GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

# Fiscal Note 2027 Biennium

Bill#/Title: **HB0326.02 (003): Establish a tax on electrical energy not produced by coal to match coal severance tax rate**

Primary Sponsor: Gary Parry Status: As Amended in House Committee

☐ 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

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Expenditures** | | | | |
| General Fund (01) | $572,604 | $98,038 | $101,322 | $102,629 |
| State Special Revenue (02) | $14,670 | $29,520 | $29,520 | $29,520 |
| Other | $0 | $0 | $0 | $0 |
| **Revenues** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $251,985 | $784,337 | $1,371,649 | $2,011,286 |
| Other | $0 | $0 | $0 | $0 |
| Permanent Trust (09) | $241,186 | $738,825 | $1,263,490 | $1,808,484 |
| **Net Impact General Fund Balance** | ($572,604) | ($98,038) | ($101,322) | ($102,629) |

**Description of fiscal impact**

HB 326, as amended, revises the taxation of electrical energy in Montana. There is a new tax, referred to as an energy severance tax, assessed on electrical energy production in the state. The tax rate is equal to 2% of the gross sale price of electricity, measured at the place of production, and only applies to electricity sales contracts beginning on or after December 31, 2025. Electrical generation sourced from coal is exempt from the tax, as is generation from facilities used for noncommercial or agricultural purposes. Tax revenue from the energy severance tax is to be distributed 50% to a newly created energy resources trust fund and 50% to the Montana coal endowment state special revenue account.

## FISCAL ANALYSIS

**Assumptions**

**Department of Revenue**

1. Data on retail sales and the average retail price of electricity sold in Montana are sourced from the U.S. Energy Information Administration (EIA) and are used to estimate the fiscal impact of the 2% energy severance tax.
2. Montana retail sales of electricity, in kilowatt hours (kWh), for CY 2022 (15,584 million kWh) and CY 2023 (15,505 million kWh) are averaged to produce a retail sales figure of 15,545 kWh for FY 2023.

3. Using forecasts from the HJ 2 revenue estimate, electrical energy license tax revenue growth estimates are used to project Montana retail sales of electricity through FY 2029.
4. Retail sales of electricity from coal-fired sources and from facilities that produce power strictly for noncommercial or agricultural use are exempt from the energy severance tax. The latter two exclusions are not assumed to have a material effect on the amount of electrical production subject to the energy severance tax.
5. Coal-fired power accounted for 45% of Montana's generation in 2023. This share is assumed to stay constant through the forecast period.
6. Of non-coal-fired electrical generation, only those sales from contracts beginning on or after December 31, 2025, are subject to the 2% energy severance tax. Newly contracted sales are difficult to project, as there are many factors that dictate contract terms, and detailed contract information is not available to the department. For the purposes of this analysis, 5% of non-coal-fired retail sales is estimated to come under a new contract each year. As a result, the amount of electricity sales subject to the tax will grow each year as more and more generation is newly contracted for sale.
7. The energy severance tax is equal to 2% of the gross sale price as measured at the place of production (see technical note #1).
8. The EIA also has data on retail prices of electricity for Montana. The all-sector average is used for this analysis. Again, CY 2022 ($0.0997 cents/kWh) and CY 2023 ($0.1097/kWh) are averaged to come up with an average price for FY 2023 of $0.1047/kWh. The 10-year compound annual growth rate of Montana's average retail price from 2013 – 2023 (2.5%) is employed to project prices through FY 2029.
9. Multiplying the estimated price by the total estimated newly contracted electricity sales from non-coal sources gives total taxable sales revenue upon which the 2% energy severance tax rate will be assessed.
10. The table below shows the fiscal impact calculations for determining energy severance tax revenue. Total revenue from the tax is approximately $482,000 in FY 2026 (January 1, 2026, effective date is halfway through FY 2026), $1.477 million in FY 2027, $2.527 million in FY 2028, and $3.617 million in FY 2029.

