MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 14, 1985

The twenty-sixth meeting of the Taxation Committee was called to order by Chairman Gerry Devlin on February 14, at 8:05 a.m. in room 312-2 of the state capitol.

ROLL CALL: All members were present as was David Bohyer, Researcher for the Legislative Council, and Alice Omang, secretary.

CONSIDERATION OF HOUSE BILL 607: Representative Quilici, District 71, Butte, stated that this bill is very important to the state of Montana and its people and gave some background on this bill, which will allow a production incentive tax credit to the coal severance tax. He commented that in 1975, they did not know what was going to happen concerning the coal tax, but now times have changed and circumstances have changed. He continued that in the coming years, coal contracts are going to expire and when they expire, if the state is not competitive, they are going to lose those contracts; and if they lose those contracts and the Montana coal severance tax drops, this state is in a lot of trouble. He answered the question of what would happen if no new production or sales occurred during the window of opportunity by saying "absolutely nothing - Montana will continue to receive the current severance tax on all existing production and the window of opportunity closes." He explained that if new production occurs and new contracts are signed that the state will get $2.00 a ton and it looked as though there could be a contract signed that would have a price tag on it of around $75 million. Then, he said, if this does happen, Montana will have solid evidence to decide whether the tax rate is really effective.

PROPONENTS: Representative Marks, District 75, Clancy, stated that he was one of those who voted against the severance tax in 1975; he did not understand the horror stories and did not agree with them. He exclaimed that he thought this was a step in the right direction as the state has been criticized as being anti-business and for trying to create an image where business cannot survive.

cannot survive. He indicated that it costs about 1.7 to 2 cents a ton-mile to ship coal no matter where it comes from and what Montana has going for it in that regard is that we are a little closer to the market and we have a slight advantage there.

Teresa Cohea, the Governor's Chief of Staff, offered Exhibit 1 as testimony in support of this bill. She also offered proposed amendments to this bill. See Exhibit 2.

James Mockler, Executive Director of the Montana Coal Council, said that he was very gratified to the governor, to Representative Quilici and to all the representatives that had the courage to sign this bill because the coal tax is more emotional to most people than it is factual. He offered some proposed amendments to this bill. See Exhibit 3. He explained that the bill does not apply to renewal of contracts once they are scheduled to expire and they would like to have it included-that if those renewed contracts are extended for five years or more, they also would receive the rebate, after they are scheduled to expire. He offered Exhibit 4.

Paul Polzin, Director of Forecasting at the Bureau of Economic Research at the University of Montana, outlined Montana's coal industry and said that it was facing an uncertain future. See Exhibit 5. He also passed out the booklet, "Montana's Coal Industry", which is Exhibit 6.

Martin White, Chairman of the Board and Chief Executive Officer of Western Energy Company, testified that he has been involved in the coal industry since 1966 and he knows that the companies involved in Colstrip have spent $52 millon to help with the local impact and the coal industry has been a good citizen from the socioeconomic standpoint. He explained that mining conditions in Montana are different than they are in Wyoming as, because the overburden is thicker on the average and the seams are thinner on the average, Montana's coal industries generally have to disturb 100% to 200% more acres to get the same amount of coal that they do in Wyoming and then they have to reclaim them, so their operating costs are higher. However, he continued that Montanans should be proud that the Montana worker and miner has had one of the highest labor productivities - and in their mine, they have had the highest productivity in the United States - and that is important to the state of Montana.

Lanny Icenogle, Project Manager for Montco, offered testimony in support of this bill. See Exhibit 7.

J. R. McPherson, Director of Affairs for Nerco Mining Company, which operates the Spring Creek Coal Mining Company in Big Horn County, Montana, and owns 50% of the Decker Mine, told the committee that Nerco believes that this committee should take an additional step by allowing the severance tax relief to all existing purchasers of Montana coal. He testified that in 1984, the state received more than $89 millon in severance tax and that approximately $17 millon was credited to the general fund. He continued that they are important customers today and they hope that they will choose to return to Montana when they need additional coal and when their existing contracts expire. See Exhibit 8.

Norman Starr, a rancher from Melville, Montana, currently serving as president of the Western Enviornmental Trade Association, advised that they were strongly supporting this bill and the amendments proposed by the Montana Coal Council. He testified that his property tax has risen 50% in the last eight years and that with coal sales in Montana, that means jobs and if the working man is making money, he is going to eat steaks and that is going to help him. He concluded that this bill is right on track and it is something that the committee can do to help agriculture and it does not cost the state of Montana one dime.

Brett Boedecker, representing Glendive Foward and Project Baker and Wibaux, the Glendive Chamber of Commerce and People for Economic Progress of Brockway, Montana, offered testimony in support of this bill. See Exhibit 8-2.

Joe Presley, representing Westmoreland Resources of Billings, stated that they are operating a mine that is producing approximately 4 millon tons a year, but they have the capacity to produce 10½ millon tons and all of their contracts expire in 1993 and unless they get extensions or new contracts, they are out of business in 1994. See Exhibit 9.

Duane Friez, representing Glendive Forward gave a statement in support of this bill. See Exhibit 10.

Glen Moore, a farmer in Ekalaka, past president of the Montana Grain Growers, chairman of the Wheat Commission, and past president for the National Association of Wheat Growers and presently the president of the Wheat Foundation in Montana, stated that they were interested in all the industries in Montana and would like to be in support of this bill.

Mike Keeting, Business Representative of the Operators' Engineers 400, said that they would like this bill to pass and gave it their support.

Forrest Boles, President of the Montana Chamber of Commerce, and also speaking for the Great Falls Chamber of Commerce, stated that Montana does have a negative business interest and the high coal severance tax does contribute to that image.

Jim Stephens, Past President of the Montana Grain Growers and the International Trade Commission, offered a statement in support of this bill. See Exhibit 10.

John Ravenberg, representing the Wolf Point Chamber of Commerce and the High Plains Land and Mineral Association, urged the committee to pass this bill.

Henry McClurnan (?), Acting Director of the Montana Mines and Geology, said that they assist in the development of Montana's mineral resources and they do that through research that would improve the quality of the value of coal, and they support this bill.

Ward Shanahan, Chairman of the Coal Tax Subcommittee of the Natural Resources Section of the American Bar Association and a director of the Montana Mining Associaion, gave a statement in support of this bill. See Exhibit 11.

Dave Goss, representing the Billings Chamber of Commerce, indicated that they were very concerned about the future of coal and the impact it will have on them. He said that they support this bill.

Bill Olson, representing the Montana Contractors' Association, stated that they wholeheartedly support this bill.

Paul Miller, representing Meridian Minerals in Billings, indicated that they own substantial coal properties in eastern Montana and they would applaud the governor's initiative in this matter.

Bob ________________, independent businessman from Butte, Montana and also a member of the Governor's Advisory Council, commented that he thought this was a very constructive bill and would allow the coal industry to be competitive and also would protect the state for existing and upcoming contracts.

Representative Bob Bachini, District 14, Hill County, gave a statement in support of this bill. See Exhibit 12.

Mike Fitzgerald, President of the Montana International Trade Commission, said that they firmly support this bill.

John Brauer, Professor of Economics at Montana Tech, said that they examined and reported on the economic impact of coal mining in Montana, which they should receive very shortly. He explained that coal mining employs about 1300 people directly, it spins off an additional 2,300 jobs in other sectors of the Montana economy, it generates another $34 millon in wages outside of the $50 millon spent on wages in coal mining and generates another $95 millon in business activity. He continued that the loss of 100 jobs in coal means the loss of 200 other jobs elsewhere in the economy of Montana. He stated that he did not agree with the Silverman-Duffield report that the future of coal is assured and he felt that they were in bad shape and he thought they would see the aluminum plant go under in Columbia Falls.

Jim Hodge, owner of Columbia Chemical in Helena, urged the committee to have a clear view as to this issue and he thought that in the coal market, it was a buyer's market and he supported this bill.

There were no further proponents.

OPPONENTS: Senator Towe said that the proposal was that they give an incentive and he asked them to read the bill carefully, if they thought it was an incentive.

He indicated that this was one of the most complex pieces of legislation that they have had before the legislature. He passed out to the committee Exhibit 13, which are arguments against lowering the coal tax. He also passed out Exhibit 14, which shows the Montana market area and the Wyoming area. He also explained the effect of a tax decrease on production and revenue. See Exhibit 15. He also explained to the committee how much Montana would stand to lose if this bill were passed. See Exhibit 16.

John Driscoll, a former legislator, said that he was the house majority leader in 1975, when this coal tax was passed and he strongly opposed this bill.

Vernon Bertelsen, Ovando, representing himself, said that this has been studied by Professors Silverman and Duffield, who have no axe to grind, and he thought they should look closely at the answers these experts have provided. He emphasized that Montana cannot help but lose taxation revenue if this legislation is passed and he would urge the committee to reject this bill.

Sherlee Graybill from Great Falls offered testimony in opposition to this legislation. See Exhibit 17.

Keith Powell, a rancher south of Miles City, and the present chairman of the Northern Plains Resource Council, gave a statement in opposition to this bill. See Exhibit 18.

Howard Best, rancher from Broadus and president of the Powder River Protective Association, offered testimony in opposition to this bill. See Exhibit 19.

Jerry Calvert, representing the Bozeman Environmental Information Center, gave a statement in opposition to this bill. See Exhibit 20.

Eric Feaver, president of the Montana Education Association, stated that currently 15% of the coal tax revenue goes to public education in Montana and this bill would chip away more revenue base and he felt that this was not a risk worth taking.

Carol Farris, Great Falls, said that she was speaking in place of Phyllis Moore, who is president of the Montana State Democratic Women's Club, and offered a statement. See Exhibit 21.

