GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0390	**Title:**	Establish the Water Severance Beneficial Use Act
Primary Sponsor:	Molnar, Brad	**Status:**	As Introduced

☐Significant Local Gov Impact ☒Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
State Special Revenue	$6,132,000	$12,206,000	$12,170,000	$12,158,000
Revenue:				
General Fund	($1,000)	($325,000)	($258,000)	($170,000)
State Special Revenue	$6,814,000	$13,563,000	$13,522,000	$13,509,000
Net Impact-General Fund Balance:	($1,000)	($325,000)	($258,000)	($170,000)

Description of fiscal impact: SB 390 establishes the Water Severance Beneficial Use Act. The bill creates a new fee on electricity generated from hydroelectric dams. Several criteria for exemption from the fee are laid out in the bill. Fee revenue is deposited in the new water severance account in the state special revenue fund. Funds in the account are allocated 10% to the Department of Revenue for implementation and associated legal costs, and 90% for the reduction of the 95 mills levied for statewide school equalization. Instructions on rounding the mill reduction calculation result in lower overall property taxes than what is offset by the hydroelectric fee.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. The department does not currently have information on severance tax paid per megawatt hour of energy produced by coal in the state.
2. Bill implementation will require retroactive additional reporting by coal burning electrical facilities so that the per megawatt hour coal severance tax can be computed for calendar year (CY) 2022.
3. The Energy Information Administration has information about total tons of coal burned and megawatt hours of energy produced by the largest coal burning power plant in Montana in 2019.
4. This power plant burned 5,122,389 short tons of coal to produce 7,926,040 MWh in 2019.

5. This means it took 0.646 tons of coal to produce one MWh in 2019.
6. Coal severance collections in CY 2019 for the mine supplying this power plant were $23.957 million.
7. This was from taxable production of 8.678 million tons.
8. Therefore, the average coal severance tax paid per ton of coal for this plant was $2.76.
9. Multiplying coal severance tax revenue per ton by tons per MWh equals coal severance tax per MWh.
10. Coal severance tax per MWh for this power plant was $1.783 in CY 2019.
11. This fee amount is used for all years in the analysis period.
12. CY 2018 data from the Department of Environmental Quality is used to estimate megawatt hour production of hydroelectric dams not currently reporting to Department of Revenue.
13. Total MWh of dams affected by SB 390 was 7.630 million MWh for CY 2018.
14. It is assumed that this MWh generation will vary in the same proportion as overall KWh estimates for the electrical energy license tax contained in HJ 2.
15. MWh estimates are: 7.643 million in FY 2022, 7.607 million in FY 2023, 7.584 million in FY 2024, and 7.577 million in FY 2025.
16. FY 2022 collections are halved because the tax is applicable beginning January 1, 2022.
17. Total tax collections are estimated at $6.814 million in FY 2022, $13.563 million in FY 2023, $13.522 million in FY 2024, and $13.509 million in FY 2025.
18. Of these funds, 10% is allocated to the department for administration and legal expenses, and 90% is appropriated to reducing the 95 mills levied for statewide education equalization.
19. The 90% appropriated to offset state school equalization mills is $6.132 million in FY 2022, $12.206 million in FY 2023, $12.170 million in FY 2024, and $12.158 million in FY 2025.
20. The department will perform the mill reduction calculation in August to conform with the timing issues of the bill.
21. The calculation for mill reduction must be rounded up to the nearest tenth of a mill. This means that school equalization is reduced by an amount slightly greater than the offsetting revenue raised by SB 390.
22. The money toward school equalization will reduce statewide mills by 1.8 mills in FY 2022, 3.6 mills in FY 2023, 3.3 mills in FY 2024, and 3.2 mills in FY 2025.
23. Overall funds raised by the 95 mills will decrease by $1,000 in FY 2022; $325,000 in FY 2023; $258,000 in FY 2024; and $170,000 in FY 2025.
24. Costs associated with implementation will be absorbed.

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact:				
Expenditures:				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Transfers	$6,132,000	$12,206,000	$12,170,000	$12,158,000
TOTAL Expenditures	$6,132,000	$12,206,000	$12,170,000	$12,158,000
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$6,132,000	$12,206,000	$12,170,000	$12,158,000
TOTAL Funding of Exp.	$6,132,000	$12,206,000	$12,170,000	$12,158,000
Revenues:				
General Fund (01)	($1,000)	($325,000)	($258,000)	($170,000)
State Special Revenue (02)	$6,814,000	$13,563,000	$13,522,000	$13,509,000
TOTAL Revenues	$6,813,000	$13,238,000	$13,264,000	$13,339,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($1,000)	($325,000)	($258,000)	($170,000)
State Special Revenue (02)	$682,000	$1,357,000	$1,352,000	$1,351,000

Technical Notes:

Department of Revenue

1. Section 6(3) in the bill says the amount of 10% of revenue is allocated to the department for implementation of the bill. Instead of "allocated," the bill should say "appropriated".
2. SB 390 may be legally challenged through the equal protection clause, since the tax is primarily imposed on electricity transported out of the state. It also may be challenged on the basis of taxing federal government property. Finally, there is legal concern that some legislative findings are not as resolved as stated by the bill, which further exposes the bill to legal challenges based on its other provisions.

Office of Budget and Program Planning

3. Currently, per Section 9901 of the American Recovery Plan Act (ARPA) which adds New Section 602 to 42 U.S.C. 801, it is unknown if reductions to state taxes resulting in a reduction to net state tax revenue may jeopardize receipt, or require repayment, of State Recovery Funds contained in the ARPA.

NO SPONSOR SIGNATURE

	3.30	KA	3-29-21
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*