



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title: **HB0791.01: Generally revise nuisance laws**

Primary Sponsor: **Anthony Nicastro**

Status: **As Introduced**

☐ Included in the Executive Budget ☐ Needs to be included in HB 2 ☐ Significant Local Gov Impact
☐ Significant Long-Term Impacts ☒ Technical Concerns ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
Expenditures				
General Fund (01)	\$0	\$0	\$0	\$0
Revenues				
General Fund (01)	\$0	\$0	\$0	\$0
Net Impact	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
General Fund Balance	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact

The fiscal impact of HB 791 cannot be determined due to the technical notes listed below.

FISCAL ANALYSIS

Assumptions

1. Due to the technical issues noted below, the fiscal impact is indeterminable.

Technical Concerns

1. This bill has an indeterminate fiscal impact on the Office of Consumer Protection (OCP). Section 14(2) purportedly exempts the Department of Justice from HB 291 for four years. This exemption does not fully address technical concerns related to opioid litigation as stated below:
 - a. The department manages the state's litigation related to unlawful practices in the manufacturing, marketing, sale, and distribution of opioids. These cases involve multiple legal theories and sometimes have included public nuisance claims. Montana courts have not definitively stated whether the conduct at issue in that litigation is covered by existing public nuisance law.
 - b. In opioid cases, the executive committee states and settling parties agreed to use an outside settlement fund administrator to calculate annual payments and administer disbursement of funds to the states.
 - c. Each settling state must operate three settlement funds: an abatement accounts fund, a state fund, and a subdivision fund. In Montana, these funds are the Montana Opioid Abatement Trust (MOAT), the state share, and the subdivision share. As the settlement agreements require, 70% of funds go to the MOAT,

15% to the state, and 15% to subdivisions. The state share is then equally divided between the Department of Public Health and Human Services and the Department of Justice.

- d. 85% of all funds received from a settlement must go to approved opioid abatement strategies throughout that settlement. Failure to reach this 85% target opens the state to enforcement of the settlement agreement.
- e. The state entered into a memorandum of understanding with the participating subdivisions to effectuate the terms of these settlement agreements.
- f. HB 791 could affect future opioid related litigation and settlements brought after October 1, 2025. HB 791 could affect the state's recovery either through trial or settlement because the unavailability of a public nuisance theory could affect the parties' positions on damages as well as affect the amount of recovery available to local governments even during the four-year period where HB 791 does not apply to the department.
- g. Additionally, HB 791 requires future recovery in public nuisance cases be allocated 100% to abatement. Prior settlements allocate a high percentage of recovery towards approved abatement uses (85%) while still allowing for a level of administrative overhead. It is not clear if administrative costs or legal costs are included in Section 5(2). If such costs are not included, then the 100% abatement requirement is likely not feasible.

NOT SIGNED BY SPONSOR



Sponsor's Initials

Date

Budget Director's Initials

3/3/2025
Date