GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note for 2022 Initiative

Bill #	Ballot Initiative 6	**Title:**	North and South Montana

☑ 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

	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:					
General Fund	$0	$0	$0	$0	$0
State Special Revenue	$0	$0	$0	$0	$0
Federal Special Revenue	$0	$0	$0	$0	$0
Other	$0	$0	$0	$0	$0
Revenue:					
General Fund	$0	$0	$0	$0	$0
State Special Revenue	$0	$0	$0	$0	$0
Federal Special Revenue	$0	$0	$0	$0	$0
Other	$0	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0	$0

Description of fiscal impact: Ballot issue #6-8-2-2021 creates two separate and independent states, which will create two separate and independent governments at some point in the future. The initiative establishes transition committees to assist in the formation of the two new states. Costs associated with these transition committees are assumed to be covered by the existing budget to fund the upcoming legislative session in January 2023 (see assumption #8). The duration/length of time the transition committees would meet, when/if Congress would provide consent for the establishment of two new states, how the transition committees would recommend division of the existing state into two new states, and the effect on the various assets and liabilities of existing branches of Montana government, including state agencies and the university system, are unknown for the long-term.

FISCAL ANALYSIS

Assumptions:

All Agencies

1. This initiative requires the division of Montana into two states: North Montana and South Montana. It is assumed that this division will create two separate, identical governmental infrastructures providing the same services.

2. As there is no deadline for the proposed transition, it is assumed that that the separation of the State of Montana into the State of North Montana and the State of South Montana will not occur within the timeframe this fiscal note is reporting. Therefore, there are no costs reflected in the Fiscal Summary through FY 2025.
3. Local governments will be affected and will need to revamp their governmental units for the state changes.
4. All contracts and leases will have to be renegotiated for each state.
5. Section 1 of the initiative designates the border between North and South Montana as the Missouri River and northern borders of Broadwater, Jefferson, Deer Lodge, and Beaverhead Counties. This would place the current seat of state government within the borders of North Montana. However, it is not stated whether Helena would become the state capital of North Montana or whether the current executive branch agencies would continue to operate on behalf of either North or South Montana.

Legislative Branch

6. Section 4 establishes 15 transition committees
   a. Each committee will have four legislative members. For the purposes of this fiscal note, it's assumed that 60 legislators will serve on the committees. Legislative members must be chosen by the 68th Legislature's leadership.
   b. Each committee will have one "other member" (expert, consultant, or other support staff).
7. The effective date is upon approval by the electorate.
8. Section 4(3) states that the members of the transition committee must be finalized within 30 days after the effective date.
   c. 2023 Legislative Session begins January 2, 2022.
   d. 2023 Legislative Session leadership will be elected November 16-18, 2022.
   e. Legislative members will need to be appointed by December 8, 2022.
   f. The committees must meet before January 22, 2023.
   g. Meetings conducted during the 68th Legislative Session will not incur extra expenses for legislators.
9. It is unknown if/how many meetings will be necessary after session.

Department of Administration, Banking and Financial Institutions Division

10. All nondepository licensees of the Department of Administration's Banking and Financial Institutions Division in North Montana would also want to be licensed in the new state of South Montana.
11. All banks and credit unions currently operating in Montana would continue to operate their existing offices and branches even though the banks may be operating in two states.

Department of Corrections

12. While some functions and staff of the current Montana Department of Corrections could be divided based on offender population in each state, there are basic services that the department currently provides as support to direct care programs. Those services, listed below, will need to be duplicated for each state regardless of the inmate population in each state:
    Offender Management System
    Restitution Collections System
    Trust Accounting System
    Officer Scheduling System
    Electronic Health Record System
    Inmate Communication System
    Commissary System.
    Clinical Services Division
    Board of Pardons & Parole
    Montana Correctional Enterprises
13. The pre-release and treatment services will also have to be provided for each state and will be dependent on the offender population and what communities could support those services.

14. The makeup of offender populations for each state will determine what facilities and services will be needed to house each state's secure care offenders. At a minimum, each state will have to provide an adult male facility, adult female facility, special needs unit, and youth unit.
15. Community supervision services could be divided between the states, based on the makeup of offender populations by county. There are administrative services that are provided for Probation & Parole, regardless of the makeup of the offender population, which will need to be duplicated for each state.

Department of Fish, Wildlife and Parks

16. The new state boundaries, as described in the ballot initiative, would alter at least four of the seven current Fish, Wildlife and Parks' administrative regions.
17. The department receives funding from over 70 different state special revenue funds, and state special revenue accounts for 75% of agency base funding. The agency revenue in North Montana and South Montana would depend upon the new state laws and revenue funds established. There is no way to estimate this potential increase or decrease.

