



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: HB0121: Provide privacy in certain restrooms, changing rooms, and sleeping quarters

Primary Sponsor: Kerri Seekins-Crowe 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>
<b>Expenditures</b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>Net Impact</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b>General Fund Balance</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

### Description of fiscal impact

HB 121 will require male and female exclusive restrooms, changing rooms and sleeping quarters in certain covered entities identified in the bill. A covered entity, as defined in Section 2, includes correctional settings, juvenile detention facilities, local domestic violence programs, public buildings, and public schools. Immediate costs to the State of Montana are expected to be minimal and could be absorbed within existing agency budgets. The Technical Notes section of the fiscal note include potential costs associated with staffing increases, renovations of state facilities, and increased legal exposure.

### FISCAL ANALYSIS

#### Assumptions

#### Department of Public Health and Human Services

- HB 121 would require the Department of Public Health and Human Services (DPHHS) to designate multi-occupancy restrooms, changing rooms, and sleeping quarters for the exclusive use of males or females. DPHHS oversees various leased buildings and healthcare institutions that fall under the definition of "public building" in section 2(9). DPHHS already has separate facilities for males and females within its state-owned buildings and most leased buildings. The bill has the potential to have a nominal fiscal impact due to the potential need for signage or minor adjustments to ensure compliance. The fiscal impact could be absorbed into the current appropriated budget.

#### Department of Corrections

- The Department of Corrections does not anticipate any costs to implement the bill, but assumes that technical concerns would be addressed before implementation.

#### Office of Public Instruction

3. HB 121 provides for the exclusive use of multi-occupancy restroom, changing room, or sleeping quarters for males or females in a non-charter public school or public charter school.
4. This bill could cause significant local fiscal impact in school districts where facility renovations are required. The OPI does not have data available to determine local impact.

**Department of Corrections**

5. Costs to the Department of Corrections can not be calculated at this time.
6. The DOC has several technical notes that should be addressed before implementation.

**Department of Administration**

7. Department of Administration (DOA), Architecture & Engineering Division (A&E) anticipates no fiscal impact based upon the following assumptions:
  - a. Current room signage within state-owned facilities is adequate or would require only minor changes.
  - b. Existing restrooms, changing rooms, or sleeping quarters will not require physical modifications.
  - c. Any signage, occupancy adjustments, or room usage will be managed within the various departments at an operational level.

**Office of the Commissioner of Higher Education**

8. The Montana University System (MUS) anticipates no fiscal impact based upon the following assumptions:
  - a. Current room signage within MUS facilities is adequate or would require only minor changes.
  - b. Existing restrooms, changing rooms, or sleeping quarters will not require physical modifications.
  - c. Any signage, occupancy adjustments, or room usage will be managed at the individual campuses.

**Technical Concerns**

**Department of Public Health and Human Services (DPHHS)**

1. There would likely be limited cost for MSH and other DPHHS-operated facilities to designate multiple occupancy restrooms and changing rooms for single sex use. But, because of the private right of action, there could be legal and financial exposure if DPHHS failed to take reasonable steps to prevent restrooms and changing rooms designated for one sex from being used by members of the opposite sex.
2. The greater legal/financial exposure may arise from the application to sleeping rooms.
3. The potential costs to DPHHS from technical notes 1 and 2 are not currently estimable.

**Department of Corrections**

4. There are no exceptions listed in Section 3 for the staff to perform security and safety checks in correctional facilities, which could mean additional costs to hire same-sex staff to perform these tasks for each shift. It is unclear whether the language "to provide law enforcement assistance" would encompass correctional officers performing security and safety checks.
5. The definition for "correctional center" in Section 2 means "a facility that houses individuals charged with or convicted of a criminal offense and that is designed, constructed, or operated by the department of corrections." This definition omits contracted secure facilities, county detention centers, sanction centers, treatment facilities and prerelease centers. The DoC also does not generally house individuals charged with crimes (pre-trial detainees) unless they are already convicted.
6. HB 121 could result in legal challenges alleging non-compliance with the federal Prison Rape Elimination Act (PREA) which requires the department to make housing decisions, including whether to "assign a transgender or intersex offender to a facility for male or female inmates" on an individualized basis. Costs of such legal challenges are unknown. 28 CFR §115.42
7. Further clarification is necessary on what effect HB 121 would have on Montana's anti-discrimination laws in Title 49. Montana often adopts EEOC guidance or Title VII jurisprudence, in which case, HB 121 conflicts with Title 49.
8. HB 121 may violate Title VII and EEOC guidance. Both legislation and precedent indicate that denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity constitutes sex discrimination. Unless resolved, this contradiction would open the department up to discrimination lawsuits. References: *Kastl v. Maricopa County Community College District*, 325 F. App'x

**Fiscal Note Request - As Introduced**

*(continued)*

492 (9th Cir. 2009). Roberts v. Clark County School District (D. Nev. 2016), 215 F. Supp. 3d 1001, 1016. Lusardi v. Department of the Army, EEOC Appeal No. 0120133395.

**Local Government**

9. Local governments may experience fiscal impacts and technical impacts associated with the implementation of HB 121. However, at the time of publication, those concerns and impacts were not available.

KSC

Sponsor's Initials

1-10-25

Date

RD

Budget Director's Initials

1/10/2025

Date