

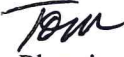
OFFICE OF THE GOVERNOR
STATE OF MONTANA



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To: 66th Legislative Assembly

From: Tom Livers, Budget Director 
Office of Budget and Program Planning

Date: January 7, 2019

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 2019 biennium of which there were 12 notable mandates submitted by agencies for \$328.5 million, approximately 94.6% 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 \$347.2 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 – Most costly and burdensome federal mandates			
Citation	Title	Notes	Estimate Annual Cost to State (millions)
P.L. 100-4, 113-76, and 113-121.	Wastewater Treatment Revolving Fund (Clean Water Act as amended 33 USC, 1251-1387)	Federal grants to states for establishment of revolving funds which was replaced by the State Revolving Funds to replace grants as the current principal federal funding source for construction of wastewater treatment and collection systems. Under Title VI of the act, grants to capitalize State Water Pollution Control Revolving Funds, or loan programs, were authorized beginning in FY1989 to replace the Title II grants. States contribute matching funds, and under the revolving loan fund concept, monies used for wastewater treatment construction are repaid to the state, to be available for project loans to other communities.	\$69.947
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.	\$48.471
42 USC: P.L.93-523, 95-190, 96-63, 96-502, 99-339, 100-572, 104-182, 107-188, 111-380, 113-64, 114-45, 114-98, and 114-322.	Safe Drinking Water Act and Amendments (and previous versions, original Act passed in 1974, amended in 1986 and 1996)	States are required monitor public water supplies for compliance with federal standards, inspect public water systems to assure that the system is maintained and operated in a manner protective of public health, certify water system operators, map critical source water areas, prepare source water assessment reports, log and report water sample results from public water systems, plan for emergency water supplies, assure that new public water systems are designed and constructed in ways protective of public health, and take enforcement actions for non-compliance, and implement a low or no interest funding program for water systems repairs and enhancements to maintain compliance with the standards (DWSRF).	\$41.782
P.L. 115-97	Limitation of State Corporation Income Tax	Elimination of the alternative minimum tax for corporations in the Tax Cuts and Jobs Act (TCJA).	\$34.000
P.L. 74-271	Social Security Act (Federal Insurance Contributions Act)	Payroll contribution directed toward both employees and employers to fund Social Security and Medicare - federal programs that provide benefits for retirees, people with disabilities, and children of deceased workers.	\$28.794
33 USC as amended	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).	\$25.400

Table 1 – Most costly and burdensome federal mandates (continued)			
Citation	Title	Notes	Estimate Annual Cost to State (millions)
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.	\$25.000
P.L. 105-277	Internet Tax Freedom Act	Created to promote and preserve the commercial, educational, and informational potential of the Internet baring federal, state, and local governments from taxing Internet access. It bars multiple taxes on electronic commerce.	\$20.730
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.	\$16.000
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.	\$8.500
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.	\$4.930
P.L. 94-210	4R Act (1970) Little 4R Act (1976)	Established the basic outlines of regulatory reform in the railroad industry and provided transitional operating fund following the 1970 bankruptcy of Penn Central Transportation Company. The law approved the "Final System Plan" for the newly created Conrail and authorized acquisition of Northeast Corridor tracks and facilities by Amtrak.	\$4.920

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		\$43.290
**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
DOJ/4110	Adam Walsh Child Protection & Safety Act (P.L. 109-248)		\$0.065
DOJ/4110	Brady Handgun Violence Prevention Act (P.L. 103-159, 107 Stat. 1536), NICS Improvement Amendments Act of 2007 (P.L. 110-180); Fix NIX Act of 2017 (P.L. 115-141)		unknown
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)		\$0.052
DOJ/4110	Indian Child Safety and Family Violence Protection Act, P.L. 101-630, 101 Stat. 4544, 25 U.S.C. 3201-3211m as amended by section 814 of the Native American Laws Technical Corrections Act of 2000		unknown
MUS/5201	Social Security Act (Federal Insurance Contributions Act)		\$25.000
MUS/5201	E-Verify		unknown
MUS /5201	Cafeteria Plans-must meet federal requirement to be pre-tax		unknown
MUS/5201	Patient Protection & Affordable Care Act Reinsurance Assessment Fee		\$0.040
MUS/5201	Health Insurance Portability & Accountability Act of 1996 (HIPAA)		\$0.050
MUS/5201	Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)		unknown
MUS/5201	Mental Health parity & Addiction Equity Act		\$0.093
MUS/5201	Newborns & Mother Health Protection Act		unknown
MUS/5201	Women's Health & Cancer Rights Act		unknown
MUS/5201	Information Technology for Economic & Clinical Health Act (HITECH)		unknown
MUS/5201	Title IX of the Education Amendment of 1972		unknown
MUS/5201	Equity in Athletics Disclosure Act		\$0.060
MUS/5201	Clery Act-Disclosure of Campus Security Policy & Campus Crime Statistics Act		\$0.092
MUS/5201	Entrance and Exit Counseling to borrowers		\$0.082

