

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT GOVERNOR

To: 65th Legislative Assembly

From: Dan Villa, Budget Director
Office of Budget and Program Planning

Date: January 2, 2017

Subject: Federal mandates as required by 2-1-407, MCA

This summary report is provided in accordance with Title 2, Chapter 1, part 4, MCA, which requires that state programs meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies, with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article III, Section 9 of the Montana Constitution.

As adopted in 1995, *Chapter 385, Laws of Montana* (SB 167), also requires each state agency that is charged with implementing federal mandates to provide information regarding the cost of federal mandates. Table 1 identifies some of the most costly and burdensome federal mandates to the State of Montana as identified for the 2017 biennium of which there were six notable mandates submitted by agencies for \$110 million, approximately 93% of the total annual costs to agencies. Table 2 provides a list of all identified mandates submitted by state agencies. The total known costs identified by state agencies is approximately \$118.3 million per year including one-time costs. Other federal mandates for which the cost estimates are unknown due to lack of research resources and other factors are also listed.

Table 1			
Citation	Title	Notes	Estimate Annual Cost to State (millions)
P.L. 108-446	Individuals with Disabilities Education Improvement Act of 2004	IDEA is a longstanding unfunded mandate that establishes requirements for states without providing adequate or even promised funding levels to achieve its goals.	\$50.3
23 CFR Part 657.19	Annual certification of Size and Weight Enforcement Plan	A state must certify and enforce State laws respecting maximum vehicle sizes and weights on the Interstate System or federal funds for the National Highway Systems apportioned to the State for the next fiscal year will be reduced by 10% of an amount by law.	\$24.1
P.L.104-182, 99-339, 93-523	Safe Drinking Water Act Amendments (and previous versions, original Act passed in 1974, amended in 1986 and 1996)	States are required to conduct assessments of water supplies, certify water system operators, provide emergency water supplies, map critical aquifer areas, establish wellhead protection areas, survey Class V wells, test contaminants of public water systems, and enforce the use of non-lead materials.	\$10.0
P.L. 82-500	Wastewater Treatment Revolving Fund (Clean Water Act as amended 33 USC, 1251-1387)	Federal acts to prevent discharge of pollutants into the nation's waters. Amendments in 1987 established State Revolving Funds to replace grants as the current principal federal funding source for construction of wastewater treatment and collection systems.	\$10.0
P.L. 111-148	The Patient Protection and Affordable Care Act	Ensures that all Americans have access to quality, affordable health care and will create the transformation within the health care system necessary to contain costs.	\$9.8
P.L. 97-300	Wagner Peyser Act	Establishes a national system of public employment offices. In order to be eligible for federal assistance, a state must designate or authorize the creation of a state agency to federal assistance, a state must designate or authorize the creation of a state agency to submit to the Secretary of Labor a detailed state plan for carrying out the provisions of the act in cooperation with the United States Employment Service.	\$5.8

Table 2 Submission of Federal Mandate Costs by State Agencies			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
**Statewide	Individuals with Disabilities Education Act - Statewide		\$50.3
**Statewide	Age Discrimination in Employment Act		unknown
**Statewide	Family and Medical Leave Act of 1993		unknown
**Statewide	Equal Employment Opportunity responsibilities - Title VII CRA (1964, as amended)		unknown
**Statewide	The Drug-Free Workplace Act		unknown
**Statewide	Fair Labor Standards Act (29 CFR 541)		unknown
**Statewide	Section 504 of the Rehabilitation Act of 1973 vis-à-vis American with Disabilities Act		unknown
**Statewide	Equal Pay Act of 1963		unknown
**Statewide	Cash Management Improvement Act of 1990 (31 U.S.C. 3335, 6501, and 6503)		unknown
**Statewide	Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) at 41 CFR Part 60-741. Section 503 prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities (IWDs), and requires these employers to take affirmative action to recruit, hire, promote, and retain these individuals.		unknown
MBCC/4107	Public Law 108-79: Prison Rape Elimination Act of 2003 (PREA) provides a mandatory 5% penalty to states certifying non-compliance with Act; mandatory penalty is assessed at 5% Byrne Grant, 4.75% VAWA grants, and 5% Title II juvenile justice programs.		\$0.1
MBCC/4107	Public Law 110-180 – NICS Improvement Amendments Act of 2007 (signed by President on 1/8/08) amends the Brady Handgun Violence Prevention Act of 1993 Public Law 103-159. The law requires a qualifying state to report mental defectives to NICS and establishes a mandatory penalty. For the FY 2017 Byrne Grant a 5% penalty is assessed if a state has less than 90% record completeness.		\$0.0
MBCC/4107	Juvenile Justice & Delinquency Prevention Act as amended(PL93-415(1974) Compliance Monitoring		\$0.0
MBCC/4107	Public Law 109-248: Sex Offender Registration & Notification Act (SORNA); Title I of the Adam Walsh Child Protection and Safety Act of 2006 provides a mandatory 10% penalty to a state's Byrne program if not in substantial compliance with federal act.		\$0.0
MAC/5114	A-133 Audit Requirements		unknown
MAC/5114	Matching (Cost Share) Requirements		unknown