**HB 326 - Fiscal Impact of Energy Severance Tax**

| | FY 2026 | FY 2027 | FY 2028 | FY 2029 |
|---|---|---|---|---|
| Total Retail Sales (kWh) | 7,780,856,613 | 15,475,216,294 | 15,548,695,066 | 15,388,615,297 |
| Exempt Sales from Coal (kWh) | 3,501,385,476 | 6,963,847,333 | 6,996,912,780 | 6,924,876,884 |
| Net Retail Sales (kWh) | 4,279,471,137 | 8,511,368,962 | 8,551,782,286 | 8,463,738,413 |
| Newly Contracted Sales (kWh)* | 213,973,557 | 425,568,448 | 427,589,114 | 423,186,921 |
| Total Taxable Retail Sales (kWh) | 213,973,557 | 639,542,005 | 1,067,131,119 | 1,490,318,040 |
| Avg Retail Price ($/kWh) | $0.1127 | $0.1155 | $0.1184 | $0.1213 |
| Taxable Sales Revenue | $24,118,554 | $73,882,525 | $126,349,036 | $180,848,370 |
| Tax Rate | 2% | 2% | 2% | 2% |
| **Tax Revenue** | **$482,371** | **$1,477,650** | **$2,526,981** | **$3,616,967** |
| *Distribution of Revenue* | | | | |
| Energy Trust Revenue | $241,186 | $738,825 | $1,263,490 | $1,808,484 |
| MT Coal Endowment Revenue | $241,186 | $738,825 | $1,263,490 | $1,808,484 |

* Estimated to be 5% of net retail sales annually

11. Energy severance tax revenue will get distributed equally between two accounts, the new state energy resources trust account established in section 13 of the bill and the existing Montana coal endowment special revenue account (see technical note #2).
12. The state energy resources trust account will be in the permanent fund type and will earn interest for the benefit of the Montana coal endowment special revenue account. The trust balance grows from $241,000 in FY 2026 to $4.052 million in FY 2029. Interest earnings from the trust are projected to be $10,800 in FY 2026, $45,500 in FY 2027, $108,100 in FY 2028, and $202,800 in FY 2029.
13. It is anticipated that implementing the energy severance tax will cost the Department of Revenue a total of $874,593 over fiscal years 2026 to 2029. These costs would come from the Technology Services Division

and Business and Income Tax Division. Technology Services Division will incur a one-time cost of $475,000 to contract a servicer to implement the energy severance tax, which includes registration, payments, penalty and interests, and revenue accounting. The Business and Income Tax Division will require $399,593 during fiscal years 2026 to 2029 for a new full-time employee to administer the tax.

**Department of Natural Resources and Conservation**

14. The Water Resources Division (WRD) receives revenue from the hydro-power facility to fund the operations and maintenance of the facility, and the remaining revenue is used for repairs and rehabilitation on other state-owned water projects.
15. The current annual revenue from the sale of electricity from the Broadwater Power Project is around $1.4 million, based on the monthly average of $123,000 from July 2024 through December 2024.
16. The 2% tax on the sale of electricity will start January 1, 2026, and is projected to total $14,670 ($123,000 x 6 months x 2%) for FY 2026 and $29,520 (123,000 x 12 x 2%) for FY 2027 and beyond.
17. DNRC is currently in negotiations to finalize the power purchase agreement/contract, which is likely to be signed after January 1, 2026; however, if the negotiations are concluded prior to that date, and an agreement/contract is finalized sooner, there would be no fiscal impact until the next renewal.
18. This tax will be paid to the Montana Department of Revenue. Additional state special revenue appropriation will be needed to pay for this tax.

**Department of Commerce**

19. New revenue to the Montana coal endowment special revenue account will be appropriated by the legislature in HB 11 to be given out as grants for local infrastructure projects, administered by the Department of Commerce.

**Fiscal Analysis Table**

**Department of Natural Resources and Conservation**

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact** | | | | |
| **Expenditures** | | | | |
| Operating Expenses | $14,670 | $29,520 | $29,520 | $29,520 |
| **TOTAL Expenditures** | **$14,670** | **$29,520** | **$29,520** | **$29,520** |
| **Funding of Expenditures** | | | | |
| State Special Revenue (02) | $14,670 | $29,520 | $29,520 | $29,520 |
| **TOTAL Funding of Expenditures** | **$14,670** | **$29,520** | **$29,520** | **$29,520** |
| **Revenues** | | | | |
| Other | $0 | $0 | $0 | $0 |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures)** | | | | |
| State Special Revenue (02) | ($14,670) | ($29,520) | ($29,520) | ($29,520) |
| Other | $0 | $0 | $0 | $0 |