Department of Public Health and Human Services

18. The Department of Public Health and Human Services (DPHHS) currently administers numerous benefit programs in partnership with federal cognizant agencies (Medicaid, CHIP, SNAP, TANF, etc.). Detailed planning would have to be undertaken to ensure that benefits would continue while the existing state of Montana is being dissolved, and agreements with the same federal agencies would need to be negotiated as North Montana and South Montana are incorporated in order to ensure that these benefits would continue uninterrupted to the populations of each new State.
19. It is assumed that all contracts originating from the existing State of Montana DPHHS would be void and that new contracts would need to be renegotiated with public and private vendors.
20. The department owns and/or operates several state facilities (Montana State Hospital, Montana Veterans' Home, Montana Mental Health Nursing Care Center, Montana IBC). The transition committees would need to determine how these state-owned assets are handled and how the facilities would be operated to serve two new states.

Public Service Commission

21. One of the policy areas is "executive functions," including the regulation of public utilities operating in each of the new states. Transition committees are likely to rely on existing agency expertise in developing and adopting a master plan for executive functions in each new state, including the regulation of public utilities.
22. Each new state would encompass service territories of both of the major electric and natural gas utilities (NorthWestern Energy and Montana-Dakota Utilities) currently operating in Montana as well as a proportionate mix of regulated telecommunications, water and sewer, and transportation entities. It is assumed that the number and nature of regulatory proceedings before each department would be largely the same as for the current commission.

<u>Long-Term Impacts:</u>

Department of Administration, Banking and Financial Institutions Division

1. Nondepository licensing would be done in the same manner as in North Montana, but fees would increase because there are more costs associated with the new government in South Montana. Those increased costs will be passed on to licensees in the form of higher licensing fees. A nondepository entity that has offices in more than part of Montana will be operating in two different states with different laws and rules.
2. Banks that currently have a main office and a branch in another location in Montana may find themselves operating as multistate banks. There are protocols established for home/host regulators of multistate banks.
3. Any branching or loan production office changes will be significantly more cumbersome, costly, and involve the banking regulators of two different states with different laws and regulations. Banks could arbitrage regulators by moving their main office from one state to the other.
4. There would only be two relatively small credit unions based in South Montana. The cost of assessments would be onerous on those two institutions. They would likely change to a charter in another state or a federal charter.

DNRC Trust Land Management Division:

5. Trust land assets comprise a variety of categories from timber, agriculture and grazing, commercial and residential real estate, to oil and gas, coal, and other mineral resources. The asset value of these resources would likely be quite different in either North Montana or South Montana.
6. The initiative would create a disproportional amounts of state trust land in different asset classes between the proposed states, resulting in less revenue generation for the various state trust beneficiaries in both states in regard to both surface and subsurface activities.
7. Adding a second administrative organization will increase costs to the beneficiaries, due to the loss of economies of scale.
8. Most of the trust land mineral royalties are generated from the proposed State of South Montana. More than half of the oil and gas revenue are generated from the State of South Montana. One hundred percent of coal royalties are generated from the State of South Montana.
9. The trust and legacy fund interest payments are significant to the beneficiaries. If a legal way to split it could be determined, the resulting two smaller trusts would have significant long-term impacts to the overall wealth that could be generated for the beneficiaries, due to each having a much smaller principal.
10. A grossly uneven split in trust land mineral royalties, as well as the existing State of Montana's share in federal mineral royalties, would have negative long-term impacts on the proposed North Montana, as most of the royalties generated from oil, gas, and coal development have historically occurred from the proposed South Montana area.

Department of Environmental Quality

11. North and South Montana must re-apply for state(s) primacy of federally delegated programs, including full re-justification of every primacy program and await US Environmental Protection Agency (EPA) and Office of Surface Mining (OSM) concurrence. All permitting, licensing, and registrations are performed by the US EPA and OSM during the primacy interim.
12. Thousands of permits, licenses, registrations, litigation, and agreements must be updated, reviewed and agreed-upon between the new government and other parties.

Department of Revenue

13. The elimination of the State of Montana also means the elimination of the Department of Revenue. Once the State of Montana is dissolved, the department will no longer collect any revenue, or make any expenditures. As a result, the revenue impact to the state is any revenue expected to be collected by the department once the changes made by the ballot initiative are implemented.

<u>Technical Notes:</u>

All Agencies

1. Transition committees address policy areas as independent islands of government. There is no committee for managing the transition of government power as a whole.
2. The language does not address administrative rules (ARM). It clarifies that the constitution and MCA will remain intact and apply to both states, but not ARM.
3. It is unclear who reviews master plans submitted by transition committees, or what happens after the submittal of master plans.

