



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

**Bill information:**

HB0924 - Prohibit lease or transfer of water right out of state until 2048 (Regier, Matt )

**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

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** HB 924 has no fiscal impact to the state.

### FISCAL ANALYSIS

**Assumptions:**

1. This bill requires the Office of the Secretary of State to notify each federally recognized tribal government in Montana. While there may be a minimal fiscal impact, the Office of the Secretary of State will absorb the costs associated with implementing this bill within its existing operating budget.
2. HB 924 prohibits the transfer or lease of water rights until December 31, 2047.
3. Effective date for Section 2,4,7,9,11, and 13 are January 1, 2048.
4. Any fees in the bill are outside the scope of this fiscal note and are undeterminable.

**Technical Notes:**

1. Leasing is being used as a compact management tool in the Yellowstone Compact; the Northern Cheyenne tribe is exploring potential leasing with Wyoming. This leasing is not protected by the compact provisions, so HB 924 could possibly restrict the state's compact implementation.
2. Now, Montana's out-of-state water export statute allows out-of-state appropriations, but applicants must satisfy a higher burden of proof in the permit and change criteria. There is potentially a Commerce Clause issue because the US Supreme Court has explicitly held that overt restrictions on interstate transfers of water

are unconstitutional. *Sporehase v. Nebraska*, 458 U.S. 941 (1982). That case has never been applied in Montana but there is an analogous case out of New Mexico. New Mexico had very similar provisions as Montana's current interstate exports statute and the New Mexico Supreme Court held that under *Sporehase*, the restrictions on out-of-state uses were unconstitutional. *El Paso v. Reynolds*, 597 F.Supp. 69 (1984).

*MKR*

*Sponsor's Initials*

*Date*

*RO*

*Budget Director's Initials*

*3-29-23*

*Date*