Don Reed, representing the Montana Environmental Information Center, gave a statement in opposition. See Exhibit 22.

Jim Murray, representing the Montana State AFL-CIO offered testimony in opposition to this bill. See Exhibit 23.

Susan Cottingham, representing over 1,000 members of the Montana Chapter of the Sierra Club, stated that they maintain that the need for this tax is just as great today and that they need this in the future. She indicated that she would be tempted to call this the Sherco relief bill.

Tony Jewett, Executive Director of the Montana Democratic Party, offered testimony in opposition to this bill. See Exhibit 24.

Jim Smith, representing the Montana Human Resources Development Council, said that they have a growing alarm for the concern and interest of the 120,000 some Montanans whose income put them officially below the poverty level. He said he came to this hearing with an open mind, but he would have to oppose it in the absence of evidence that this would help the poor.

Earl Reilly, representing the Montana Senior Citizens' Associations, urged that the committee not pass this legislation. See Exhibit 25.

There were no further opponents.

<u>QUESTIONS ON HOUSE BILL 607</u>:

Representative Ream asked Mr. Duffield or Mr. Silverman if they would comment on their report.

John Duffield, Professor of Economics at the University of Montana, explained that they were asked to provide a long-range production forecast for Montana coal and in doing this, had an opportunity to see how the historical market had evolved. He also gave information on what they looked at and how they came to the results that were in their report. See Exhibit 25-2. He concluded that, in his mind, the coal industry was in good shape in the long run from what the indicators tell him and that right now they are in a very soft market - Wyoming's average contract price is $9.77 for southern producers and the new bids are going out at $6.30, so he felt they were in an unusual situation.

Representative Asay commented that he had indicated that the plant in Billings, under current conditions, would not go to Montana and asked Mr. Duffield to elaborate.

Mr. Duffield replied that he calculates that since this plant is only 110 miles further from the Gillette coal source than from Colstrip that there is a difference there just for transportation of about $2.00 and if current prices (which is something they had the least information on) are around $9.50 (and maybe they are at around $11.00) and using the $11.00 figure, they would need a $9.00 Wyoming bid, assuming other coal characteristics are similar. Bids in the market area are around $5.00 to $6.00.

Representative Asay asked about how they arrived at their figures.

Mr. Duffield responded that there was a number of figures that they did not have access to because of confidentiality and one of those was price and for current contracts they used actual numbers from the Department of Revenue.

Representative Asay asked if they can still reach a firm conclusion even though they are using figures that are somewhat questionable and asked if this was a valid way for an economist to perform.

Mr. Duffield responded that if he was using dubious information, it would not be, but he was using uncertain information and the appropriate approach in that situation is to do sensitivity on the range of reasonable differences, so they looked at coal prices for Montana on the order of $10.50, $9.50 and $8.50, which he felt was a reasonable range. He explained that for Wyoming, they looked at a range from $5.00 to $9.00 and he did not think that was dubious.

Representative Asay said that he had made some comment that $1.00 in reduction in the coal severance tax would not have a significant effect.

Mr. Duffield replied that that was correct and that is consistent with the results of Mr. Wood.

Representative Asay observed that the Montana Trade Commission indicated that a 6 cents per ton reduction in the delivered price of coal regardless of where it came from actually ends up to be a saving of $1½ millon for a typical plant so it would indicate to him that that $1.00 reduction has considerable significance. He asked if he was still willing to back his statement that $1.00 is not significant.

Mr. Duffield responded, "You bet - he was completely in agreement with Mr. White when he says that the severance tax he does find in his face-to-face dealings with coal buyers is significant and that that is part of a larger truth that the delivery price is significant; and if it is significant, you can then use our model as they have looked at the difference in actual delivery costs." He indicated that he agreed that 50 cents is $1½ millon and that that looms very large in the operation costs and the price for the coal producers and they are strongly interested in that. He continued that where the market comes into that isn't delivery price - for the market that is 3 or 4% of the delivery price.

Representative Harp asked about point 9 in his summary and asked him if he was talking about long term or short term.

Mr. Duffield responded that he was talking very much so about long term. He indicated that that report is only long term and they should insert a qualifier there and he would support the statement by Terry Cohea that they have designed a bill that results in a break-even on the tax revenue effects.

Representative Harp asked about the differences between Rock Shell, Wyoming and Colstrip, Montana - that the difference between those two is really only 5 cents and he asked if he was comfortable enough today to tell the people in this committee that we can affort to risk 5 cents for the possibility of losing a $75 millon contract to Wyoming.

Mr. Duffield answered that it is 5 cents for millon BTU and he is really talking about risking several millon dollars.

Representative Harp said that if he was a person in the market place looking for the lowest price, he would be looking at 5 cents and nothing else.

Mr. Duffield answered that he has presented these numbers as what he thought was the most valid and, if he agrees with these numbers, it would show that they already have that contract, so dropping that 5 cents results in a net loss of that revenue.

Representative Harp reiterated that the question is if they really do have that 5 cent advantage and with the possibility of losing $75 millon contract to Wyoming, did he feel that Wyoming could undercut that and come in with 1 cent less and the representative from Western Energy testified that he had received a contract with a one cent difference.

Mr. Duffield replied that he felt it was a gamble and he would call the odds - if Montana comes in with $10.50 coal - the odds of Montana getting that contract are about 60%. He continued that if they come in with $9.50 coal, the odds are around 75% and if they come in with $8.50 coal, the odds are about 95% and that is how he would call the gamble.

Representative Sands requested that Vic Woods comment about the Duffield study.

Mr. Woods replied that the first he saw of this report was probably last September or October and he has not seen the one the committee has in front of them. He explained that he observed, at that time, it was not done in the fashion that they in the market world would do a report as they would go out and talk to the utilities to understand exactly what they are trying to do and all of the options that they have. He commented on Sherco #3 and explained his position.

Representative Raney asked Ms. Cohea if the purpose of the bill was to lower the tax and increase production.

Ms. Cohea answered that the purpose of this bill was to stimulate new production in the state.

Representative Raney questioned if there would be an increase in coal production in Montana even if they do not pass this bill.

Ms. Cohea replied that current production last year was 33 millon tons and they have identified contracts and production within the next several years of 38 millon tons and that is included in the base and not subject to credit and they do foresee growth at least to 38 millon tons.

Representative Raney asked if any increased production over the base level means that the challenge has been met by the coal companies.

Ms. Cohea responded that they are not trying to set the criteria by which the legislature will decide if the challenge has been met - that is the decision that the legislature and the people of Montana must decide.

Representative Raney questioned if all the facts and figures regarding transportation and coal sales would not have to be available in order for the legislature and the people of Montana to decide this.

Ms. Cohea replied that any decision the legislature makes is always based on the best information available and the amendment she presented this morning would increase the amount of information that is available to the committee. She informed him that the state of Montana, however, has no control over disclosure of rail cost information - that can be inferred from information that is filed with the Federal Energy Regulatory Commission, and their proposal would make public everything that possibly could be made public.

Representative Raney stated that the fact still exists that there is no way they will really know all the facts and figures involved in these coal sales and transportation costs - they will only know what the rail companies and the coal companies are willing to let known. He asked if this was correct. He indicated that right now Burlington-Northern will not let them know its transportation costs and he asked if she thought they would let them know those costs.

Ms. Cohea answered that she would not predict what Burlington-Northern would do but she would tell him that the utilities are required to file with the Federal Energy Regulatory Commission the delivered price so the legislature will know exactly how many tons were sold, exactly who they were sold to, how long the contracts are for and what the delivered price is at the utility.

Representative Raney noted that someone is going to have to determine whether the coal companies have met this challenge, and it will be the legislature to decide this, and if they decide that the challenge has been met, would that mean that the governor or his staff will come after us to permanently lower the tax to 20% instead of 30%.

Ms. Cohea responded that when you start an experiment, you don't decide what the results will be and what you will do for the next step - they are offering an opportunity to run a real life experiment to determine how important the severance tax rate is and the legislature will determine the outcome of that test and nobody knows now what it will be nor do they know what will happen years from now.

Representative Raney indicated that two years from now they will have to go on basically the same kind of information that can be supplied to them right now and that information has been supplied to them right now by the Duffield-Silverman report and yet, the governor has not chosen to use that report because, if he had, obviously this bill would not be proposed and he asked how would they know more about the market place two years from now than they currently know.

Ms. Cohea answered that, if she understood what Mr. Duffield said, his forecast is long range - out to the year 2000 - and she would submit to the committee that in 1987, they will know what happened in 1985 and 1986. She stated that the 1987 legislature does not have to take any action - this bill sunsets.

Representative Raney indicated that she made the statement that this bill would not cost Montana revenue and he would submit that there are all kinds of contracts that they could obtain, if they are available, in Wisconsin and Minnesota that would be impossible for Wyoming to compete with - they would have to give their coal away to compete with Montana, so if we take on the 20% reduction, we would have gotten those contracts anyway, so what we have done is given away 1/3 of our coal revenue that would have been the states in hopes of getting the Sherco contract, so we may give away 1/3 for three or four contracts in hopes of getting just that little area that Wyoming can compete in.

Ms. Cohea replied that all the studies say that the Sherco contract is the only new contract that is on the horizon during the next five years. She emphasized that this bill is over in two years, so she does not see that risk.

Representative Raney stated that this is then a Sherco bill.

Ms. Cohea answered that there are three circumstances in which all purchasers of Montana coal can benefit from this bill - they can purchase more under existing contracts during the two-year period, they can renew existing contracts and get the credit on incremental production for the life of that contract or new contracts - not just long term and major ones - but spot contracts can also get this credit so there are a number of ways that they can benefit from this bill.