Legislative Branch

4. It is unknown how many meetings will be necessary after session to accomplish the duties outlined in the initiative. If a resolution is passed by the 68th Legislature, as contemplated in the initiative, the Legislature must provide funding and direction on the following points:
   a. The initiative does not specify if or how the Legislative members and the "other members" get compensated.
      i. There are two statutes that specify how members could be compensated: 5-2-302, MCA and 2-15-124, MCA.
   b. The initiative does not specify which agency would compensate committee members.

c. The initiative does not specify how many meetings will be required or where the meetings will be held.

DNRC Water Resources Division:

5. The current McCarren-compliant general statewide stream adjudication of pre-1973 federal and tribal reserved water rights will be placed in legal limbo and may subject the state to extensive litigation in federal court to resolve reserved water rights that have already been settled.
6. Dividing the State of Montana into two states will create the need to negotiate complex and contentious interstate water allocation agreements.
7. Water resources are managed based on watershed basins, and thus state boundaries will create interstate water management challenges and necessitate new water compacts and agreements.
8. The Regional Water Program has four water systems that will start in one state and have pipelines that go into the different state. There would be questions about which laws and regulations would be followed by the regional systems.

DNRC Conservation & Resource Development Division (CARDD):

9. The Department of Natural Resources and Conservation (DNRC) will not be able to issue debt to support loan programs because the security of the state repayment would be in question.
10. The DNRC CARDD has a number of programs which affect the State of Montana as a whole. Slicing the state into two different states would affect those programs and their funding.
11. All councils, commissions, and committees working with the conservation districts, sage grouse program, and Rangeland Resource Executive Committee will need to be redefined and approved.
12. There is no direction on how revenues for the programs will be put in place for the changes of the two new state administrations. The populations of each new state may have an impact on the funding of programs. Each state may have different laws and have different funding.
13. Every CARDD loan program has a guaranteed repayment term; most community loans are at least 20 years. Governing documents set out the conditions for the communities with the State of Montana. Each existing loan would need to redo the repayment documents which would be affected by each bondholder and by the federal tax law. Both new states could be in violation of federal tax law.
14. The State of Montana and CARDD have a number of agreements with the federal government. Those agreements would need to be renegotiated, which would take time and may cause loss of revenue and delays in work being completed or work not completed at all.

DNRC Forestry Division:

15. Forestry has multiple agreements and grants with state, federal and tribal governments involving the Good Neighbor Authority, Forestry Assistance, and Fire Protection programs. These agreements would have to be renegotiated, most likely causing delay in program delivery, including emergency wildland fire suppression response.

DNRC Board of Oil & Gas Conservation Division:

16. Underground Injection Control primacy may not be given by the Environmental Protection Agency to North and South Montana.

DNRC Trust Land Management Division:

17. By the Enabling Act approved February 22, 1889, the Congress of the United States granted to the state of Montana, for Common Schools (K-12) support, sections 16 and 36 in every township within the state. Some of these sections had been homesteaded, some were within the boundaries of Indian reservations, and others had been disposed of before passage of the Enabling Act. Other lands were selected by the state in lieu of these lands. The Enabling Act and other congressional acts also granted acreage for other educational and state institutions; these lands like the "in lieu" lands have been selected from the public domain in various parts of Montana and would not be equally distributed between the proposed State of North Montana and State of South Montana. This would likely lead to one of the new states having a greater share of the acreage than the other.

18. Permanent dispositions of trust interests must be invested to continue to generate interest revenue in perpetuity. These are known as "non-distributable" revenues. Non-Distributable Trust Lands revenues have been deposited into a permanent Trust Fund Investment Pool account, also known as the Trust and Legacy Fund. Trust beneficiaries each have a share of this fund and they receive interest payments from it. This fund for all the trust beneficiaries totaled $760 million in fiscal year 2021. It would be impossible to determine the historical deposits made to these funds, since statehood, to split it to the trust lands in North Montana and South Montana from where the revenues originated.
19. Trust land held for the benefit of an institution in one of the new states would be in the other state. For example, Montana Tech in Butte (in the proposed South Montana) holds a lot of surface and mineral estate located in what would be the proposed North Montana.
20. Such division along the boundary would split some state trust parcels or groupings of parcels managed by a single lessee into two states, including the State of Montana's ownership of the bed of the Missouri River. This would present permitting challenges and create an increased burden on state land lessees, licensees, permittees, easement holders, etc. associated with making multiple applications with different State Trust Land offices which may adhere to different laws, rules, policies and procedures.
21. Splitting royalties along the Missouri River to North Montana and South Montana would present technical difficulties.

Department of Transportation

22. The Montana Department of Transportation is unsure of the role the federal government will have in the determination of funding two new states.

Budget Director's Signature | 8-12-21 *Date*