



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:

SB0287 - Revise property laws (Fitzpatrick, Steve)

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>
Expenditures:				
General Fund		----- unknown -----		
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:		----- unknown -----		

Description of fiscal impact: SB 287 creates a likelihood of litigation for state agencies, but the fiscal impact cannot be predicted.

FISCAL ANALYSIS

Assumptions:

- SB 287 revises laws relating to property interests subject to eminent domain and 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.

Department of Revenue

- For the Department of Revenue and the administration of alcoholic beverage and cannabis 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 property recognized under the Montana Constitution or by law for which just compensation may be claimed and awarded.
- This bill would not create additional administrative costs to the Department of Revenue, but it may have some legal implications with an unknown fiscal impact due to conflict with current law. See the technical note below.

Department of Transportation

- 4. The Department of Transportation is unable to predict the fiscal impact of SB 287 due to the broad language. It is not possible to assess the fiscal impact of SB 287, because it opens the possibility of claims for inverse condemnation.

Technical Notes/Long-Term Impacts:

Department of Revenue

- 1. This bill appears to create a property right in alcoholic beverage and cannabis licenses. However, this is in conflict with existing statutory 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" and 16-12-207(1), MCA, which states that "a cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use marijuana license, marijuana transporter license, or any other license authorized under this chapter is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled."

Department of Natural Resources and Conservation

- 2. SB 287 requires compensation "when a court finds that the property has been damaged," whereas a regulatory taking traditionally requires the plaintiff to establish the government action effectively deprived the individual of all economically reasonable use or value of their property.
- 3. The Forestry and Trust Lands Management Division complies with multiple-use management concepts provided in 77-1-203, MCA, by issuing short-term licenses for secondary uses of trust land that are subject to the productivity of the land. Licenses can be issued for a variety of purposes, including uses that may be associated with businesses and livelihood. SB 287 classifies these licenses as a private property interest and increases risk for the DNRC when enforcing terms of the licenses and protecting the primary productivity of the land if/when a license is no longer compatible.

Local Government Impacts:

- 1. Impacts to local governments would be similar to Technical Notes/Long-Term Impacts described above for state government.

NO SPONSOR SIGNATURE

Sponsor's Initials

2/12/23
Date

Budget Director's Initials

2-15-23
Date