**Department of Revenue**

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact** | | | | |
| FTE | 1.00 | 1.00 | 1.00 | 1.00 |
| **TOTAL Fiscal Impact** | **1.00** | **1.00** | **1.00** | **1.00** |
| **Expenditures** | | | | |
| Personal Services | $85,493 | $86,585 | $87,693 | $88,819 |

| | | | | |
|---|---|---|---|---|
| Operating Expenses | $484,153 | $11,453 | $13,629 | $13,810 |
| Equipment | $2,958 | $0 | $0 | $0 |
| **TOTAL Expenditures** | **$572,604** | **$98,038** | **$101,322** | **$102,629** |
| **Funding of Expenditures** | | | | |
| General Fund (01) | $572,604 | $98,038 | $101,322 | $102,629 |
| **TOTAL Funding of Expenditures** | **$572,604** | **$98,038** | **$101,322** | **$102,629** |
| **Revenues** | | | | |
| State Special Revenue (02) | $251,985 | $784,337 | $1,371,649 | $2,011,286 |
| Other | $0 | $0 | $0 | $0 |
| Permanent Trust (09) | $241,186 | $738,825 | $1,263,490 | $1,808,484 |
| **TOTAL Revenues** | **$493,171** | **$1,523,162** | **$2,635,139** | **$3,819,770** |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures)** | | | | |
| General Fund (01) | ($572,604) | ($98,038) | ($101,322) | ($102,629) |
| State Special Revenue (02) | $251,985 | $784,337 | $1,371,649 | $2,011,286 |
| Other | $0 | $0 | $0 | $0 |
| Permanent Trust (09) | $241,186 | $738,825 | $1,263,490 | $1,808,484 |

## STATEWIDE SUMMARY

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact** | | | | |
| FTE | 1.00 | 1.00 | 1.00 | 1.00 |
| **TOTAL Fiscal Impact** | **1.00** | **1.00** | **1.00** | **1.00** |
| **Expenditures** | | | | |
| Personal Services | $85,493 | $86,585 | $87,693 | $88,819 |
| Operating Expenses | $498,823 | $40,973 | $43,149 | $43,330 |
| Equipment | $2,958 | $0 | $0 | $0 |
| **TOTAL Expenditures** | **$587,274** | **$127,558** | **$130,842** | **$132,149** |
| **Funding of Expenditures** | | | | |
| General Fund (01) | $572,604 | $98,038 | $101,322 | $102,629 |
| State Special Revenue (02) | $14,670 | $29,520 | $29,520 | $29,520 |
| **TOTAL Funding of Expenditures** | **$587,274** | **$127,558** | **$130,842** | **$132,149** |
| **Revenues** | | | | |
| State Special Revenue (02) | $251,985 | $784,337 | $1,371,649 | $2,011,286 |
| Other | $0 | $0 | $0 | $0 |
| Permanent Trust (09) | $241,186 | $738,825 | $1,263,490 | $1,808,484 |
| **TOTAL Revenues** | **$493,171** | **$1,523,162** | **$2,635,139** | **$3,819,770** |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures)** | | | | |
| General Fund (01) | ($572,604) | ($98,038) | ($101,322) | ($102,629) |
| State Special Revenue (02) | $237,315 | $754,817 | $1,342,129 | $1,981,766 |
| Other | $0 | $0 | $0 | $0 |
| Permanent Trust (09) | $241,186 | $738,825 | $1,263,490 | $1,808,484 |

**Technical Concerns**

1. There is some ambiguity of the wording used in the definition of "sales price" in section 2(2). The definition states the "Sale Price" means the gross sale price without any deduction measured at the place of production. However, electricity generated in the state of Montana is not sold at the place of production, rather it is transmitted inside and outside of the state and ultimately sold to the end user. It can be bought/sold/traded as a commodity between producers, transmitters, and utilities. Additional clarification may be needed to administer this tax at the place of production.
2. Section 12(b) of the bill instructs 50% of the revenue from the energy severance tax to be deposited in the Montana coal endowment regional special revenue account. Section 13(2) directs interest earnings from the state energy resources trust fund to the regional special revenue account. It is assumed that both sections are referring to the same account, but it is not clear if that account is the Montana coal endowment regional water system special revenue account or the Montana coal endowment special revenue account. Section 13(2) references 90-6-710, MCA, which is the Montana coal endowment program and is the statute referenced in 17-5-703(3)(a), MCA, which is the statute that directs interest earnings from the Montana coal endowment trust fund to the Montana coal endowment state special revenue account. It is assumed the bill intended the special revenue account referenced in sections 12(b) and 13(2) to be the Montana coal endowment special revenue account; however, clarity is needed.
3. Sections 14 – 16 of the bill are effective contingent on the establishment of a state energy authority by the Department of Commerce, i.e. if HB 314 is passed and approved. If this happens, section 12 is terminated and the revenue from the energy severance tax is distributed 50% to the state energy trust account, 40% to the Montana energy authority operations account (section 15), and 10% to the Montana energy authority resource trust account (section 16).

NOT SIGNED BY SPONSOR

| Sponsor's Initials | Date | Budget Director's Initials | Date |
|---|---|---|---|
| | 3/28 | | 3/28/2025 |