Table 2 - Submission of federal mandate costs by state agencies (continued)			
MUS/5201	Federal Financial Aid Program Requirements (Pell, SEOG, Work Study, Perkins Loans)		\$0.705
MUS/5201	Family Educational Rights & Privacy Act (FERPA)		\$0.088
MUS/5201	Qualified Tuition & Student Loan Interest Reporting (1098-T)		\$0.075
MUS/5201	Unrelated Business Income Tax (UBIT)-taxes on income not related to educational mission		\$0.060
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	P.L. 89-522: An Act to provide books for the adult blind		unknown
MSL/5115	Library Services and Technology Act		unknown
MHS/5117	National Historic Preservation Act, Section 106 (36 CFR 800 and 16 USC Section 470)		\$0.840
FWP/5201	Land & Water Conservations Fund Act interpretation (Part 522, USF&W Service Manual, Section. 7.7.b and 16 USC Section 4601-8(f)(1)		\$0.060
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 requirement (fed admin reg)		\$0.010
DEQ/5301	P.L.80-845, 84-660, 87-88, 89-234, 89-753, 91-224, 92-500, 95-217, 97-117, 100-4, 113-121. 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 control strategies for pollutants in streams that are not meeting water quality standards.		\$22.860

Table 2 - Submission of federal mandate costs by state agencies (continued)			
DEQ/5301	P.L. 93-523, 95-190, 96-63, 96-502, 99-339, 100-572, 104-182, 107-188, 111-380, 113-64, 114-45, 114-98, and 114-322. Safe Drinking Water Act and Amendments. States are required monitor public water supplies for compliance with federal standards, inspect public water systems to assure that the system is maintained and operated in a manner protective of public health, certify water system operators, map critical source water areas, prepare source water assessment reports, log and report water sample results from public water systems, plan for emergency water supplies, assure that new public water systems are designed and constructed in ways protective of public health, and take enforcement actions for non-compliance, and implement a low or no interest funding program for water systems repairs and enhancements to maintain compliance with the standards (DWSRF).		\$28.000
DEQ/5301	P.L. 100-4, 113-76, and 113-121. Title II and VI Wastewater Treatment Revolving Fund (Clean Water Act as amended 33 USC, 1381-1388). Federal grants to states for establishment of revolving funds which was replaced by the State Revolving Funds to replace grants as the current principal federal funding source for construction of wastewater treatment and collection systems. Under Title VI of the act, grants to capitalize State Water Pollution Control Revolving Funds, or loan programs, were authorized beginning in FY1989 to replace the Title II grants. States contribute matching funds, and under the revolving loan fund concept, monies used for wastewater treatment construction are repaid to the state, to be available for project loans to other communities.		\$20.800
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) P.L. 99-499 stat. 1613 et seq to address uncontrolled hazardous waste sites. <ul style="list-style-type: none"> •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
DEQ/5301	15 U.S.C.2446 section 206. Asbestos Hazard Emergency Response Act (AHERA). This law requires each State to adopt an asbestos contractor accreditation plan at least as stringent as the model accreditation plan developed by the EPA.		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		\$1.700