Representative Raney observed that none of the contracts that Westmoreland and Peabody have are going to expire before 1993 so he wondered why they were chasing this in 1985 - they could do like a study between now and 1989 and then make up their mind and he asked why they are rushing into this because they are only getting to examine this for about a month's time and then they have to make their decision and he asked if this was proper.

Ms. Cohea replied that the Coal Tax Oversight Subcommittee did an exhaustive study of coal taxation and coal market issues during the last interim. She indicated that there are major contracts that are coming up in 1993, there are smaller ones coming up in 1987 and 1988, but the important point is that the purchasing agents for those contracts say that utilities' coal source decisions are not made lightly and as John Driscoll testified there is 'build a boiler' for the coal you are going to burn so if you are going to decide to change your existing contract and go to a new producer, you have to make significant changes in your boiler so the contracts that expire in 1993, the utilities are already assessing the market and trying to determine what coal they are going to buy.

Representative Schye asked Ms. Cohea what her reaction was to the amendments.

Ms. Cohea replied that she can answer for the governor and they have specifically looked at this amendment and the governor does not support it and the reason is that they feel very strongly that they must hold to the current severance tax rate on all current production in order for the people of Montana to have an opportunity to look at whether modification will increase production, so allowing the credit to the base is not what they want.

Representative Ream asked about the language concerning information that would be available to the legislature.

Ms. Cohea answered that that language is exactly patterned upon the current law regarding corporation tax returns - those are held confidentially, but the legislature saw fit to enact a provision that if they felt a corporation was somehow not complying with Montana law to allow the governor to make public those returns. She indicated that, to her knowledge, this has never been done, but we included that provision in the bill so that all the information that is now public will continue to be public and, in fact, additional information will be public. She clarified that it would be an additional safeguard to allow the legislature to determine if the contracts were being dealt with properly as there would be a procedure to make these contracts, which are not now available to any member of the public, available under extreme circumstances.

Representative Ream said that he was concerned that they are the policy-making body, they are passing laws like HB 607 that could have grave implications and it seems as though the Revenue Oversight Committee should have all the tools available to them.

Ms. Cohea replied that she cannot say today what would happen prior to that time, but she thought it was a good concern and would be something that could be discussed.

Representative Ream asked how they are going to measure success - she said that Sherco was the only major new contractor that is coming on line and if they get the contract would this be considered successful and if they don't, what would that mean.

Ms. Cohea answered that that is something that every legislature and every citizen of Montana will have to decide for themselves, but there are other markets other than the Sherco - there are spot contracts, there are existing contracts if more can be taken under their renewal - there are a number of measures but, again, that is a legislative decision.

Representative Devlin asked Mr. Mockler if he could think of some other companies other than Sherco that this would address.

Mr. Mockler replied that Sherco is the only one that he knows is out for bid at this time, but he has heard that there could possibly be a contract from Wisonsin Power and Light and he thought it would be of significant size.

Representative Raney asked Representative Quilici about receiving information on transportation contracts and sales contracts.

Representative Quilici replied that the transportations costs are confidential, but he felt this bill has all the safeguards that he could possibly see and he would oppose any amendments except those put on by Ms. Cohea, which would strengthen this act. He continued that nobody is sure that this piece of legislation is going to work, but, if they do not do something in this session, he could be sure that by the next session, they will not have a budget big enough to fund one city.

Representative Raney pursued the question of getting information.

Representative Quilici indicated that he has looked at this piece of legislation pretty thoroughly and he could tell him that he has as much concern for the people of this state as anyone else and he also felt they had enough safeguards built into this so that he should not have to worry about what will happen on June 30, 1987. He continued that this is a very tough bill, but there is no way, in his mind. that this bill will do any harm to the people in the state of Montana and he felt that any new production that comes into this state will benefit them.

Representative Koehnke asked Mr. Mockler if he thought that Burlington-Northern would help them by lowering their freight to try and keep this business.

Mr. Mockler responded that the utilities that buy their coal have repeatedly stated that the freight rates on a ton-mile basis are virtually identical for Montana as they are for Wyoming and he did not think that Burlington-Northern has either raised or lowered its rates for a long time nor did he think they were able to do this because their customers know what the freight rate is from Wyoming.

Representative Schye asked if the amendment they put on was put on in good faith after all the work and compromises were put on the bill.

Mr. Mockler answered that he was not involved in the negotiations at all - some of the companies were and some were not - but he did not offer the amendment in bad faith - he offered it as a choice to this committee as he thought it would be worth it to encourage the customers to extend those contracts.

Representative Cohen asked if Mr. Silverman could make some comments.

Mr. Silverman said he would like Mr. Wood to read their present report as the calculations they have made are almost identical to Mr. Woods in terms of the future of coal in Montana and the lowering of price of Montana coal. He stated that he was disturbed about some of the comments concerning the gloomy future of coal in Montana and that in 1975, ten years ago, they were much more pessimistic about the future, but he felt that Montana's future for coal is a positive growth future and he thought that they would be mining twice as much coal fifteen years from now with the upper level of growth that they suggest will happen. He concluded that they are very positive about the Montana coal industry in the future - it is a good one.

Representative Asay asked Mr. Wood that Mr. Duffield and Mr. Silverman thought the future of coal was very bright if they did absolutely nothing and he wondered if he concured with that.

Mr. Wood replied that he did not and he thought the atmosphere of coal mining is such that there are going to be significant purchases of coal and coal is bought five to seven years before hand and he felt there was going to be significant opportunities and unless some type of incentive is there, there is a strong chance that Montana will not participate.

Representative Quilici handed out to the committee Exhibits 26 and 27. He stated that everyone is concerned about Montana's coal tax and you have to give the governor a lot of credit for working out this type of bill and it is a step in the right direction.

The hearing on this bill was closed.

ADJOURNMENT: There being no further business, the meeting adjdourned at 11:35 a.m.

GERRY DEVLIN, Chairman

Alice Omang, Secretary

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 14, 1985

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, GERRY, Chrm.	X		
WILLIAMS, MEL, V. Chrm.	X		
ABRAMS, HUGH	X		
ASAY, TOM	X		
COHEN, BEN	X		
ELLISON, ORVAL	X		
GILBERT, BOB	X		
HANSON, MARIAN	X		
HARRINGTON, DAN	X		
HARP, JOHN	X		
IVERSON, DENNIS	X		
KEENAN, NANCY	X		
KOEHNKE, FRANCIS	X		
PATTERSON, JOHN	X		
RANEY, BOB	X		
REAM, BOB	X		
SANDS, JACK	X		
SCHYE, TED	X		
SWITZER, DEAN	X		
ZABROCKI, CARL	X		

CS-30

Exhibit 1
HB 607
2/14/85
Teresa Cohea

TESTIMONY ON HOUSE BILL 607

by

TERESA OLCOTT COHEA
Executive Assistant
Office of the Governor

Mr. Chairman and members of the Committee, I appear in support of HB 607.

HB 607 reflects the commitment made by the Governor in the State of the State message to give the coal industry a chance to prove that a modification of the coal severance tax will make Montana coal more competitive in the market and thereby encourage expanded production.

Like most legislative proposals, HB 607 represents a compromise -- a compromise between the demands of the coal industry that Montana permanently reduce the tax on all production to a level comparable to or below Wyoming's, and the Governor's insistence on the following:

a) Montana's existing revenue base be safeguarded;

b) Montana not engage in a tax rate "bidding war" with Wyoming; and

c) the proposal be restricted to a limited "window of opportunity", not a wide open door to tax reduction, so that the people of Montana can evaluate whether modifying Montana's severance tax makes our coal more competitive.

HB 607 is based on two important concepts:

1) It holds fast to the current severance tax rate on current production and new contracts already signed. This production totals approximately 38 million tons -- 15% <u>above</u> calendar year 1985 production. The "new coal production incentive tax credit" does <u>not</u> affect this production. Therefore, Montana's existing revenue base is not affected.

2) The bill has been carefully drafted to insure that the credit will be available only for coal production that exceeds Montana coal customers' existing purchases. Based on verified information, the Department of Revenue would establish "base consumption levels" for each purchaser of Montana coal -- the average of 1983 and 1984 production, plus any new tonnage for which contracts have already been signed. Montana coal producers would be able to claim a 33-1/3% credit for the severance tax paid on coal purchased under one of the following conditions:

a) the coal is produced in calendar years 1985 or 1986 and exceeds a purchaser's base consumption level;

b) an existing contract is extended for at least five years for coal in excess of the purchaser's base consumption level;

c) a new contract is signed for coal in excess of a purchaser's base consumption level.

The contract must be extended or signed during the "window of opportunity" -- January 1, 1985, through June 30, 1987. The credit will apply for the life of any contract signed or extended during the period that meets these criteria.

During the past month, when I've talked about HB 607 with legislators and the public, several questions were consistently raised about the proposal. Let me address those questions now in explaining the bill:

Q. Will HB 607 cost Montana revenue?

A. No. The credit applies only to production in excess of production already contracted for, so Montana's existing revenue base will not be affected. Simply renewing existing contracts does not make a coal producer eligible for the credit. To be eligible, he must sell "new" coal -- above current production and contract levels.

Some studies suggested that Montana coal producers have a chance -- by "a slim margin" -- at winning new contracts without modifications in the tax rate. That might be -- but it's too important an issue to be left to chance. If Montana doesn't get the major long-term contract that will be let this spring (the only such contract likely to be let in Montana's market area during the next five years), Montana will lose over $75 million of severance tax revenue over the life of the contract.

Q. Can the "window of opportunity" be closed once we open it?

A. Yes. In fact, under the Governor's proposal, the "window of opportunity" closes on June 30, 1987. Any extension of the "window of opportunity" or other modification of the tax would require new legislation, which would be debated and decided upon by the legislature.

Q. What if some new production occurs and new contracts are signed?

A. Two things will occur:

(1) Montana will gain approximately $2/ton in tax revenue on all the new production generated;

(2) Montanans will have solid evidence to decide whether tax rates really affect Montana's coal markets.

