully meandered nor adjudicated, per SB 507, the DNRC could not require the current lessee to maintain his oil and gas lease, resulting in potential lost rental revenues of \$5,541 annually (Common Schools trust beneficiary, \$5,264 reduced Guarantee Account and \$277 reduced revenue from the Common School Permanent Fund) and an unknown amount of royalty revenue, if successfully developed.
5. The amendments to SB 507 would increase the fund balance of the Common Schools Permanent Trust Fund for easement revenue and as a result the interest revenue generated would be increased as well. It is assumed that the long term interest rate of 5.478% for FY 2010 and 5.748% in FY 2011 through FY 2013.
6. For fiscal note purposes, with the limitation noted in new section 8, easements would only be issued on meandered or adjudicated waters. It is assumed that the department would process an average of 200 easement applications a year for an application fee of \$50 each. The application fees would be deposited into a new state special revenue account (Historic Riverbed Use Account) to fund the processing of the applications. The department would utilize \$10,000 for contracted services each year to assist with processing applications.
7. Easement revenue for the Common Schools Permanent Fund is based on the following:
  - a. The average appraised value per acre of an adjacent upland parcel is \$2,000. Therefore, the value of the navigable riverbed is 50% of the value of an adjacent upland acre or \$1,000/acre.
  - b. The area of an average easement is approximately 0.50 acres. ( $\$1,000 \text{ per acre} \times 0.50 \text{ acres} = \$500$ ).
  - c. Two hundred easements at \$500 per easement would generate approximately \$100,000 for the Common Schools Permanent Fund each year.
8. The guarantee account is the first funding of K-12 BASE aid. When the guarantee account revenue is reduced, general fund expenditures must replace the reduced revenue. The loss in interest revenues due to SB 507 are about \$5,000 per year.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses (01) General Fund	\$5,264	\$46	(\$212)	(\$227)
Operating Expenses (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
<b>TOTAL Expenditures</b>	<b>\$15,264</b>	<b>\$10,046</b>	<b>\$9,788</b>	<b>\$9,773</b>

<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	(\$5,264)	(\$46)	\$212	\$227
State Special Revenue (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Guarantee Acct (02)	(\$5,264)	(\$46)	\$212	\$227
<b>TOTAL Funding of Exp.</b>	<b>(\$528)</b>	<b>\$9,908</b>	<b>\$10,424</b>	<b>\$10,454</b>

<b><u>Revenues:</u></b>				
State Special Revenue (02) Historic Riverbed Use Acct	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Guarantee Acct (02)	(\$5,264)	(\$46)	\$212	\$227
Common School Perm Fund (09)	\$99,723	\$99,983	\$100,269	\$100,558
<b>TOTAL Revenues</b>	<b>\$104,459</b>	<b>\$109,937</b>	<b>\$110,481</b>	<b>\$110,785</b>

<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	\$5,264	\$46	(\$212)	(\$227)
State Special Revenue (02) Historic Riverbed Use Acct	\$0	\$0	\$0	\$0
Common Schools Guarantee Acct (02)	\$0	\$0	\$0	\$0
Common School Perm Fund (09)	\$99,723	\$99,983	\$100,269	\$100,558

**Technical Notes:**

1. New section 3, (3) (e) as amended, limits the discretion of the Land Board to deny an easement. The amended language states, “The authorization must be approved [by the board] if the requirements of this section are met. The amendment infringes on Article X, Section 4 of the Montana Constitution, which states, “It [the board] has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted..., under such regulations and restrictions as may be provided by law.”
2. New section 3, (8) (c) for which the applicant can show an easement obtained from a state agency prior to the effective date of this act. DNRC is unaware of any instance where any agency, other than DNRC and the State Board of Land Commissioners, has issued an easement upon a navigable waterway. If another agency issued such an easement, it would not be effective. Only the Land Board can convey an easement in a state-owned waterway.
3. New section 6, (2) (b) (ii) allows the holder of a lease, license or easement to increase the size of the footprint if the increase is necessary to accomplish the purpose for which the lease, license or easement was granted, provided that the holder pay full market value. Section 6 conflicts with the constitutional authority of the State Board of Land Commissioners to determine when to convey interests in state school trust lands. The amendments require the applicant to acquire the appropriate state or federal permits, which would consist of 310 permits issued by the conservation districts and/or 404 permits issued by the Army Corps of Engineers. The bill does not address the concern about disposing of interests in state lands without the Land Board’s consent.

4. Section 7(2)a of SB 507 states that: “For the purposes of [sections 1 through 8], the board or the department may not adopt rules requiring the purchase of liability insurance as a condition for issuing a lease, license, or easement.” Additionally, section 7(2)b states that the board or the department may not require the purchase of liability insurance as a condition for the issuance of a lease, license, or easement.
5. Section 8 allows the board or department to require a lease, license, or easement for the use of the bed of a river only for those rivers that have been determined by a court of competent jurisdiction as navigable for title purposes or was meandered by official government survey at the time of statehood.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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*Date*