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
MAC/5114	Recordkeeping Retention Requirements (3 years)		unknown
MAC/5114	Procurement Standards		unknown
MAC/5114	Cost Principles of OMB Circular A-87, "Cost Principles for State and Local Governments"		Unknown
MAC/5114	Title VI of the Civil Rights Act of 1964		Unknown
MAC/5114	Title IX of the Education Amendments of 1972		unknown
MAC/5114	The National Environmental Policy Act of 1969		unknown
MAC/5114	Debarment and Suspension		unknown
MAC/5114	Lobbying prohibition as set forth in OMB A-122 and Section 319 of P.L. 101-121, codified at 31 U.S.C. Section 1352		unknown
MAC/5114	Davis-Bacon and Related Acts (DBRA)		unknown
MAC/5114	The Native American Graves Protection and Repatriation Act of 1990		unknown
MAC/5114	The National Historic Preservation Act of 1966		unknown
MAC/5114	U.S. Constitution education program		unknown
MAC/5114	Arts Endowment enabling legislation. You are also required to execute projects, productions, workshops and programs in accordance with the Arts Endowment's enabling legislation that requires —artistic excellence and artistic merit to be included in the criteria upon which awards are made.		unknown
MAC/5114	Prohibition on use of funds to ACORN or its subsidiaries		unknown
MAC/5114	General Sub-granting Requirements		unknown
Library/5115	Public Law 89-522: An Act to provide books for the adult blind		unknown
Library/5115	Library Services and Technology Act		unknown
MHS/5117	National Historic Preservation Act Section 106 (36 CFR 800 and 16 USC Section 470)		\$0.8
FWP/5201	Recreational Boating Safety Act (46 USC Section 13102(a)(3) and 13103 (a)(3))		unknown
FWP/5201	Farmland Protection Policy Act (7 CFR 658 and 7 USC 4202 (a))		unknown
FWP/5201	National Historic Preservation Act Section 106 (36 CFR 800 and 16 USC Section 470 (f))		\$0.1
FWP/5201	Land & Water Conservation Fund Act interpretation (Part 522, USF&W Service Manual, Sect. 7.7.b and 16 USC Section 4601-8(f)(1))		\$0.1
FWP/5201	Cost accounting standards and disclosure statement requirements (Fed admin reg)		\$0.0

