



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

**Bill information:**

SB0142 - Provide oversight of local impact fee laws (Regier, Keith )

**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 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$200,989	\$89,414	\$94,055	\$98,766
State Special Revenue	\$220,000	\$220,000	\$220,000	\$220,000
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$220,000	\$220,000	\$220,000	\$220,000
<b>Net Impact-General Fund Balance:</b>	<u>(\$200,989)</u>	<u>(\$89,414)</u>	<u>(\$94,055)</u>	<u>(\$98,766)</u>

**Description of fiscal impact:** SB 142 requires the Department of Commerce to oversee the collection and administration of impact fees imposed on development by governmental entities.

### FISCAL ANALYSIS

**Assumptions:****Department of Commerce**

- The department would be required to review the materials submitted by governmental entities under Section 4 of the bill and make a determination as to whether the governmental entity has collected or expended impact fees in violation of Title 7, Chapter 6, part 16, MCA, or has failed to refund impact fees timely as required in 7-6-1603, MCA, and notify the governmental entity in writing of the determination.
- If the department determines a violation has occurred the government entity would be required to provide to the department a list of all persons who paid impact fees determined to be incorrectly collected or not refunded as required and the amount each person is owed in refunded impact fees. Any person or entity who is owed

refunded impact fees may request in writing from the governmental entity and the department that prompt payment be concluded.

3. If a governmental entity fails to comply with the requirements of Title 7, Chapter 6, part 16, MCA, the department may, within 180 days of receiving a written request as provided in subsection (7), initiate proceedings against the governmental entity in a court of competent jurisdiction to recover amounts due and to enforce compliance.
4. Section 5 of the bill establishes rulemaking authority for the department, grants the department authority to approve a project application for which impact fees are collected, and provides that any person from whom impact fees are collected for an approved project may seek legal redress against the department.
5. Section 7 of the bill would require the department to review and approve evidence of ordinance and resolution amendments, along with affidavits of compliance submitted by government entities no later January 31, 2024.
6. For the purposes of this fiscal note it is assumed that 12 government entities would exceed the \$100,000 impact fee threshold.
7. In order to review the service area reports, capital improvement plans, annual audit reports, affidavits of compliance, follow up documentation for entities not in compliance, and to initiate legal proceeding will require the annual staff hours estimated by the table below:

Estimated Hours Per Governmental Entity Per Year					
Program Manager	Program Specialist 2	Professional Engineer 1	Attorney 2	Accountant 1	Administrative Assistant 3
40	100	70	70	70	40
Multiply By Estimated 12 Governmental Entities Over \$100,000 Threshold					
480	1200	840	840	840	480

For general program administration, technical assistance, outreach, approval of independent firms qualified to produce service area reports, processing of public facility applications, and potential legal defense, will require the annual staff hours estimated by the table below:

Program Manager	Program Specialist 2	Professional Engineer 1	Attorney 2	Accountant 1	Administrative Assistant 3
80	240	240	140	140	60

Total staff necessary for oversight and regulation would be as follows:

- Program Manager - 0.25 FTE (480+80=560)
- Program Specialist 2 - 0.75 FTE (1200+240=1440)
- Professional Engineer 1 – 0.50 FTE (840+240=1080)
- Lawyer 2 – 0.50 FTE (840+140=980)
- Accountant 1 – 0.50 FTE (840+140=980)
- Admin Assistant 3 – 0.25 FTE (480+60=540)

8. Additional operating costs would be necessary for the initial stand up of the program. They include staff training, establishment of an on-line portal, and travel.
9. Department costs for administering the oversight and regulation would be partially offset by 20% of the up to 5% admin fee government entities may collect. At this time there is no way to estimate the amount that may be collected. Based on estimates of department costs, if the maximum 5% was collected as admin fees by the

government entities, the amount of total impact fees collected in order to fully support the department would need to be \$34.7 million in FY 2024; \$23.5 million in FY 2025; \$23.8 million in FY 2026; and \$24.2 million in FY 2027.

- Based on FY 2021 collections, it is estimated that an average of \$22 million will be collected in impact fees annually and that the full 5% will be collected as admin fees by the government entities. This would result in \$220,000 each year in fees submitted to the department for admin costs. ( $\$22,000,000 \times 5\% \times 20\% = \$220,000$ ). Any deficits in funding for the program would be made up from the general fund.