<u>Q. Taxes are a smaller component of the delivered price of coal than freight or mining costs. Will the credit really make a difference?</u>

A. It's up to the coal companies, coal haulers, and coal purchasers to prove that it does. For years, they've said that "pennies per ton" can spell the difference between getting a long-term, multi-million ton contract -- or not getting it. This proposal would reduce -- on a temporary basis and under strict criteria -- the severance tax on new coal. This is the only component of the delivered price of Montana coal over which the state has control. The burden is on the producers and haulers, to sell more coal -- cutting <u>their</u> profit margins and production costs if necessary -- to prove that the tax does -- or does not -- make a difference.

<u>Q. Won't changing our coal severance tax rate signal Congress that we've weakened our stand?</u>

A. No. It will strengthen it. During the past four years, Montana has spent enormous effort and over $1 million defending our right to determine for ourselves the appropriate level for our coal severance tax rate. The U.S. Supreme Court refused to set the rate of Montana's tax saying:

> "questions about the appropriate level of state taxes must be resolved through the political process. Under our federal system, the determination is to be made by state legislators in the first instance .... the state is free to pursue its own fiscal policies..."

Now that we propose to exercise that right, some would argue that we are no longer free to pursue our own fiscal policy! The Governor urges that we exercise the right that we have fought for -- and won -- in both the U.S. Supreme Court and Congress -- to discuss the appropriate level of coal severance taxation.

<u>Q. Is modifying the coal severance tax good public policy?</u>

A. Nearly every session, the Legisalture debates and determines the appropriate level for other taxes:

a) In 1981, the Legislature repealed the surtax on income taxes; our largest revenue source;

b) In 1981, it raised the oil severance tax, our third largest tax source; in 1983, the Legislature lowered the same tax by more than 15%.

c) In 1983, the Legislature revised the tax structure on metal mines;

d) Tomorrow, this committee will discuss a bill to cut the oil severance tax in half for oil recovered through tertiary processes.

In most cases, the Legislature doesn't know what effect these changes will have on the industry involved on Montana's economy. HB 607 offers a low-risk way for the Legislature to determine if the level of Montana's severance tax does affect production and sales. Based on solid evidence of what happened during the "window of opportunity," Montanans and the Legisalture can decide what the appropriate level for Montana's coal tax should be as we move into the second century of statehood.

Exhibit 2
HB 607
2/14/85
Teresa Cohea

AMENDMENTS TO HOUSE BILL 706

1. Page 6, Line 23

Following: "purchaser" "
Insert: "and multiplying the total by 33-1/3%"

2. Page 9, Line 18

Following: "information"
Strike: "confidential"
Insert: "open to public inspection -- certain exceptions. All the information filed with the department in accordance with [section 5] is public record and open to public inspection, except the coal sales agreements as specified in (2)(a) and (b) of [Section 5].

3. Page 9, Line 19 through 23

Following: "15-2-201,"
Strike: "the returns", lines 20 - 22 in their entirety, and "department," in line 23
Insert: "coal sales agreements specified in [section 5] (2)(a) and (b)"

Exhibit 3
HB 607
2/14/85

Montana Coal Council

Mockler

HB 607

Page 2, after line 21, insert the following new paragraph:

(c) For purposes of calculating incremental production after July 1, 1987, for coal purchases under 2(a) and 2(b) above, the purchaser's base consumption level shall be decreased if and as purchaser's sales agreement(s) expire according to the term of those agreement(s) in effect as of January 1, 1985. The base consumption level shall be decreased by that quantity of coal included in the base consumption level which resulted from purchases under the expired agreement.

Page 9, after line 16, insert the following:

(4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

Exhibit 4
HB 607
2/14/85
Mockler

Montana Coal Council

Position Paper Concerning Governor Schwinden's
Severance Tax Rebate Proposal

Governor Schwinden's proposed legislation for a severance tax rebate on new coal sales is a step in the right direction in that it recognizes that the coal industry in Montana is in trouble and needs help. However, the proposal does not address the major problem of contract renewals when a majority of the contracts expire in the mid-1990s. Governor Schwinden's proposal assumes that the utilities purchasing coal will keep their existing contracts in force indefinitely and pay the 30% severance tax on these contracts. This is the one flaw in his proposal. To illustrate the problem let's use the following hypothetical example.

XYZ Utility
Tons in Millions

	1983-84	1985-87	1988-93	1994	1995
Purchases	7.0	7.5	9.5[1]	6.5[2]	2.5[3]
Base Level Tonnage	7.0	7.0	7.0	7.0	7.0
Tons Subject to Credit	0	.5	2.5	0	0

1. Signs a contract for 2.0 million tons during window of opportunity for deliveries starting in 1988.

2. Contract for 3.0 million tons expires and is not renewed.

3. Contract for 4.0 million tons expires and is not renewed.

The first amendment proposed by the Montana Coal Council gives the rebate to existing contracts that are extended for at least 5 years beyond their expiration date. They would only get the rebate during the period covered by the extension and not during the primary term of the contract. If this amendment is not adopted, current customers will get little, if any, benefit from the proposal, and, in fact, would be penalized. New customers would be favored over existing customers and our best prospects for new or continuing business are our current utility customers.

The second amendment we request simply requires the Department of Revenue to certify in advance whether any contract in question would qualify for the tax advantages addressed by HB 607.

607

Montana Coal Council

Position Paper Concerning Governor Schwinden's Severance Tax Rebate Proposal

Governor Schwinden's proposed legislation for a severance tax rebate on new coal sales is a step in the right direction in that it recognizes that the coal industry in Montana is in trouble and needs help. However, the proposal does not address the major problem of contract renewals when a majority of the contracts expire in the mid-1990s. Governor Schwinden's proposal assumes that the utilities purchasing coal will keep their existing contracts in force indefinitely and pay the 30% severance tax on these contracts. This is the one flaw in his proposal. To illustrate the problem let's use the following hypothetical example.

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The second amendment we request simply requires the Department of Revenue to certify in advance whether any contract in question would qualify for the tax advantages addressed by HB 607.

Exhibit 5
HB 607
2/14/85
Polzin

Montana's Coal Industry: Facing an Uncertain Future

Paul E. Polzin
Professor and Director of Forecasting
Bureau of Business and Economic Research
University of Montana
Missoula, MT 59812

I. Conclusion: Due to deterioration in Montana's competitive advantage, existing coal contracts may not be renewed and/or new coal contracts may not be signed. This may lead to the direct loss of 300 to 500 well-paying jobs with labor income of $10 to $18 million per year. Montana's competitive advantage may be improved by reductions in the following:

   A. The Coal Severance Tax.

   B. Coal mining costs.

   C. Transportation costs.

II. Montana's Economy.

   A. A slow recovery from recession began in 1983 and continues today.

   B. Montana's economy will not regain prerecession 1979 peak until late 1985 or 1986.

   C. Montana has experienced permanent reductions in its economic base resulting in the loss of more than 7,000 jobs.

      1. The loss of a transcontinental railroad (The Milwaukee Road).

      2. The closure of primary metal refineries in Anaconda and Great Falls.

      3. The shutdown of a large plywood plant and sawmill in Missoula.

4. The closure of all Anaconda mining operations in Butte.

5. The loss of Burlington Northern Railroad jobs due to reorganization and automation.

D. The prospects for new basic industries are limited.

1. A few new small mines.

2. A few small manufacturing plants.

3. Expansion of nonresident travel and tourism.

III. The Contribution of Coal Mining to Montana's Economy.

A. Coal mining employs 1,300 persons in Montana with labor income of $53 million.

B. Coal mining accounts for 1.6 percent of Montana's economic base as measured by employment, and 3.6 percent as measured by income.

C. Coal mining jobs are high paying and steady.

IV. What Happened to Montana's Coal Boom?

A. Demise of synthetic fuels.

B. Change in air pollution regulations.

C. Moderating growth in demand for electricity.

V. The Outlook for Montana's Coal Industry.

A. Current contracts call for increase of about 6 million tons per year by 1987. No growth thereafter.

B. Contracts totaling 15.4 million tons per year with Minnesota and Wisconsin utilities will expire in 1995 or earlier.

C. Two new electric generating plants planned, one in Minnesota and one in Wisconsin.

D. Montana's competitive position will deteriorate relative to Wyoming.

1. Scheduled reduction in Wyoming's Coal Severance Tax.
2. A second railroad now serving Wyoming coal fields.
3. New Wyoming mines closer to midwest markets.
4. Revised formula to calculate federal coal royalties.
5. Increases in mining and other costs work to disadvantage of Montana mines.

Exhibit 6
HB 607
2/14/85
Polzin

Montana's Coal Industry

facing an uncertain future

Exhibit 7
HB 607
2/14/85
Icenogle

HB 607

Mr. Chairman and members of the Committee, my name is Lanny Icenogle and I am Project Manager for Montco, a proposed surface coal mine in the Ashland area. During the past year, Montco has received its mining permit from the Montana Department of State Lands and is currently seeking coal commitments to enable us to be the first new mine in the State in over 7 years.

Also present here today is Victor H. Wood who is a consultant responsible for marketing efforts for the proposed Montco Project. Mr. Wood was previously in the Coal Purchasing Department of Northern States Power Company of Minneapolis for 23 years. In that position he was responsible for selecting and negotiating the two major long-term contracts now held by NSP with Montana coal operators that were executed in the early 1970's. A portion of my testimony reflects the views of Mr. Wood regarding his coal marketing efforts. Mr. Wood will be available to answer questions regarding Montana's coal market.

