

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA MCLEAN
LT GOVERNOR

To: 64th Legislative Assembly

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

Date: January 5, 2015

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 2015 biennium of which there were five notable mandates submitted by agencies for \$135.5 million, approximately ninety-seven percent of the total annual costs to agencies. Table 2 provides a list of all identified mandates submitted by state agencies. The total cost identified by state agencies is approximately \$139 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.	\$48.5
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 percent of an amount by law.	\$24.2
P.L.105-521	Child Support Enforcement Act	Makes it a federal crime to fail to pay child support. Parents who flee a state owing at least \$5,000 or have failed to pay support for at least one year could face six months in jail and/or fines of up to \$5,000. Repeat offenders could get up to two years in jail and fines of up to \$250,000.	\$16.0
P.L.100-4, 95-21, 92-500	Clean Water Act	In general, this law establishes the basic structure for regulating discharges of pollutants into the waters of the United States. It gives EPA the authority to implement pollution control programs such as setting wastewater standards for industry. Mandates on states include the development of individual control strategies for toxic pollutants in streams that are not meeting water quality standards. The 1987 amendments included a phase-out of the construction grants program, replacing it with the State Water Pollution Control Revolving Fund, more commonly known as the Clean Water State Revolving Fund (SRF).	\$12.5

Table 1 (continued)			
Citation	Title	Notes	Estimate Annual Cost to State (millions)
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 nonlead 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.	\$8.5
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		\$48.471
**Statewide	The Age Discrimination Act of 1975		unknown
**Statewide	Family and Medical Leave Act of 1993		unknown
**Statewide	Equal Employment Opportunity responsibilities - Title VII CRA (1964, as amended)		unknown
**Statewide	The Americans with Disabilities Act of 1990		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 Americans 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	Juvenile Justice & Delinquency Prevention Act as amended(PL93-415(1974) Compliance Monitoring		\$0.060
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. FY 2011 Byrne Grant 3% penalty if state has less than 50% record completeness. FY 2013, Byrne Grant, 4% penalty, if state has less than 70% record completeness. FY 2017 Byrne Grant 5% penalty if state has less than 90% record completeness.		\$0.050
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.		\$0.110

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
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.		\$0.060
DOJ/4110	Adam Walsh Child Protection & Safety Act (Pl 109-248)		\$0.065
DOJ/4110	Federal law requires that laboratories submitting DNA data to NDIS are accredited by a nonprofit professional association of persons actively engaged in forensic science that is nationally recognized within the forensic science community. The following entities have been determined to satisfy this definition: The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Services, Inc. (FQS)		\$0.038
MUS/5102	Patient Protection & Affordable Care Act Comparative Effectiveness Research Fee		\$0.030
MUS/5102	Patient Protection & Affordable Care Act Reinsurance Assessment Fee		\$0.809
MUS/5102	Student Right to Know and Campus Security Act (P.L. 101-542)		\$0.088
MUS/5102	Title IV withdrawal refund		\$0.063
MUS/5102	Federal student aid disbursement (Fed admin reg)		\$0.534
MUS/5102	Perkins Student Loan Program (Fed admin reg)		\$0.137
MUS/5102	Student assistance general provisions (Fed admin reg)		\$0.154
MUS/5102	Family Parent Loan Program (Fed admin reg)		\$0.079
MUS/5102	Cost accounting standards and disclosure statement requirements (Fed admin reg)		\$0.010
MUS/5102	30 day delay disbursement (Fed admin reg)		\$0.008
MUS/5102	Bankruptcy Law in regard to student financial aid		\$0.002
MUS/5102	Repayment and collection of nursing student loans (Fed admin reg)		\$0.031
MUS/5102	Title IV, crediting a student account (Fed admin reg)		\$0.045
MUS/5102	Federal Direct/Stafford Loan		\$0.107
MUS/5102	Nursing Student Loan Program		\$0.010
MUS/5102	Pell Grant Program		\$0.077
MUS/5102	Withholding tax on nonresident aliens		\$0.037
MUS/5102	Repayment and collection of student loans		\$0.314
MUS/5102	Taxpayer Relief Act Reporting (1098 Reporting)		\$0.021
MUS/5102	Americorp/Community Service		\$0.010

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
MUS/5102	Ag Research, Ext., and Ed. Reform Act of 1998		\$0.069
MAC/5114	A-133 Audit Requirements		unknown
MAC/5114	Matching (Cost Share) Requirements		unknown
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 Subgranting Requirements		unknown
MSL/5115	Public Law 89-522: An Act to provide books for the adult blind		unknown
MSL/5115	Library Services and Technology Act		unknown
	National Historic Preservation Act Section 106 (36 CFR 800 and 16 USC Section 470 (f))		
	MHS/5117		\$0.840
	FWP/5201		\$0.100
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))		\$0.060

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
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	Resource Conservation and Recovery Act (Fed admin reg)		\$0.008
FWP/5201	Cost accounting standards and disclosure statement requirements (Fed admin reg)		\$0.010
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. •Oversee or implement remedial actions at sites on the federal National Priorities List (NPL) that have been delegated to Montana for state-lead status under cooperative agreements with the Environmental Protection Agency (EPA). • Provide technical and management assistance to EPA for remedial investigations and cleanup actions at NPL (Superfund) sites maintained in federal-lead status. • Provide assurance that the state will assume responsibility for operation and maintenance of implemented remedial action for the expected life of such actions (40 CFR 300.510)"		unknown
MDOT/5401	Conformity of Transportation with air quality (40 USC 176c)		\$1.200
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		\$0.230
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		\$2.590
MDOT/5401	Annual certification of Size and Weight Enforcement Plan (23 CFR Part 657.19)		\$24.170