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	2.75	2.75	2.75	2.75
<b><u>Expenditures:</u></b>				
Personal Services	\$257,790	\$257,790	\$261,656	\$265,581
Operating Expenses	\$163,199	\$51,624	\$52,399	\$53,185
<b>TOTAL Expenditures</b>	<u>\$420,989</u>	<u>\$309,414</u>	<u>\$314,055</u>	<u>\$318,766</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$200,989	\$89,414	\$94,055	\$98,766
State Special Revenue (02)	\$220,000	\$220,000	\$220,000	\$220,000
<b>TOTAL Funding of Exp.</b>	<u>\$420,989</u>	<u>\$309,414</u>	<u>\$314,055</u>	<u>\$318,766</u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$220,000	\$220,000	\$220,000	\$220,000
<b>TOTAL Revenues</b>	<u>\$220,000</u>	<u>\$220,000</u>	<u>\$220,000</u>	<u>\$220,000</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	\$ (200,989)	\$ (89,414)	\$ (94,055)	\$ (98,766)
State Special Revenue (02)	\$0	\$0	\$0	\$0

**Effect on County or Other Local Revenues or Expenditures:**

**Montana League of Cities and Towns**

- SB 142 may preclude local governments from the ability to impose impact fees on new development that is necessary to provide adequate water, sewer, public safety, transportation, and other services to new development in their jurisdiction.
- Local governments and existing taxpayers may incur fiscal impacts in covering the costs of services to new development if development proposals are not denied based on the local government’s ability to mitigate service requirements.
- Jurisdictions in high cost or high taxable value areas would incur additional costs related to duplicative auditing reports covering the same information currently provided in annual audits and financial reviews.

**Montana Association of Counties (MACO)**

- A number of counties may not have the planning documents required and would incur costs in completing and maintaining the planning documents. Some of those counties may or may not have a project that warrants

impact fees, making the choice to either invest in the planning just in case, or pass any impacts of development onto the existing tax base. The amount of those costs is not quantifiable.

**Department of Natural Resources and Conservation**

- 5. Diverting 20% of the impact fees collected by the local government may cause additional charges to water and wastewater system users.
- 6. SB 142 requires service reports where impact fees are collected, local governments would have to contract with independent firms. This may result in additional costs to users where the local government could have done the work with in-house staff.

**Technical Notes:**

**Department of Commerce**

- 1. Section 1, page 2, line 14 of the bill provides the requirement that a governmental entity must remit 20% of the administrative fee collected to the department is currently contained within the definition of the word “impact fee.” This is an atypical place for such a provision, as it is not technically part of the definition of impact fee.
- 2. Section 5 of the bill provides that any person from whom impact fees are collected for an approved project may seek legal redress; however, it is unclear against whom the person may seek legal redress, the department or the governmental entity.
- 3. Section 4, page 10, line 12 through 16 awards a prevailing governmental entity court costs, expert witness fees, and attorney fees and vice versa if a claimant prevails. Section 5, page 10, line 21 through 23 provides a private right of action. It is unclear whether the prevailing party award of costs in Section 4 apply to this particular private right of action in Section 5.
- 4. Section 4 states that it applies to governmental entities that collect more than \$100,000 in total impact fees in a single fiscal year. Subsection 7 provides that any person or entity who is owed refunded impact fees as provided in this part may request in writing from the governmental entity and the department that prompt payment be concluded. It is unclear whether Subsection 7 was intended to be restricted to refunds owed only by governmental entities that collect more than \$100,000 per fiscal year or such a restriction was unintentional.

**Department of Natural Resources and Conservation**

- 5. A local government imposes an impact fee to connect into a sewer system. That fee is pledged by the local government as part of their loan financing package to make their payments on their loan.
- 6. This legislation may cause local governments to not have the resources to make debt payments

NO SPONSOR SIGNATURE 1/16/23

1-16-22

Sponsor's Initials

Date

Budget Director's Initials

Date

Budget Director



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## Dedication of Revenue 2025 Biennium

Section 17-1-507, MCA, requires an analysis of dedication of revenue in fiscal notes.

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay?**  
No. Revenue is derived from a percentage of admin fees collected by local governments from development projects. Oversight provided in return is a benefit to the local governments and the developers.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?** The revenue is needed to offset administrative costs.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended?** Yes / No The revenue is relevant but not sufficient. The Department of Commerce cannot estimate the amount of revenue that will be collected. The minimum amount that can be determined is less than projected administrative costs they are intended to offset.
- d) **Does the need for this state special revenue provision still exist?**  Yes  No  
The revenue is still needed to offset administrative costs.
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending?** No. A HB 2 appropriation could be used and the fund audited by the Office of the Legislative Auditor with any findings being presented to the Legislative Audit Committee. The fund is also subject to legislative review and appropriation.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need?** The revenue will offset admin costs of the department providing oversight and regulation of local government impact fees.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency?** Yes. A state special revenue account should be established for the program proposed in this bill because expenditures and revenues related to activities defined in the bill would be accounted for in a dedicated fund.