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
FWP/5201	Resource Conservation and Recovery Act (Fed admin reg)		\$0.0
DEQ/5301	42 U.S.C. Chapter 116 -SARA Title 3, Reporting Hazardous Material (Fed admin reg) •serve on emergency response commission to facilitate preparation and implementation of emergency plans.		unknown
DEQ/5301	Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA) 42 U.S.C. sections 9601-9657 and Superfund Amendments and Reauthorization Act, (SARA) Public Law No. 99-499 stat. 1613 et seq to address uncontrolled hazardous waste sites.		unknown
MDOT/5401	Risk Based Asset Management Plan Requirement - for the National Highway System (23 USC, Section 119(e)(1))		Varies per match rate
MDOT/5401	Omnibus Trade & Competitiveness Act of 1988 Metrification (P.L. 100.418 section 5164)		unknown
MDOT/5401	GASB 49 Pollution Remediation EPA Liability at the state owned Lincoln Airport.		unknown
MDOT/5401	Annual certification of Size and Weight Enforcement Plan (23 CFR Part 657.19)		\$24.1
MDOT/5401	Annual certification of MCSAP (Motor Carrier Safety Assistance Program) program qualifications, including MOE (Maintenance of Effort), program plan and compatibility of state laws and regulations. (49 CFR, Part 350, Subpart B and Subpart C) and Laptop Encryption Policy SP-11-002-CD		\$3.0
MDOT/5401	Internal & External Americans with Disabilities Act (Titles I, II, & III of ADA-42 USC126, 28 CFR 35, 29 USC 794, 49 CFR 27) - Contractor Compliance (Federal-Aid Highway Act of 1968 Section 22(a), 23 USC 140(a), 23 CFR 230) - Affirmative Action, Disadvantaged Business Enterprise Supportive Services, On-The-Job Training and associated support services, National Summer Transportation Institute (23 CFR 230) - Internal (Title VII) and External (Title VI) Non-discrimination (Title VI and VII of the Civil Rights Act of 1964 - 42 USC 2000d, General-Aid Highway Act of 1973 Section 162(a), 23 USC 324, Age Discrimination Act of 1975, Civil Rights Restoration Act of 1987 (PL100-209), 49 CFR 200, USDOT Order 1050.2, Executive Orders 12898, 13166, and 13672, 42 USC 4601, 49 USC 471, 20 USC 1681, 42 USC 126, 49 CFR 37, 49 CFR 38)		\$0.9
MDOT/5401	Clean Water Act Permit Conditions (33 USC Section 1251-1376, 33 CFR Part 330 Appendix A)		\$2.5

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
MDOT/5401	FAA FAR Part 139 Airport Standards		\$1.8
MDOT/5401	Conformity of Transportation with air quality (40 USC 176c)		\$1.2
MDOT/5401	Adoption of ECVISN architectural standards and FMCSA CVISN program requirements (Terms of ECVISN Grant Agreement) and Laptop Encryption Policy SP-11-002-CE		\$1.0
MDOT/5401	Control of Outdoor Advertising (23 USC Section 131 and 23 CFR Ch. 1, Sec. 750) "if failed to meet CFR, penalty of 10% for Highway Construction Funds"		\$0.2
MDOT/5401	FAA NPIAS Airport Criteria		\$0.2
MDOT/5401	Drug & Alcohol Testing (49 CFR Parts 40 & 382)		\$0.1
MDOT/5401	Drug & Alcohol Testing EBT device standards (49 CFR Part 40)		\$0.0
MDOT/5401	Value Engineering & Life Cycle Costs PROSPECTIVE (59 Fed Register 59182, Nov, 16, 1994) "Varies for Construction projects over \$50-million or Bridge project over \$40-million"		\$0.1
DNRC/5706	Wastewater Treatment Revolving Fund (P.L. 82-500 Clean Water Act as amended 33 USC, 1251-1387)		\$10.0
DNRC/5706	Safe Drinking Water Act - Title XIV of Public Health Service Act as amended 42 USC 300f, et. seq.		\$10.0
DNRC/5706	FCC Order 04-292 requires radios used by public safety personnel such as wildland firefighters be migrated from previous 25 kHz system to narrowband digital 12.5 kHz system.		\$0.1
DNRC/5706	Arbitrage Calculation - IRS Code - Treasury Regulations Section 1.148-2(b)		\$0.1
DNRC/5706	Safe Drinking Water Act - Sec. 1443(b)		\$0.0
DNRC/5706	REAL ID Act of 2005 requires individuals to have personal identification in compliance with the act in order to enter federal facilities such as interagency dispatch centers. Until Montana enacts standards for state driver licenses that meet the federal requirement, DNRC anticipates one-time-only costs of passports for firefighter personnel of approximately \$42,000.		\$0.0
DNRC/5706	PMS 310-1 NIMS - In order to meet upgraded national training standards for wildland firefighters in the Wildland Fire Qualification Guide PMS 310-1 and National Incident Management System (NIMS), as directed by the National Wildfire Coordinating Group (NWCG), DNRC anticipates one-time-only costs for training and related travel of \$24,000 and ongoing costs of approximately \$4,000 annually thereafter.		\$0.0