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
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"		\$0.110
MDOT/5401	Omnibus Trade & Competitiveness Act of 1988 Metrification (P.L. 100.418 section 5164)		unknown
MDOT/5401	Drug & Alcohol Testing EBT device standards (49 CFR Part 40)		\$0.040
MDOT/5401	Drug & Alcohol Testing (49 CFR Parts 40 & 382)		\$0.050
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"		\$0.220
MDOT/5401	Clean Water Act Permit Conditions (33 USC Section 1251-1376, 33 CFR Part 330 Appendix A)		\$2.540
MDOT/5401	FAA FAR Part 139 Airport Standards		\$3.460
MDOT/5401	GASB 49 Pollution Remediation EPA Liability at the state owned Lincoln Airport.		unknown
DOL/5603	FSIS Meat Inspection 10-475		\$0.700
DOL/5603	Shell Egg - Milk and Egg Inspection 10-162		\$0.035
DOL/5603	Cattle Health 10-025		\$0.716
DOL/5603	ADT Animal Disease Traceability 10-025		\$0.150
DOL/5603	USDA/APHIS Other Grants(Swine, FAD, NAI, Scrapie, MMLR) 10-025		\$0.103
DNRC/5706	Wastewater Treatment Revolving Fund (P.L. 82-500 Clean Water Act as amended 33 USC, 1251-1387)		\$10.000
DNRC/5706	Arbitrage Calculation - IRS Code - Treasury Regulations Section 1.148-2(b)		\$0.100
DNRC/5706	Safe Drinking Water Act - Title XIV of Public Health Service Act as amended 42 USC 300f, et. seq.		\$10.000
DNRC/5706	Safe Drinking Water Act - Sec. 1443(b)		\$0.028
DOR/5801	4R Act/Little 4R Act		(\$4.920)
DOR/5801	Internet Tax Freedom Act		(\$2.730)
DOR/5801	Reduction of US Mineral Royalties from 50% to 48%		(\$0.960)
DOR/5801	PL672 - Limitation of State Corporation Income Tax		(\$1.500)
DofA/6101	ADA Self Regulation Project (Fed admin reg)		unknown
DofA/6101	Consolidated Omnibus Reconciliation Act of 1985 (COBRA)		\$0.067
DofA/6101	The Patient Protection and Affordable Care Act		\$8.500

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
DofA/6101	Social Security Administration		\$0.960
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	Working Families Tax Relief Act		\$0.000
COR/6401	Prison Rape Elimination Act		\$0.051
DLI/6602	Wagner Peyser Act. Montana receives approx. \$5.2 million of Wagner Peyser (WP) funding per year. 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 the 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 \$75,000 for the Foreign Labor program. The program actually costs us approximately \$150,000. Montana asked to give up the program and was told that we would lose our WP funding if we did not work the Foreign Labor Program.		\$5.750
DLI/6602	Trade Assistance Adjustment (TAA) (funding fluctuates depending on the number of petitions certified by USDOL)		\$0.600
DLI/6602	Federal Unemployment Tax Act (26 U.S.C. 3301 <i>et seq.</i>)		\$0.722
DLI/6602	Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3301 <i>et seq.</i>)		\$0.000
DLI/6602	Social Security Act (42 U.S.C. 501 <i>et seq.</i>)		\$2.519
DLI/6602	Unemployment Compensation (5 U.S.C. 8501 <i>et. seq.</i>)		\$0.000
DLI/6602	Trade Act of 1974 (19 U.S.C. 2101 <i>et. seq.</i>)		\$0.000
DLI/6602	Public Officers and Employees (18 U.S.C. 1919 <i>et. Seq.</i>)		\$0.000
DLI/6602	Disaster Unemployment Assistance (42 U.S.C. 517)		\$0.000
DPHHS/6901	Child and Family Services Improvement Act of 2006 - Monthly Visits (Continued)		\$0.046
DPHHS/6901	Fostering Connections to Success Act: Educational Planning and Stability		\$0.020
DPHHS/6901	Child Support Enforcement Division-All division activities are federally mandated under Title IV-D of the Social Security Act, 42 USC 651 <i>et seq.</i> , and 45 CFR, Chapter 3.		\$16.000

Table 2 Submission of Federal Mandate Costs by State Agencies (continued)			
Agency	Description of Mandate & Reference	OTO *	Annual Cost (millions)
DPHHS/6901	Patient Protection and Affordable Care Act - Health Care Reform Drug Rebate Supplemental changes		unknown
DPHHS/6901	CHIPRA - Changes in perspective payment system concerning FQHC and RHC		\$0.300
DPHHS/6901	CHIPRA - Mental Health and Substance Abuse parity		unknown
DPHHS/6901	CHIPRA - Dental coverage - required dental services		unknown
DPHHS/6901	CHIPRA - Deemed Newborn coverage		unknown
DPHHS/6901	Patient Protection and Affordable Care Act - Health Care Reform Systems changes		\$3.400
DPHHS/6901	Medicare and Medicaid Programs: Electronic Health Record Incentive Program 75F.R. CMS - 0033-P - audit requirements		unknown
DPHHS/6901	PERM - comply with Improper Payment Information Act of 2002. PL107-300		\$0.300
DPHHS/6901	Medicare and Medicaid Programs: Electronic Health Record Incentive Program 75F.R. CMS - 0033-P - facility recordkeeping requirements		\$0.900
Total:		\$0.00	\$138.974
STATEWIDE TOTAL AS REPORTED BY RESPONDING STATE AGENCIES (OTO included)			
*Designated as One-Time-Only costs			
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). Suggested changes to state statute that would create savings or reductions if adopted		
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. Suggested changes to state statute that would create savings or reductions if adopted		