HB 607 is a positive step which addresses problems posed by the current severance tax. The Governor, sponsor and co-sponsors

(7)

should be commended for taking a creative approach to a problem facing Montanans. Legislation such as HB 607 is needed by the coal industry to remain competitive and will enable the utilities to select and buy increased amounts of Montana coal.

Although we support the "window of opportunity" and are excited about the prospects of competing in the market with an added incentive, there is a problem which has been addressed by previous speakers, which if not corrected through amendment will likely make the bill fall way short of expectations during the window period. As written, the bill will only attract short-term commitments, if at all. The bill as drafted requires purchasers to renew their existing contracts prior to July 1, 1987, at the current 30% severance tax level in order to be eligible for the proposed coal tax credit for additional coal purchases. Montana's existing contracts expire beginning in the early 1990's. Requiring utilities to renew all existing contracts in order to obtain the tax credit on new purchases by making premature judgement of competitive forces is not reasonable. As the bill's lack of a certification process whereby an agreement can be submitted to the Department of Revenue in advance to determine eligibility for "new coal" treatment. The process, similar to an IRS opinion, is absolutely essential where the parties must make large capital investments to develop a mine and in some cases transportation. We think this is equally important to the State which will assure them that the coal is truly "new" coal. We are proposing a simple process to accomplish this and ask the Committee to consider the amendment.

We thank you for your consideration of our comments.

Amendment #1

Page 2, after line 21, insert the following new paragraph:

(c) For purposes of calculating incremental production after July 1, 1987, for coal purchases under 2(a) and 2(b) above, the purchaser's base consumption level shall be decreased if and as purchaser's sales agreement(s) expire according to the term of those agreement(s) in effect as of January 1, 1985. The base consumption level shall be decreased by that quantity of coal included in the base consumption level which resulted from purchases under the expired agreement.

Amendment #2

Page 9, after line 16, insert the following:

(4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

Exhibit 8
HB 607
2/14/85

1/14/85

STATEMENT BY:

NERCO MINING COMPANY ON HOUSE BILL 607

Mr. Chairman and members of the Committee, I am J.R. McPherson, Director of Public Affairs for NERCO Mining Company. NERCO Mining Company owns and operates the Spring Creek Mine located in Big Horn County, Montana. In addition, NERCO Mining Company is 50% owner of the Decker Mines which are also located in Big Horn County. The combined output of these mines was approximately 13 million tons or nearly 40% of Montana's total coal production in 1984.

I am here today to express NERCO's support for the general concept proposed in HB 607 which offers coal producers a window of opportunity to market more coal. We appreciate the interest shown by the Governor and the Legislature in the problems confronting our industry in marketing new coal. Given extremely competitive market conditions, we need legislation such as HB 607 to provide incentives for new coal sales which, in turn, generate additional revenue for the state.

However, NERCO believes that HB 607 must take an additional step by providing severance tax relief to all existing purchasers of Montana coal. We hope that the Governor and Legislature recognize the substantial contribution made to Montana's economy and revenue base by these customers. For example, during 1984 the state received more than $89 million in coal severance tax of which approximately $17 million was credited to the general fund. These are important business customers today; and we hope they will chose to return to Montana when they need additional coal and when their existing contracts expire.

In order to achieve this goal, yet be consistent with the Governor's concept, NERCO proposes that existing customers be included among the beneficiaries of HB 607. In addition to the 33-1/3% credit awarded to new purchasers of Montana coal, we recommend taking an additional 16-2/3% of the severance tax collected on these new coal sales and distributing it to existing customers on a pro-rate basis. In simple terms this means the state will receive one-half of the revenue from new coal sales, while one-third will go to new coal purchasers and one-sixth will go to existing customers.

We have drafted a proposed amendment to accomplish this goal and attached it to our written testimony for the committee's consideration.

This approach will not affect the current or projected revenue base, yet it will send a positive message to our existing customers that the state values their business and wants them to remain in Montana. Furthermore, it will send a positive signal to other businesses which might consider locating in this state. In all respects, it would strengthen the effort to "Build Montana."

I urge you to adopt the proposed amendment and give HB 607 a do pass recommendation.

NERCO MINING COMPANY AMENDMENT TO HB 607

Page 6, line 8, insert:

"(3) Of the remaining 66 2/3 per cent of the tax imposed on incremental production eligible for the tax credit (1) and (2) above, 16 2/3 per cent will be eligible as a tax credit to coal mine operators producing coal as of December 31, 1984, on a pro rata basis beginning on January 1, 1985. Such coal tax credit shall in turn be refunded to the coal purchaser."

Renumber (3) to (4).

Exhibit 9

HB 607

Mr. Chairman and members of the Committee, my name is Joe Presley. I am President of Westmoreland Resources, Inc. Westmoreland Resources owns and operates the Absaloka Mine. We mine approximately 4.0 million tons per year but have a current capacity to produce 10.5 million tons per year.

All of Westmoreland's present contracts expire in 1993. Unless we get extensions on these contracts or acquire new contracts we are out of business in 1994. We have been aggressively seeking new contracts but have not been successful in these efforts. As you know, there have not been any significant new commitments for Montana coal since the severance tax was passed in 1975. Economic professors from the University of Montana may be able to cavalierly say that our existing contracts will be renewed, but their assurance does not give me a lot of comfort.

One argument for not reducing the severance tax is that the Burlington Northern will just increase the freight rates to capture any tax reduction. This is not true for two major reasons:

1. The Staggers Act passed by the U. S. Congress in 1980 granted railraods the authority to enter into long-term contracts with shippers. Since the passage of the Act, all but two of the utilities purchasing coal from Montana have signed long-term contracts. These contracts set the freight rate and provide for the rate to be periodically adjusted for inflation or de-flation. The BN is currently negotiating with one of the two utilities

that has not signed a contract. In 1984, Montana producers mined and sold 33.1 million tons. 28.1 million was shipped out of state. 77% of this tonnage is covered by long-term contracts.

2. Opponents of the tax rebate proposal do not need to worry about utilities. They are big boys and can take care of themselves. Since rail freight is the largest component in the delivered cost of coal, utilities will enter into a satisfactory contract with the Burlington Northern before they ink a contract with a Montana producer. They have other alternatives for coal and will not buy from Montana unless their delivered cost, including the freight, is their least cost alternative.

Thus there appears to be adequate restraints to prevent BN from capturing any tax reductions by Montana.

check, which right now potentially leans itself towards having this facility in Mandan, North Dakota.

With the new mines being created in the above forementioned counties and the building of a rail spur to these potentially new mines, would create approximately an additional 100 miles of rail. This would result in Glendive being in the center of a 200 mile maintenance check. Glendive, as well as Dawson County and the state of Montana, are in need of having this facility because without it we have lost a strong employment base and tax revenue that would be sorely missed.

It is also our feeling that any attempts to maintain the state's present production levels without being dictated by the marketplace are doomed to failure, just as our recent example of OPEC would indicate.

The Governor's bill is intended to give the coal industry the opportunity to put up or shut up in order to demonstrate whether or not the coal severence tax issue effects the marketability of Montana coal.

Mr. Chairman, may I submit that this incentive needs to be amended in order to promote long-term coal commitments during the window of opportunity. Let me stress that the only effective way that Montana can be assured that it can sustain current production levels beyond the expiration date of existing contracts will be predicated upon the success of Governor Schwinden's initiative. If Governor Schwinden's initiative is not successful in promoting long-term commitment, the proposal will become the window of doom for eastern Montana.

Mr. Chairman, we offer the following amendments and feel if accepted would create the opportunity that the coal industry needs in order to pass the acid test in 1987.

AMENDMENTS TO HB607

Page 2 after line 21 insert the following new paragraph:

(c) However, the base consumption level under (a) & (b) shall be reduced by the quantity of coal included in the original base consumption level purchased under a contract executed prior to January 1, 1985, at the time the contract terminates or would have terminated under the terms of the contract.

Page 9 after line 16 insert the following:

(4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

In closing, we feel it is imperative to pass legislation that treats all parties equally and gives everyone who is interested in mining Montana coal, purchasing Montana coal, or any potential new entries into the Montana coal market the same opportunities and incentives.

Exhibit 10

WITNESS STATEMENT

NAME [illegible] BILL NO. HB-607

ADDRESS 211 [illegible], Glendive MT DATE 2-14-75

WHOM DO YOU REPRESENT? Glendive Forward of MT

SUPPORT Yes OPPOSE ______ AMEND Yes

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We, Glendive Forward of MT represent surrounding communities of eastern MT as well as Glendive.

We support HB 607, we feel it is imperative to assist by legislation a severance tax [illegible] [illegible] [illegible] degradation, [illegible] coal development from our state

We support amendments to [illegible] [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible] not [illegible]

[illegible]

CS-34

Mine Forum

I Imperative that HB 6-7 must be Supported + Passed

II Imperative that MT [illegible] anymore [illegible]

III Natural Resource [illegible]

IV We have been advised that

N. Dak coal is better MT coal

Wyo coal is not better MT

N Dak + Wyo [illegible] higher than MT

(1) [illegible] same best [illegible]

(2) [illegible]

Coal [illegible]

V Legislation [illegible] must

(1) Jobs

(2) [illegible]

[illegible] homes

[illegible]

VI We [illegible] Sundance

[illegible]

Exhibit 10

WITNESS STATEMENT

NAME Jim Stephens BILL NO. HB-607

ADDRESS 415 Wilda Lane DATE 2/14/85

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I am Past Pres of Mont Grain Growers - Mont F.U. - and the Int trade commission

I think this bill has merit and should be given a chance to work. I am a farmer & a motel operator. We in Ag have been told to take less and we'd make more - it hasn't worked in Ag. - I do think it could work here. - If it does, and all other segments of the industry Bit the Bullett - we will all be the benefactors -

Please look favorable on this Bill and give it a chance.

