



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:

SB0304 - Revise FWP instream water rights (Cuffe, Mike)

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	\$0	\$0	\$0	\$0
State Special Revenue	\$4,951,305	\$1,924,308	\$1,924,308	\$1,924,308
Federal Special Revenue	\$374,815	\$251,982	\$251,982	\$251,982
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: SB 304 amends 85-2-436, MCA, which governs temporary (water leases) and permanent changes to instream flow by the Department of Fish, Wildlife & Parks (FWP). Changes by FWP are also subject to 85-2-402, MCA, generally governing changes to water rights. This bill requires that the amount of water protected as instream flow to be based on biological relationships of target fish species to flow levels. SB 304 moves the priority date forward for FWP held or leased water rights to the date of application. The bill limits the amount of water protected instream to the amount not already appropriated in the stream at the date of application. The Department of Natural Resources and Conservation (DNRC) would be required to examine the FWP claims, provide decree-related public assistance, and provide technical assistance to the water court throughout the decree process. Per statute, DNRC has until June 30, 2026, to complete examination of all claims in the state and deliver summary reports for all basins to the Water Court. Reopening 16 basins to a re-adjudication would need to be completed within this timeframe.

FISCAL ANALYSIS

Assumptions:

Department of Fish, Wildlife & Parks (FWP)

1. SB 304 states that FWP must determine the flow rate and volume of water necessary to meet the biological need of the fishery resource. FWP does not currently collect data that could be used to satisfy this requirement. FWP would need to establish a new survey and methodology for collecting the necessary data.
2. FWP estimates there are 268 streams that would need to be monitored. Of those, 96 streams currently have stream gauges operated by either the United States Geological Survey (USGS), or the Department of Natural Resources and Conservation (DNRC). This leaves 172 streams that currently do not have a stream gauge or monitoring process in place. The FWP does not know if the USGS has the capacity to incorporate 172 new gauges into the existing stream gauging infrastructure. Therefore, the department would purchase an additional 86 stream gauges to monitor streamflow. The initial cost of purchasing the stream gauges would be \$2,408,000 (\$28,000/ gauge X 86 gauges). FWP estimates the cost of \$1,556,600 annually to operate the stream gauges (\$18,100/year X 86 stream gauges).
3. FWP would need to purchase stream flow gauge software. The purchase price of this software is \$150,000 and would require annual operating costs of \$50,000 per year.
4. FWP would need the following FTE to survey all streams, including those with stream gauges, and surveys would need to be completed each season (4 times/year) to establish a long-term trend. This would require a team consisting of the following FTE:

FTE Description	Annual Personal Services Expenses	One-Time Only New Employee Package Costs
1.0 FTE hydrologist	\$91,883.60	\$2,800.00
1.0 FTE fish biologist	\$75,896.69	\$2,800.00
1.0 FTE fish technician	\$66,099.13	\$2,800.00
2.25 FTE fish technicians (3 @ 0.75 FTE each)	\$93,980.14	\$8,400.00
1.5 FTE hydrology technicians (2 @ 0.75 each)	\$62,653.43	\$5,600.00
1.0 FTE database analyst	\$79,177.02	\$2,800.00
Total	\$469,690.01	\$25,200.00

5. The team would require the following one-time operations costs:

Item	Quantity	Price	Total Cost
FlowTracker 2	3	\$12,000.00	\$36,000.00
ADCP (peak flows meter)	1	\$50,000.00	\$50,000.00
½ ton pickup	5	\$38,926.00	\$194,630.00
Electrofishing units	3	\$10,000.00	\$30,000.00
waders	9	\$500.00	\$4,500.00
tool sets and minor equipment	3	\$500.00	\$1,500.00
pressure transducers	50	\$5,000.00	\$250,000.00
Total			\$566,630.00

- FWP estimates that hydrologic data would need to be gathered for a minimum period of twenty years to account for drought years, normal and above normal water years as called for in subsection (8). Therefore, this team would be ongoing, and would require annual operations costs of \$100,000 for fuel, travel, per diem meal reimbursements, etc.

Department of Natural Resources and Conservation (DNRC)

- DNRC would be required to examine FWP instream flow claims under the proposed new statutory requirements.
- A re-adjudication in the 16 affected basins would require DNRC staff to provide decree-related public assistance and technical assistance to the Water Court throughout the decree process. Due to the nature of the proposed change, DNRC anticipates that these basins would require a complete re-adjudication as changes to the previously adjudicated FWP claims could have basin-wide impacts on water users.
- There are two additional basins which currently have FWP claims for instream flow that have not gone through a decree by the Water Court. To incorporate updated FWP instream flow claims based on this bill, the decrees in these basins would have to wait until completion of the FWP studies.
- When FWP has the studies completed DNRC would need to reassess the staffing needs to re-adjudicate these basins.

	<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>
<u>Fiscal Impact:</u>				
FTE	7.75	7.75	7.75	7.75
<u>Expenditures:</u>				
Personal Services	▼ \$469,690	▼ \$469,690	▼ \$469,690	▼ \$469,690
Operating Expenses	▼ \$2,253,800	▼ \$1,706,600	▼ \$1,706,600	▼ \$1,706,600
Equipment	\$2,602,630	\$0	\$0	\$0
TOTAL Expenditures	<u>\$5,326,120</u>	<u>\$2,176,290</u>	<u>\$2,176,290</u>	<u>\$2,176,290</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$4,951,305	\$1,924,308	\$1,924,308	\$1,924,308
Federal Special Revenue (02)	\$374,815	\$251,982	\$251,982	\$251,982
TOTAL Funding of Exp.	<u>\$5,326,120</u>	<u>\$2,176,290</u>	<u>\$2,176,290</u>	<u>\$2,176,290</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$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)	▼ \$0	▼ \$0	▼ \$0	▼ \$0
State Special Revenue (02)	▼ (\$4,951,305)	▼ (\$1,924,308)	▼ (\$1,924,308)	▼ (\$1,924,308)
Federal Special Revenue (03)	▼ (\$374,815)	▼ (\$251,982)	▼ (\$251,982)	▼ (\$251,982)

Technical Notes:

- The new subsection (8) established by this bill applies to all appropriation rights held solely by FWP. However, Section 3, establishes that the bill applies retroactively to claims, leasing, or application of appropriation rights claimed or changed by FWP since May 11, 1979. For the purposes of this fiscal note,

FWP assumed the most expansive interpretation of this bill, which includes almost all appropriation rights solely held by the FWP.

2. This bill does not provide a definition of “biological need.” For the purpose of this fiscal note, FWP interpreted this as fisheries needs for all stages of life to carry out essential processes for successful fish reproduction, growth, and survival for all species present. These processes include spawning and egg incubation, maintaining migration flows, providing temperature refugia, habitat connectivity, and necessary flows for river essential river function.
3. DNRC has until June 30, 2026, to meet the current statutory deadlines, 85-2-271, MCA, associated with examination of all claims in the state and delivery of summary reports to the Water Court. All 16 basins would need to be re-adjudicated and the statutory deadline in this statute would need to be modified based on the FWP study completion date.

NO SPONSOR SIGNATURE

Sponsor's Initials

2/20/23
Date



Budget Director's Initials

2-17-23
Date