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
DOR/5801	PL672 - Limitation of State Corporation Income Tax		(\$1.00) to (\$3.00)
DOR/5801	Reduction of US Mineral Royalties from 50% to 48%		-\$1.0
DOR/5801	Internet Tax Freedom Act		-\$2.7
DOR/5801	4R Act/Little 4R Act		-\$4.9
DofA/6101	Fair Labor Standards Act overtime provisions		unknown
DofA/6101	ADA Self-Regulation Project (Fed admin reg)		unknown
DofA/6101	The Patient Protection and Affordable Care Act		\$9.8
DofA/6101	Social Security Administration		\$1.0
DofA/6101	Consolidated Omnibus Reconciliation Act of 1985 (COBRA)		\$0.1
DofA/6101	Statewide Cost Allocation Plan (SWCAP)		\$0.0
DofA/6101	Cash Management Improvement Act		\$0.0
LRBP/6107	Environmental hazard requirements		Unknown
LRBP/6107	OMB Circular A-110 required cost analysis for procurement actions		Unknown
LRBP/6107	ADA Self-Regulation Project (Fed admin reg)		Unknown
LRBP/6107	Cash Management Improvement Act		\$0.0
LRBP/6107	Statewide Cash Allocation Plan (SWCAP)		\$0.0
LRBP/6107	Working Families Tax Relief Act		\$0.0
COR/6401	Equal Pay Act of 1963		unknown
COR/6401	Prison Rape Elimination Act		\$0.1
DLI/6602	Wagner Peyser Act		\$5.8
DLI/6602	Social Security Act (42 U.S.C. 501 <i>et seq.</i>)		\$2.6
DLI/6602	Federal Unemployment Tax Act (26 U.S.C. 3301 <i>et seq.</i>)		\$0.8
DLI/6602	Trade Assistance Adjustment (TAA) (funding fluctuates depending on the number of petitions certified by USDOL)		\$0.1
DLI/6602	Cash Management Improvement Act of 1990 (31 U.S.C. 3335, 6501, and 6503)		\$0.0
DLI/6602	Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3301 <i>et seq.</i>)		\$0.0
DLI/6602	Unemployment Compensation (5 U.S.C 8501 <i>et seq.</i>)		\$0.0
DLI/6602	Trade Act of 1974 (19 U.S.C. 2101 <i>et seq.</i>)		\$0.0
DLI/6602	Public Officers and Employees (18 U.S.C. 1919 <i>et. seq.</i>)		\$0.0
DLI/6602	Disaster Unemployment Assistance (42 U.S.C. 517)		\$0.0

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
DLI/6602	Montana receives approx. \$5 million of Wagner Peyser (WP) funding per year (\$4.9 mill in SFY 2014, 2015, and 2016). This figure has fluctuated very little over the past 25 years. Montana supplements the programs included in the Wagner Peyser Act (WP) by more than their original funding each year. WP covers underfunded federal programs such as the Veteran's Program (DVOP/LVER), Foreign Labor (H2A / H2B), and Workforce Investment Act. For example, Montana only receives \$112,000 for the Foreign Labor program. The program actually costs the state approximately \$250,000. Montana asked to give up the program and was told that the state would lose WP funding if Montana did not work the Foreign Labor Program.		unknown

Suggested Changes to State Statute that would create Savings or Reductions if adopted	
MDOT/5401	Repeat Offender Law (Without repeat offender legislation, \$7.9-million federal funds will be diverted to safety programs).
MDOT/5401	SB 81 from the 62nd Legislative Session revised commercial driver's license provisions; making MDT Motor Carrier Services Division eligible for federal grants and ensuring MDT won't be penalized for up to 10% of Federal Aid Highway Apportionment.