CS-34

Exhibit 11

WITNESS STATEMENT

NAME WARD SHANAHAN BILL NO. 607

ADDRESS 917 GILBERT STREET DATE 2/14

WHOM DO YOU REPRESENT? MONTANA MINING ASSOCIATION

SUPPORT X OPPOSE ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman, members of the committee:
I'm a lawyer in Helena, I serve as chairman of the coal tax sub-committee of the Natural Resource Section of the American Bar Association. I'm a Director of the Montana Mining Association and appear here at the request of that association.

Montana must make an attempt to assist in the sale of its products. Economic health is dependent on production. The Environment has been and will be protected. The other side of the equation must be addressed. The production & sale of our products, particularly coal is dependent on a constructive proposal like HB 607.

W Shanahan

10

Exhibit 12

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM REPRESENTATIVE BOB BACHINI OF HOUSE DISTRICT 14, HILL COUNTY, AND ALSO SPEAKING IN BEHALF OF CARL KNUTSON "STATE LEGISLATIVE REPRESENTATIVE OF BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES" (GANDY DANCERS) WHO IS OUT OF TOWN TODAY. WE SUPPORT HOUSE BILL 607, IF IN ANY WAY IT WILL ACTIVATE NEW COAL SALES FROM MONTANA MINES.

8:00 A.M. FEBRUARY 14, 1985
ROOM 312-2

BB/MFR

(1)

Exhibit 13
HB 607
2/14/85
Towe

The Big Sky Country

MONTANA STATE SENATE

Senator Thomas E. Towe — January 16, 1985

ARGUMENTS AGAINST LOWERING THE COAL TAX

1. COAL TAX IS NOT A SIGNIFICANT FACTOR IN THE TOTAL PRICE.

Mining Costs	=20% of delivered price	From 1977 FERC Report
Freight	=60% of delivered price	
Tax (all taxes)	= 9.8% of delivered price	
Profit (Net Income)	=10.2% of delivered price	

Therefore, lowering the severance tax by 33 1/3% = 2.6% of total price. The same effect could be produced by cutting:

a) Profit by 25%
or b) Mining Costs by 13%
or c) Freight by 4 1/3%

2. WYOMING HAS MANY ADVANTAGES.

a) Less mining costs -- overburden to seam thickness ratio 30% less cost.

b) Geared up sooner -- before federal coal leasing moritorium.

c) Over built -- 60,000,000 ton per year excess capacity (Montana has 15,000,000). Therefore, can afford to cut price and compete better.

d) Closer to markets in South -- $1.60 to $3.00 per ton.

e) More private coal in Montana. Royalties expected to go up and not deductible. Federal royalties are deductible in both states.

f) Rail competition means 1 to 3 mills per mile cheaper freight from Wyoming.

3. YET, WE STILL UNDERSELL WYOMING IN 9 OUT OF 10 COMMON

BURNSITES WHERE BOTH MONTANA & WYOMING COAL IS SHIPPED. (Measured by BTU per pound delivered.)

--Montana is 280 miles closer to Minneapolis (NSP), which is $5.04 savings at $.018 per ton mile.

--Average coal tax last quarter was $2.88 total.

4. MONTANA HAS MORE NEW CONTRACTS SINCE THE COAL TAX THAN BEFORE (7 OUT OF 13 CONTRACTS SINCE 1975 OR 53.8%)

--57.9% of total annual coal shipments contracted for have been contracted since 1975.

--Wyoming has only 52% since 1975 (37.6% of their annual coal shipments).

--The largest contract in the history of the world was in Montana since 1975.

--Two new contracts -- Colstrip 4 and Bellriver -- have just been entered into -- not yet producing. This will add about 9,000,000 tons annually.

5. THE REAL PROBLEM IS THE SLUMP IN THE COAL MARKET.

--World-wide problem.

--Pennsylvania, West Virginia, Illinois, Ohio -- massive unemployment for last 8 years. Montana has actually increased slightly.

--Midwestern Utilities (our prime market) overbuilt based on grossly overstated energy forecasts.

--Generally no new contracts will be signed until a new plant is built, then one contract for 20 years.

--Coal conversion mandated by Energy Policy Act of 1978 never took place.

--This situation is expected to change starting in 1995.

--Energy supply will again become short.

6. WYOMING WILL PROBABLY MATCH US DOLLAR FOR DOLLAR IN REDUCTION OF COAL TAX.

--Heavy Republican House and Senate is ready to introduce the bill.

--Waiting to see Montana's reaction.

--Governor's proposed credit (window of opportunity) will probably be seen as a reduction from 30% to 20% (details will be lost in translation)

7. BURLINGTON NORTHERN WILL PICK UP 95% OF ANY REDUCTION WE GIVE.

--BN has enormous stake in Montana coal shipping.

--They can't afford to lose this freight income.

--Either with or without the tax reduction, they will come in and bid a long-term freight contract (permissible under the Staggers Act) at just a fraction of a cent per ton under Wyoming bid to save the freight for their Montana line.

--Whether our tax is $3.00 per ton or $2.00 per ton, BN will bid just enough less to get the contract.

--They would like to get $14.00 per ton to Minneapolis but they could come down to $12.35 per ton and still be higher per ton mile than Chicago Northwestern, which serves Gillette, Wyoming.

--If BN matched their competition (Chicago NW) at
$.0154
per ton mile, they would reduce the delivered price per ton by $2.08 or twice the savings of the Governor's proposal.

8. TO SUGGEST ANY REDUCTION NOW SUGGESTS THE COAL COMPANY ARGUMENTS ARE VALID, WHEN THEY ARE NOT.

9. ONCE THE COAL COMPANIES GET A REDUCTION TO 20%, WE WILL NEVER GET IT BACK UP TO 30%.

--If the coal companies do get more contracts, they will argue we have to extend the deadline because it worked. We won't be able to stop then.

--If the coal companies don't get more contracts, they will argue that they need more time to let it work. We won't be able to stop them.

--The time will expire on July 1, 1987. This means an extension will be the big issue of the 1986 election campaign. Big business PACs will swamp the next election with the request that the "window of opportunity" be extended -- whether we get new contracts (the coal companies put up) or not (the coal companies need more time).

--Finally, the coal companies will ask to move old contracts down to 20% because it is discriminatory to leave some at 20% and some at 30%.

--The amendment to reduce lignite to 20% was passed in 1975 and we never were able to get it back up to 30% even though they never have obtained any contracts or commenced any new production.

WHY ALLOW A FOOT IN THE DOOR WHEN WE DON'T NEED TO?

Thomas E. Towe

Thomas E. Towe

Exhibit 14
HB 602
2/14/85
Towe

Figure C-2

Montana Market Area for $1.00/Ton Price Reductions Against $7.70/Ton Wyoming Coal. Base is $9.50 Montana.

