GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:	
SB0539 - Establish the Water Severance Beneficial Use Act (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 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Expenditures:				
General Fund	$543,347	$91,793	$93,013	$94,253
State Special Revenue	$0	$0	$0	$0
Revenue:				
General Fund	($192,000)	($313,000)	($33,000)	($218,000)
SSR (90%)	$6,535,000	$14,357,000	$14,748,000	$15,409,000
SSR (10%)	$726,000	$1,595,000	$1,639,000	$1,712,000
Net Impact-General Fund Balance:	($735,347)	($404,793)	($126,013)	($312,253)

Description of fiscal impact: SB 539 establishes the Water Severance Beneficial Use Act. The bill creates a new fee in lieu of tax on electricity generated from hydroelectric dams. Several criteria for exemption from the fee are provided for in the bill. Fee revenue is deposited in a new state special revenue fund called the water severance account. Of the fee revenue, 10% is allocated to the Department of Revenue for implementation and associated legal costs and the remaining 90% is to be used for the reduction of the 95 mills levied for statewide school equalization. Instructions on rounding the mill reduction calculation would result in lower overall property taxes than what is offset by the hydroelectric fee.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. The fee in lieu of tax assessed on qualifying hydroelectric dams is calculated as the average coal severance tax paid on the amount of coal mined in Montana required to produce 1 megawatt-hour (MWh) of electricity. The Department of Revenue does not currently have information on severance tax paid per MWh of energy produced by coal in the state. See technical note #2.

2. The estimated fee in lieu of tax calculated in this fiscal note is based on the coal burned and MWhs produced by Montana's largest coal burning power plant. It is assumed that all coal burned by this plant is supplied by a single Montana coal mine for which coal severance tax collection data is available.
3. The Energy Information Administration (EIA) tracks the total tons of coal burned and MWhs of energy produced by the largest coal burning power plant in the state.
4. In calendar year (CY) 2021, this plant burned 6,207,512 tons of coal, which produced 10,002,582 MWhs of electricity. On average, this plant required .621 tons of coal to produce one MWh of electricity.
5. The coal mine supplying this power plant produced 6,478,188 tons of taxable coal in CY 2021. It paid $20,950,633 in coal severance tax on that production for an average of $3.23 of severance tax per ton.
6. Multiplying $3.23 of tax per ton by .621 tons per MWh is a usage fee of $2.01 of severance tax per MWh in CY 2021.
7. Assuming the tons of coal required to produce one MWh of energy remains constant in the short term, the fee would have grown by $0.14 on average from CY 2018 to CY 2021 based on the growth of the average tax per ton during this period. It is assumed that it will continue to grow at that rate through the forecast period.
8. Based on these assumptions, the estimated fee amount will be $2.35 in FY 2024, $2.48 in FY 2025, $2.62 in FY 2026, and $2.75 in FY 2027.
9. Data from the Montana Department of Environmental Quality (DEQ) was used to estimate the MWh production of hydroelectric dams subject to the fee. In FY 2021, the energy produced by these dams was about 5,853,246 MWhs.
10. It is assumed that the power generated by these dams will vary in the same proportion as overall KWh estimates for the electrical energy license tax contained in HJ 2.
11. The following table contains the HJ 2 growth rate of energy production, the corresponding forecast of MWhs from dams affected by SB 539, the estimated fee rate applied to that generation, and the estimated revenue. FY 2024 power generation and revenue are halved because the tax is applicable beginning January 1, 2024.

FY	Growth Rate	MWh	Fee Rate	Revenue
2024	-2%	3,095,104	$2.35	$7,261,500
2025	4%	6,429,109	$2.48	$15,952,179
2026	-3%	6,263,301	$2.62	$16,387,051
2027	-1%	6,222,641	$2.75	$17,121,459

12. Of the total fee revenue, 10% is appropriated to the Department of Revenue for administration and legal expenses and 90% is appropriated to reducing the 95 mills levied for statewide school equalization.
13. The mill reduction calculation must be rounded up to the nearest tenth of a mill, so school equalization is reduced by an amount greater than the offsetting revenue raised by the generation fee. Due to this provision, overall revenue raised by the 95 mills will decrease by about $192,000 in FY 2024, $313,000 in FY 2025, $33,000 in FY 2026, and $218,000 in FY 2027.
14. SB 539 is estimated to reduce the 95 statewide mills by 1.5 mills in FY 2024, 3.2 mills in FY 2025, 3 mills in FY 2026, and 3.1 mills in FY 2027.
15. The Department of Revenue anticipates 1.00 FTE will be required to administer this tax. Additionally, a one-time contracted expense of $450,000 will be required to create a new tax type in the integrated tax system.

	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Fiscal Impact:				
FTE	1.00	1.00	1.00	1.00
Expenditures:				
Personal Services	$81,789	$83,096	$84,153	$85,225
Operating Expenses	$461,558	$8,697	$8,860	$9,028
TOTAL Expenditures	$543,347	$91,793	$93,013	$94,253
Funding of Expenditures:				
General Fund (01)	$543,347	$91,793	$93,013	$94,253
State Special Revenue (02)	$0	$0	$0	$0
TOTAL Funding of Exp.	$543,347	$91,793	$93,013	$94,253
Revenues:				
General Fund (01)	($192,000)	($313,000)	($33,000)	($218,000)
SSR (90%)	$6,535,000	$14,357,000	$14,748,000	$15,409,000
SSR (10%)	$726,000	$1,595,000	$1,639,000	$1,712,000
TOTAL Revenues	$7,069,000	$15,639,000	$16,354,000	$16,903,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($735,347)	($404,793)	($126,013)	($312,253)
State Special Revenue (02)	$7,261,000	$15,952,000	$16,387,000	$17,121,000

Technical Notes:

Department of Revenue

1. Section 4, subsection 1 of the bill dictates that the usage fee in lieu of tax be based on megawatts of electricity generated/delivered. While a megawatt measures the capacity of an electric system, a megawatt-hour represents how much electricity is generated and delivered through that system. The electric generation and corresponding fee rates used in this fiscal note are based on megawatt-hours.
2. SB 539 directs the Department of Revenue to determine the usage fee in lieu of tax annually by calculating the average amount of coal severance tax that is imposed on the amount of coal mined in state that it takes to generate one megawatt of electricity. That is, the fee rate is designated in dollars of coal severance tax per one megawatt-hour of electricity generated. This may be difficult for the Department to determine accurately because coal miners who pay coal severance tax differ from the producers of coal-generated electricity. The fee estimated in this fiscal note is based on one Montana coal-generated power plant that is fully supplied by a Montana coal mine. Accurate implementation of this bill and annual calculation of the fee would require reporting by coal burning power plants of the Montana severance tax paid on the coal they consume.
3. It may be difficult to determine who is required to pay the fee in lieu of tax based on the bill text. Transmission service providers may not be the same entity as the hydroelectric facility that generates the power.
4. For any assessment of additional tax, the payer has 30 days to pay or object to the tax, which differs from the Department of Revenue's standard 45-day appeal timeline.
5. As noted in the Legal Review Note for SB 539 dated March 22, 2023, this bill may raise potential federal constitutional issues, which may subject the state to future litigation.

NO SPONSOR SIGNATURE	3.30.23	[signature]	3-29-23
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*