Table 2 - Submission of federal mandate costs by state agencies (continued)			
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		\$3.020
MDOT/5401	Annual certification of Size and Weight Enforcement Plan (23 CFR Part 657.19)		\$25.000
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	Risk Based Asset Management Plan Requirement - for the National Highway System (23 US, Section 119(e)(1))		Varies based on match rate
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)		\$0.870
MDOT/5401	FAA FAR Part 139 Airport Standards		\$3.790
MDOT/5401	FAA NPIAS Airport Criteria		\$0.170
MDOT/5401	GAB 49 Pollution Remediation EPA Liability at the state-owned Lincoln Airport.		unknown
DOL/5603	FSIS Meat Inspections 10-475		\$1.059
DOL/5603	Shell Egg - Milk and Egg Inspection 10-162		\$0.019
DOL/5603	Cattle Health 10-025		\$0.777
DOL/5603	ADT Animal Disease Traceability 10-025		\$0.140
DOL/5603	USDA/APHIS Other Grants (Swine, FAD, NAI, Scrapie, MMLR) 10-025		\$0.121
DNRC/5706	Wastewater Treatment Revolving Fund (P.L. 82-500 Clean Water Act as amended 33 USC, 1251-1387)		\$49.147
DNRC/5706	Arbitrage Calculation - IRS Code - Treasury Regulations Sections 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.		\$13.782

Table 2 - Submission of federal mandate costs by state agencies (continued)			
DOR/5801	4R Act (1970) Little 4R Act (1976) - P.L. 94-210 - Established the basic outlines of regulatory reform in the railroad industry and provided transitional operating fund following the 1970 bankruptcy of Penn Central Transportation Company. The law approved the "Final System Plan" for the newly created Conrail and authorized acquisition of Northeast Corridor tracks and facilities by Amtrak.		\$4.920
DOR/5801	Internet Tax Freedom Act - P. L. 105-277 - Created to promote and preserve the commercial, educational, and informational potential of the Internet barring federal, state, and local governments from taxing Internet access. It bars multiple taxes on electronic commerce.		\$20.730
DOR/5801	Reduction of U.S. Mineral Royalties from 50% to 48%		\$0.960
DOR/5801	P.L. 115-97 - Limitation of State Corporation Income Tax		\$34.000
DOA/6101	ADA Self-Regulation Project (Fed admin reg)		unknown
DOA/6101	Consolidated Omnibus Reconciliation Act of 1985 (COBRA)		\$0.067
DOA/6101	The Patient Protection and Affordable Care Act		\$8.500
DOA/6101	Social Security Administration		\$0.096
DOC/6401	Sex Offender Registration & Notification Act (SORNA); Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) provides a 10% penalty to a state's Edward Byrne Memorial Justice Assistance program if not in substantial compliance with federal act.		\$0.050
DOC/6401	P.L. 108-79: Prison Rape Elimination Act of 2003 (REA) provides a mandatory 5% penalty to states certifying non-compliance with Act		\$0.030
DOC/6401	Juvenile Justice & Delinquency Prevention Act as amended P.L. 93-415 (2018) Compliance Monitoring		\$0.020
DOC/6401	P.L. 110-180 - National Instant Criminal Background Check System (NICS), Improvement Amendments Act of 2007. The law requires a qualifying state to report mental defectives to NICS and establishes a penalty.		\$0.000
DOC/6401	8 U.S.C. 1373: Communication between government agencies and the Immigration and Naturalization Service (sanctuary cities)		\$0.000
DLI/6602	Wagner Peyser Act. Montana receives approx. \$4.9 million of Wagner Peyser (WP) funding per year. This figure has fluctuated very little over the past 25 years. Montana supplements the Work Opportunity Tax Credit (WOTC) program with Wagner Peyser each year. In addition, the Veteran's Program funding (DVOP/LVER) and Foreign Labor Program funding (H2A/H2B) are depending on the Wagner Peyser Act.		\$4.930
DLI/6602	Trade Assistance Adjustment (TAA) (funding fluctuates depending on the number of petitions certified by USDOL)		\$0.800
DLI/6602	Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.)		\$1.204
DLI/6602	Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3301 et seq.)		\$0.000
DLI/6602	Social Security Act (42 U.S.C. 501 et seq.)		\$3.698
DLI/6602	Unemployment Compensation (5 U.S.C. 8501 et seq.)		\$0.000
DLI/6602	Trade Act of 1974 (19 U.S.C. 2101 et. seq)		\$0.000
DLI/6602	Public Officers and Employees (18 U.S.C. 1919 et. Seq.)		\$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)		\$0.050

Table 2 - Submission of federal mandate costs by state agencies (continued)			
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 et seq., and 45 CFR, Chapter 3.		\$16.000
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	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. P.L.107-300		\$0.300
DPHHS/6901	Medicare and Medicaid Programs: Electronic Health Record Incentive Program 75F.R. CMS - 0033-P - facility recordkeeping requirements		\$0.900