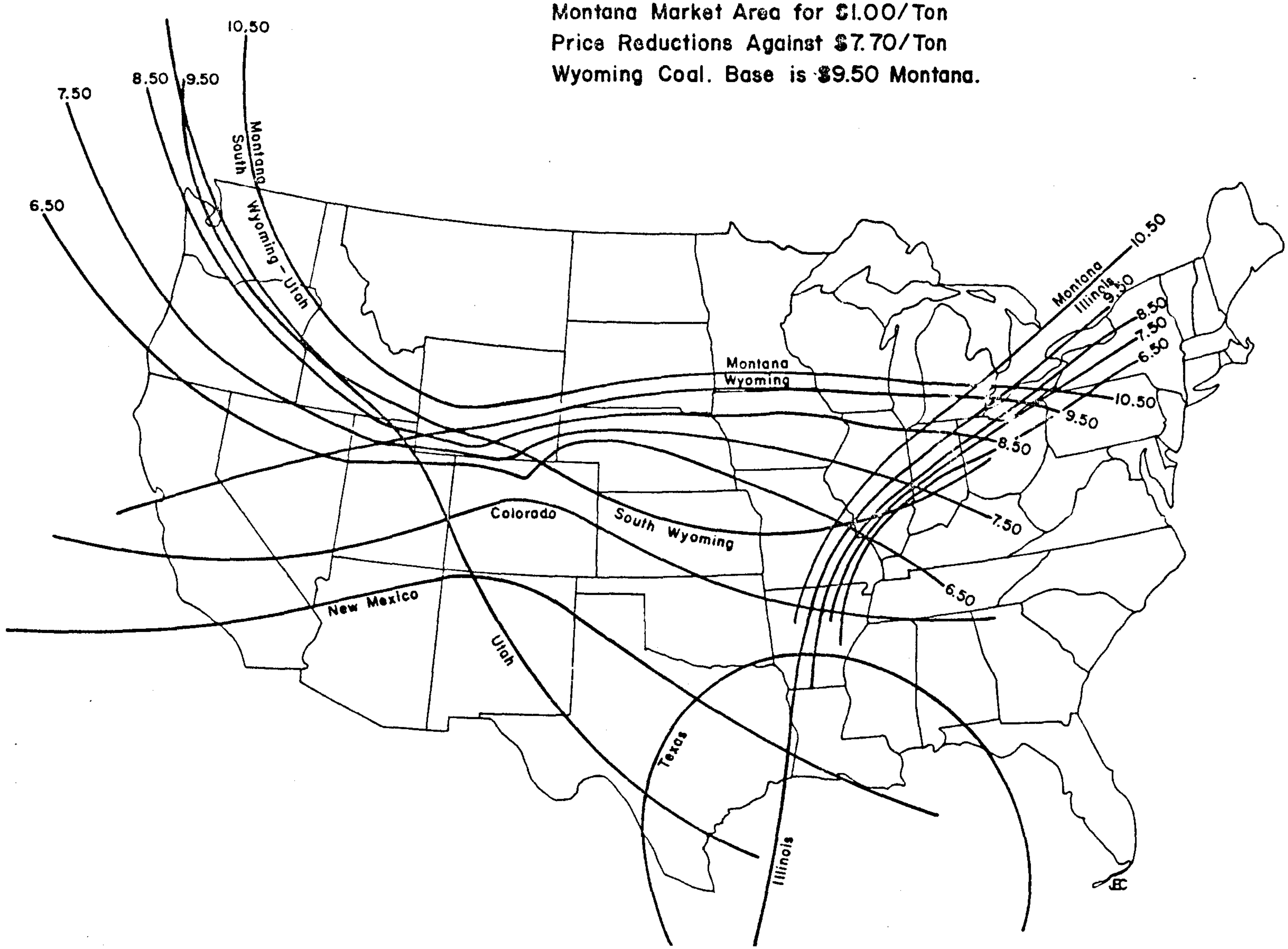
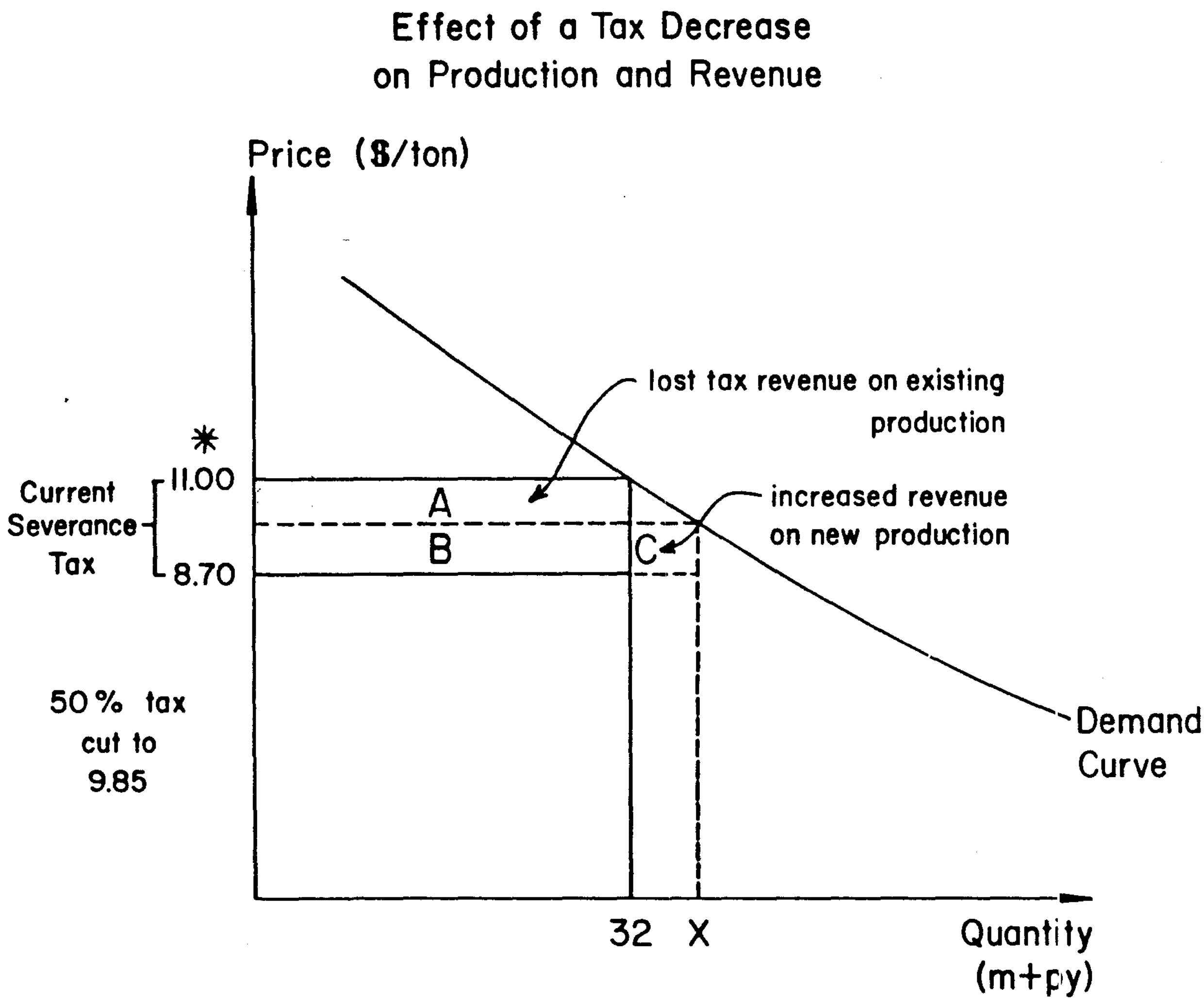


Exhibit 15
HB 607
2/14/85
Towe

Figure S-3



A+B= current revenue.
A=lost revenue under tax reduction.
C=revenue on new production.
C-A=net change in tax revenue.

Issue: X=new production level (elasticity of demand).
* Average price of 8700 BTU producers, for example.

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Exhibit 16
HB 607
2/14/85
Towe

Thomas E. Towe
Senate Dist. 46
13 February 1985

IMPACT OF MONTANA'S COAL TAX

Delivered price of coal -- to Minneapolis, Minn.

Freight (BN Railroad)	$13.60	-	57.62%
Mine Price of Coal	10.00	-	42.37%
Severance Tax	2.16	-	9.15%
Coal Co. Profit (M. White)	1.72	-	7.29%
Coal Co. Profit (FERC)	2.40	-	10.20%
Reduction Under HB 607	.72	-	3.05%

Reduction of Coal Tax Under HB 607 - 72 cents
Reduction of Freight Rates by BN from
1.7 cents to 1.6 cents per ton mile - 79 cents
(Chicago Northwestern is at - 1.54 cents per ton mile)

Montana Mine

Delivered Price of Coal to Minneapolis, Minn.*

Mining expense	$2.50	
Reclamation expense	.60	
Royalty expense	1.25	
Depreciation	.61	
Production taxes (at $10.00 per ton)	3.14	(State-$2.21, Fed.-$.50, & local taxes-$.43)
Real Estate Taxes	.03	
Administration & General	.15	
Total Mining Costs	**$8.28**	
Profit	1.72	
Total Mine Price	$10.00	
Freight at 1.7 cents per ton mile**	13.60	(800 miles)
Total Price Delivered	**$23.60**	

Wyoming Mine

Montana Price	$10.00	per ton
Less small production cost***	1.81	$3.26 1/2 less
Less smaller tax	1.08	
Less smaller royalty	.375	
Wyoming Price	6.74	
Freight at 1.7 cents per ton mile	18.36	(1,080 miles)
Total Price Delivered	**$25.10**	

TC

Therefore -- to compete -- Wyoming Mine has to sell:

$25.10 Wyo. price delivered
$23.60 Mont. Price delivered

$ 1.50 Price advantage for Montana.

$6.74 Wyoming mine price
less 1.50 difference

$5.24 Price for Wyoming to compete

But if Montana reduced price by $1.50 to $8.50 per ton (80 cents profit instead of $1.72)

- $5.24 Price for Wyo. to compete at $10.00 Mont. coal
- 1.50 Further reduction

$3.74 Price for Wyo. to compete at $8.50 Mont. coal

LOSS OF REVENUE TO MONTANA

Sherco #3 Contract:

$1.5 million to 2.5 million tons per year
x 20 years
-----
30 million tons
x 72 cents (tax reduction under HB 607

$21.6 million loss

But with Sherco #3 contract, the coal companies will say -- "We put up, now keep faith and reduce all tax to 20%."

$112,000,000 (tax projected for FY '87)
x 33 1/3%

$ 37,329,600 loss per year
x 20 years (with no increase in production)

$746.6 million loss

Also what is to stop BN Railroad from increasing freight rates to 1.79 cents per ton mile from 1.70 cents per ton mile (5.3% rate increase)

--.09 cents per ton mile = 72 cents extra cost of delivered coal
--33 1/3 % credit on coal tax (HB 607) = 72 cents less cost of delivered coal

----

* All figures but freight from Marty White, CEO, Western Energy, Butte Symposium, 22 Sept. 84
** Freight from John Hertog, 31 Jan. 85, Helena, Mont.
*** From James Murphy, Market Dept. Western Energy, Butte Symposium, 21 Sept. 84

Sherlee Graybill
Great Falls, Mont.
Taxation Comm. 2/14/85

Exhibit 17
HB 607
2/14/85

I have come here today to encourage careful investigation of of the Governor's plan to lower the coal severance tax by 1/3 for coal sold during the next two years.

The proposal came upon us quickly and in our haste to learn its provisions and understand its effects, I believe we risk forgetting the originial reasons for passing the 30% coal tax several years ago.

If pressed I know that anyone on the Natural Reasources Committee could certainly list the reasons for the 30% coal tax pretty thoroughly--but I wonder if in our hurry to review the Governor's proposal, have we made enough effort to reflect on the fundamental rationale for the original tax?

The tax was created because we in Montana decided to take control of our future--and not leave it in the hands of corporations and out-of-state interests.

But what gave us the right to do that?

I want to suggest two reasons for that right.

First, we live here. We bring up our children here. We try to ensure that life here for us and our children is a good life. To do that we must always legislate with foresight. The policies we adopt in this state should not be stopgap measures. The coal tax was not designed to help the coal industry. Montana's coal tax is for Montana's benefit. The coal tax was broadly conceived; it was desiged with regard for the future.

It would be a shame if the tax were suddenly changed because of the vagaries of the present coal market, and a desire to make a quick profit.

Perhaps the new proposal's rationale goes deeper than this, but that needs to be proven before we lower the coal tax hastily. We should not risk waiting to find out if the proposal's logic is sound <u>after</u> we have lowered the tax.

