



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note for Initiative

Bill #		Title:	Fair Compensation for Private Property Takings Initiative
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- 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 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>
Expenditures:				
General Fund	Approximately \$600 million over 6 years to Montana local and state governments			
Revenue:				
General Fund	\$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:

Fiscal impacts to both state and local governments will result from takings claimed and compensation sought from governmental entities for potential violations of the initiative. Suit would be brought on behalf of a property owner for diminution of property value or to invalidate the government action. Costs to the governmental entities would include: damages (compensation) payable to the property owner; legal defense costs, including expert witnesses, for the government entity; court costs; and payment of attorneys' fees if the property owner prevails.

FISCAL ANALYSIS

Assumptions:

- The State of Montana and local governments in Montana can reasonably expect takings claims in a broad variety of service and regulatory areas including but not limited to: metal mine or opencut mine permits; septic pumper permits; major facility siting decisions; sanitation in subdivision decisions; local government subdivision decisions; issues before the Montanan Public Service Commission; hunting, fishing, and recreational floating rules and/or restrictions; water rights decisions; trust land management and fire protection decisions; and licensing decisions from a large number of state agencies. There would also be significant impacts to the Department of Justice in defending the state for the claims and to the Judicial Branch in increased judicial workload.

2. The States of Washington and Oregon each have had similar private property rights initiatives. Washington had a fiscal analysis prepared under the auspices of state government for I-933 and Oregon has had actual experience in claims made for Measures 37 and 49. Both of these states have estimated dramatically high costs for the respective initiatives.
3. A reasonable fiscal impact to Montana can be estimated by general comparisons to the analysis and experience of both Washington and Oregon, with adjustments to account for differences in Montana's smaller population.
4. It is assumed that the propensity for disputes in Montana is equivalent to Washington or Oregon.
5. It is assumed that these three states have a sufficiently similar economic composition; no controls for industry, land use, or other regulatory differences are included in this analysis.
6. No present values or timing of events scenarios are used in this analysis.
7. Scenario #1: Comparison to Washington
 - a. Washington's estimate as to the fiscal impact of I-933, made by the State of Washington Office of Financial Management, ranged from \$7.29 to \$8.99 billion. The estimate included state government and local governments including cities and counties. The average estimated impact was \$8.15 billion.
 - b. According to the U.S. Census Bureau, Washington's 2008 population is estimated to be 6.549 million people.
 - c. According to the U.S. Census Bureau, Montana's 2008 population is estimated to be 0.967 million people.
 - d. Adjusting the \$8.15 billion Washington estimate for Montana's population versus Washington's population equates to \$1.20 billion.
 - e. The Washington property rights initiative applied to real property. The Montana initiative has a greatly expanded scope of what constitutes a property right including all regulatory actions and intangibles, such as copyrights. Consequently, the above analysis substantially understates the costs to Montana state and local governments.
 - f. The Washington initiative has very similar but not identical language as to how the respective initiatives apply to local and state governments. These differences may or may not be material; however, it is reasonable to use a discount to the Montana impact to account for them.
8. Scenario #2: Comparison to Oregon
 - a. After passage of a similar initiative, Oregon received 6,857 claims through December 5, 2007. Oregon estimates the potential cost of these claims to be \$19.8 billion.
 - b. According to the U.S. Census Bureau, Oregon's 2008 population is estimated to be 3.79 million people.
 - c. Adjusting the \$19.8 billion impact for Montana's population versus Oregon's population equates to \$5.05 billion.
9. Because the Oregon initiative was retroactive, and therefore includes more claims than Montana may be able to expect, it is more reasonable to use the comparison to Washington for this analysis.
10. Using the comparison to the analysis done for the Washington initiative and taking into account the uncertainties that exist because of the differences between the Montana and Washington initiatives; a 50% discount has been applied to this analysis. \$1.20 billion adjusted by 50% is a \$600 million impact.
11. It is reasonable to assume that the combined impact to Montana state government and local governments could be at least \$600 million.

Sponsor's Initials

Date

Budget Director's Initials

Date