FISCAL NOTE

Bill #:	SB502	**Title:**	Create state power authority
Primary Sponsor:	Ken Toole	**Status:**	Introduced

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Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
General Fund	$1,625,855	$328,161
State Special Revenue	$1,784,145	$1,769,839
Revenue:		
General Fund	$1,784,145	$1,694,839
State Special Revenue (State Authority)	$1,784,145	$1,769,839
Net Impact on General Fund Balance:	**$158,290**	**$1,366,678**

Yes	No		Yes	No	
X		Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Natural Resources

1. The state authority will contract for all its services.
2. DNRC will provide contract oversight for the state authority and its projects.
3. The state authority will use all the revenue deposited in the state special revenue fund.
4. DNRC will need the following nine (9) FTE positions to provide technical and administrative assistance to the power authority: 1 attorney, 1 electrical engineer, 1 structural engineer, 1 transmission specialist, 1 marketing specialist, 2 resource specialists, 1 accountant, and 1 administrative support position.

Department of Environmental Quality

5. DEQ will provide services to the State Power Authority (SPA) "within the limits of available resources" as called for in the bill and therefore will incur no extra costs.
6. This bill would require the SPA to apply under the major facility siting act for any proposed new electrical generation facility or certain electric transmission lines. It is assumed the fees required would offset the cost to DEQ of processing the application.

Department of Revenue

7. Under this proposal, effective on passage and approval, a state power authority (authority) is established, as a wholesale purchaser and seller of electricity to provide cost-based electricity to residential, agricultural, and small commercial consumers in Montana with electric loads of less than 1,000 kilowatts per month. The analysis done in the fiscal note assumes the authority will begin to purchase and sell electricity starting in fiscal 2003, a one year lag from when this bill will be effective on passage and approval; due to current contracts and the ability to perform their powers and duties. The authority may buy or build electrical generation facilities, transmission lines, or distribution systems. The authority may request that the legislature approve coal severance tax bonds or revenue bonds for the purpose of constructing electrical generation facilities in the state or establishing and maintaining energy conservation programs designed to reduce or otherwise modify consumer demand for electricity. The authority has additional powers and duties, as outlined in the legislation.
8. Under this proposal, a sufficient amount of revenue derived from the wholesale energy transaction tax, not to exceed 25% of total collections, must be deposited in the state power authority special revenue account with the remaining revenue to be deposited in the state general fund. The analysis done in this fiscal note assumes the state power authority will use the full 25% of total collections.
9. Under this proposal, the wholesale energy transaction (WET) tax rate is increased from 0.015 cent per kilowatt hour to 0.030 cent per kilowatt hour of electricity transmitted by the transmission services provider in the state. Electricity delivered to a distribution services provider that is the state power authority, is exempt from the wholesale energy transaction tax. The Department of Environmental Quality has estimated an average of 500 megawatts annually, will fall into this category of exemptions under this proposal. Under this proposal, total collections from the WET tax will increase by $3.568 million in fiscal 2002 and $3.465 million in fiscal 2003. The state authority state special revenue account will receive $1.784 million in fiscal 2002 and $1.770 million in fiscal 2003. Revenue going to the state general fund will increase by $1.784 million in fiscal 2002 and $1.695 million in fiscal 2003. Table 1 shows current law and proposed law impacts from the tax rate increase to 0.030 cent per kilowatt hour.

Table 1
Current Law and Proposed Law Impact Calculations
FY2002 and FY2003

	FY2002			FY2003		
Description	Current Law	Proposed Law	Change	Current Law	Proposed Law	Change
Taxable Kwh	23,788,606,000	23,788,606,000	0	24,097,858,000	24,097,858,000	0
Minus State Authority Exempt Kwh	0	0	0	0	(500,000,000)	(500,000,000)
Net Taxable Kwh	23,788,606,000	23,788,606,000	0	24,097,858,000	23,597,858,000	
Multiplied by Tax Rate	$0.00015	$0.00030	$0.00015	$0.00015	$0.00030	$0.00015
Tax Paid	$3,568,291	$7,136,582	**$3,568,291**	$3,614,679	$7,079,357	**$3,464,679**
State Authority Share (25%)	$0	**$1,784,145**	$1,784,145	$0	**$1,769,839**	$1,769,839
State General Fund Share (75%)	$3,568,291	$5,352,436	**$1,784,145**	$3,614,679	$5,309,518	**$1,694,839**

FISCAL IMPACT:

	FY2002 Difference	FY2003 Difference
FTE	9.00	9.00
Expenditures:		
Personal Services	420,000	420,000
Operating Expenses	2,990,000	1,678,000
Funding:		
General Fund	1,625,855	328,161
State Special Revenue (State Authority) (02)	1,784,145	1,769,839
Revenues:		
General Fund (01)	1,784,145	1,694,839
State Special Revenue (State Authority) (02)	1,784,145	1,769,839
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	158,290	$1,366,678
State Special Revenue (State Authority) (02)	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Under this proposal, the state authority may purchase electrical generation facilities, transmission lines, or distribution systems in the state. This bill does not state whether or not the state authority is exempt from paying property taxes on any of the properties mentioned above. If these properties were exempt from property tax then revenue going to local governments would decrease. Property taxes collected from electrical generation facilities, transmission lines, and distribution systems in the state for tax year 2000 totaled $90.7 million. Local governments received $64.2 million of the total collections. The amount of revenue decrease to local governments depends upon the properties, which the state authority acquires, and if these properties will be tax exempt.

LONG-RANGE IMPACTS:

1. Under this proposal, the state general fund and the state authority special revenue account will continue to receive greater revenue than under current law; with the assumption the taxable kilowatt-hours do not fall below a level where revenue generated from the WET tax is less than what would have been collected under current law.
2. Under this proposal, the state authority may purchase electrical generation facilities, transmission lines, or distribution systems in the state. This bill does not state whether the state authority is exempt from paying property taxes on any of the properties mentioned above. If these properties were exempt from property tax then revenue going to the state would decrease. Property taxes collected from electrical generation facilities, transmission lines, and distribution systems in the state for tax year 2000 totaled $90.7 million. The state received $26.5 million of the total collections. The amount of revenue decrease to the state depends upon the properties, which the state authority acquires, and if these properties will be tax exempt.

TECHNICAL NOTES:

Department of Natural Resources

1. The definition of "cost-based" (section 3 (1)) implies that state authority rates will be sufficient to build a reserve against those periods when the authority's costs are above market rates.
2. Because no party is obligated to buy from the state authority, the risk exists that the authority will be unable to sell electricity at a rate sufficient to meet its obligations to repay state bonds. However, the provisions that the state authority must obtain bonding authority from the Legislature and must convince a court that condemnation of existing facilities won't have adverse impact on the rates paid by consumers will lessen the likelihood of the state authority being unable to sell electricity at or below market rates.
3. Section 5(1)(g) allows the authority to acquire oil, gas and geothermal leases on state land pursuant to Title 77, chapter 3. This chapter deals with oil and gas leases only. The bill should reference Title 77, chapter 4 in reference to geothermal leasing.
4. Section 5(1)(g) also exempts the authority from paying annual rentals on oil and gas leases required by 77-3-423. Any compensation due the state school trust beneficiaries cannot be waived, as doing so would violate Article X, Section 11(2) of the Constitution of Montana, which requires receipt of fair market value for disposition of any estate or interest therein.
2. Section 5(1)(g) and (h) allow the authority to acquire leases on state land for a variety of uses. Issuance of leases is at the discretion of the Board of Land Commissioners, and the authority would be subject to all process requirements that are applicable to any other party interested in obtaining such leases. This may include competitive bidding; posting of performance or reclamation bonds; payment of rentals, royalties, penalties, or other fees; compliance with MEPA; coordination and/or compensation to surface owners or lessees; and any other requirements applicable to the type of lease entered into by the authority.
6. Based on the general resolution governing the issuance of coal severance tax bonds, the state is limited to issuing no more than $48.6 million. House Bill 8 authorizes $18.9 million in new coal severance tax bonds, leaving $28.7 million in bonding capacity. To implement SB502, HB 8 would need to be amended to increase this amount. This would reduce the remaining bonding capacity.
7. A further concern is that while the general resolution limits additional bonds to $48.6 million, national rating agencies have an even more restrictive standard that is being used to evaluate the bond rating. Based on communications this fall with Moody's Rating Service, the rating on coal severance tax bonds is currently AA- (watch). The "watch" status was added this year because the debt service on the outstanding bonds ($6.1 million maximum year) is just over 1/3 of the amount of annual coal severance tax deposits into the bond fund. In other words, the debt service exceeds the "3 times test." Because energy prices are increasing, Moody's did not further down grade these bonds. However, it will be difficult to maintain the current rating when the department issues its next series of bonds, especially if the next bond issue is greater than $10 million. A down grade in these bonds has implications on the rate of interest at which the new bonds are sold and also has implications on the secondary market for outstanding coal severance tax bonds.

Department of Enviornmental Quality

8. The definition of "cost-based" (section 3 (1)) implies that state authority rates will be sufficient to build a reserve against those periods when the authority's costs are above market rates. Because no party is obligated to buy from the state authority, the risk exists that the authority will be unable to sell electricity at a rate sufficient to meet its obligations to repay state bonds

Department of Revenue

9. Under this proposal, the legislation doesn't state whether or not the property acquired by the state authority will be exempt from property tax