<u>The second reason</u> we had the right to adopt a 30% coal tax is because Montana coal is part of Montana. Once it is gone--it is gone for good. We have an abundant supply--but there is not an inexhaustible supply of economically minable coal. It is our responsibility to see that Montana's reasources

are managed so that Montana realizes the most good from them, for as long as the coal lasts.

The 30% tax was structured to make sure that we get a fair price for coal taken out--at the same time protecting the coal from those who would exploit it.

When our coal is gone will we be able to say that Montana benefited from the way we, who sit here today, managed that coal reasource?

SUMMARY

#1 The 30% tax should not be sacraficed for relief from temporary market conditions. That would be short-sighted. The tax must be oriented toward the future.

#2 We must manage our nonrenewable reasources in order to maximize the benefit for Montana's future generations.

#3 Perhaps this new proposal does look to the future. But I am not yet confident that it does. I wonder how many Montana law-makers can say that they are confident of the proposal's long term logic?

Answer page

* I am not an expert.

I wanted to articualte why the 30% tax was and still is important to Montana.

* And I wanted to express my concern that the proposed change be reviewed in light of these reasons.

* Some say that the need for coal will decrease. But what happens if, in 10 or 20 years, the need for coal increases? Are we going to be better off at 20%--than we would be at 30%? Will we be able to get the tax back up to 30%? It's easy to lower it, will it be so easy to

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Exhibit 18
HB 608
2/14/85
Powell, Keith

Testimony of Keith Powell, Chairman
Northern Plains Resource Council
Feb. 14, 1985
House Taxation Committee - HB607

Ten years ago the 1975 Legislature created the 30% Coal Severance Tax. These legislators believed that while some part of Montana's wealth, from non-renewable resources was being removed from the state, that it would be prudent for the state to build a trust fund. This fund would continue to benefit the state long after the coal marketing had ended. These legislators also believed, in 1975, that some funds to ease the tailend impacts were also going to be needed. They were proven right a few years later when Atlantic Richfield closed down, and there were no tailend funds.

Now this 1985 legislative session is to consider lowering the 30% coal severance tax by one third. (Temporarily they say). The purpose we are told is to make Montana's coal more competive to capture any possible new coal contracts.

We should be aware that at present, Montana coal under sells Wyoming coal in 9 out of 10 common burnsites on a B T U basis.

It is true that the coal market is depressed and for several reasons; the severance tax not being significant. Crude oil prices have declined. Also a large area of the country is bulging with excess electricity,(Basin Electric, Montana Power, Laramie River Station in Wheatland, Wyo. and the Pacific North West with it's excess power, and yet the mothballed atomic plants).

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There is an excess of generating capacity, and the possibility of several new coal contracts is remote. The one likely new contract, for a Minnesota power plant, could be served by Montana mines significantly cheaper than by Wyoming coal even with the 30% severance tax.

According to the Montana Dept. of Revenue the effective rate of Montana's coal severance tax at present is 20.8% and will drop to 18.5% in the fall of 1987, when the royalty deduction provisions, passed in 1983, are phased in.

I believe that the present legislature has been quite protective of its revenue measures, and rightly so. To approve a further cut in the coal severance tax would be costly to the State Treasury and could be disastrous in the long run.

Do we want to initiate a price war with Wyoming? They have more excess mining capacity than Montana. Some OPEC countries have had some experience at this.

Are we sure we could close the window? Or would the window be used to open the door?

This appears to be special interest legislation at the expense of Montana people. I believe the severance tax should be left alone.

The cost of freight is approximately 60% of the cost of delivered coal. Perhaps the spread between Burlington Northern's rates and those of Chicago North Western might be a better place to do some trimming.

Thank you.

Exhibit 19
HB 607
2/14/85
Best

MONTANA'S 30% COAL SEVERANCE TAX: A LOOK BACK

Montana's 30% severance tax on coal has been attacked by utilities and mining companies, and defended by public officials and Montana citizens generally, since its passage during the 1975 legislature.

One way to put the present debate into perspective is to look at what has been said about the tax since its passage. Here are some quotes from those most involved in the debate over Montana's coal severance tax--a debate that has raged in the Montana legislature, in the U.S. Congress, and in the judicial system, all the way up to the U.S. Supreme Court.

We start with a look back to 1973, when the Montana legislature was considering a bill to raise the "Strip Mine License Tax" on coal to a mere 40 cents per ton. Here is what the Decker Coal Company had to say about "H.B. 509":

> An increase in the coal mining license tax is a further severe impediment to, if not a complete suspension of, the orderly development of the Montana coal industry...The percentage increases imposed and presently proposed, all within a three-year period, are a tremendous burden...Such increases would be understandable were the initial rates unreasonably low or in a non-competitive market. Such is not the case here. The base rate of 5 cents per ton taxation from 1921 to 1971 is substantially higher than the tax of our major competitive state.
>
> ...The increased tax does not improve the possibility of obtaining new contracts and continuing, at the expiration of its current contract, its contribution to Montana's economy.
>
> There are those who would prefer no mining. They may well have accomplished their purpose if HB 509 is passed.

Despite Decker's testimony, HB 509 was passed. Shortly thereafter, Decker entered into a 180 million ton, six year contract with Commonwealth Edison of Chicago; Westmoreland prepared to open a new mine to produce four million tons per year; and Western Energy opened up a new mine.

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In 1975, the legislature passed Senator Tom Towe's SB 13, the 30% coal severance tax after Towe told his fellow legislators:

> The history of coal mining in the state is that wealth in coal is not in prosperous communities. Coal is known for two things, coal and poverty. Coal hasn't paid its fair share in other parts of the country. But I won't let it happen in Montana. We need the revenue: The social impact of coal development is being felt by taxpayers, ranchers and farmers in Rosebud County. Colstrip needs more schools and roads. What will happen 30 years from now when the coal is gone? Will we have a large hole in the ground like in Butte?

The following year, the people of the State of Montana overwhelmingly voted to put half of the revenues from the tax into a permanent trust fund for future generations. And the debate was on:

> "The highest coal tax in the nation" is what both proponents and critics are calling Montana's new dual severance tax on coal.
>
> The critics claim it will cut production and development of this natural resource so abundant in Eastern Montana and send diggers to other states.
>
> Proponents say that at long last Montana has learned that the people of the state have a stake in its natural resources...
>
> What is especially significant in the legislative action is a changing attitude toward the ownership of natural resources.
>
> Such resources, the state seems to be saying, no longer belong solely to the owners of the land over them or those who hold the mineral rights. They belong in some degree to all of the people of the state.
>
> --<u>Billings Gazette</u> Editorial
> <u>April 24, 1975</u>

> Fears that Montana coal development will be stifled by the new state tax, the highest in the west, appear to be quite groundless.
>
> The bill was hardly more than passed when Decker Coal Co. applied for permission to open a second strip mine

> in Big Horn County and revealed plans to expand another...
>
> ...Even though the profits may not be quite as high, they will be substantial and the state of Montana will not be left with empty pockets to regretfully gaze at holes in the ground.
>
> --Billings Gazette Editorial
> May 1, 1975

Soon after the tax was passed, the major coal and utility companies began efforts to undo the tax on two fronts--in the courts, and in the Congress. Newspapers, state officials, and Montana's Congressmen and Senators in Washington decried these efforts and defended the 30% coal severance tax:

> Montana should not stand by wringing its hands as the large coal and power companies try to knock out the state's severance tax on a nonrenewable resource...
>
> ...[I]t really isn't a matter of the amount of the severance tax that nettles the giants attacking Montana's 30% severance tax. They just don't like any severance tax on what use to be theirs for the taking...
>
> No, we don't think Montana should have an anti-business climate. Neither should it be expected to wag its tail for grudgingly given handouts from the exploiters.
>
> --Billings Gazette Editorial
> January 4, 1978

> I will not sit by and let the coal barons try to do to Montana what the copper barons did in the past. Eastern Montana has the largest coal reserves in the world, but once that coal is gone life must go on...I will not allow Eastern Montana to be turned upside down without proper reclamation and present and future benefits to offset social and economic impacts...
>
> It is becoming increasingly obvious to me that coal and energy interests from outside Montana want the coal and water without regard for the future of Montana.
>
> --Congressman Ron Marlenee
> January 4, 1978

After District Judge Peter Meloy rejected the coal and utility companies' suit to overturn the tax in late 1979, public officials were elated:

> Montana will never again roll over and play dead when big outside interests decide to take our resources.
>
> --Attorney General Mike Greeley

> I'm delighted and relieved.
>
> --Lieutenant-Governor Ted Schwinden.

The Montana Supreme Court upheld Judge Meloy's decision in July of 1980:

> Montana has been painfully educated about the extreme economic jolts that follow when the mine runs out, the oil depletes or the timber saws come still.
>
> We have a good many examples that teach us what happens to our hills when the riches of our Treasure State are spent.
>
> From the Supreme Court's opinion,
> Judge Sheehy

The Justice's opinion was based on Montana's history, but it was prophetic as well. Just three months later, thousands of workers were laid off in Butte, Anaconda, and Great Falls:

> If there is a living soul in Montana who still opposes the state's coal severance tax, let them mount a soap box in the center of Anaconda, Butte or Great Falls and give us the benefit of their wisdom...
>
> ..if there lives a Montanan brave enough to say this state should not bank some of the money ripped from our soil to prepare for the day when the industry abandons us, let him speak his piece today.
>
> Let him tell it to the 1,500 smelter and refinery workers in Anaconda and Great Falls. Let him expound his theories of development before the merchants who depended upon the payroll that vanished after 78 years.
>
> --Billings Gazette Editorial
> October 2, 1980

The severance tax was upheld by the U.S. Supreme Court, and efforts to limit the tax through Congressional action repeatedly failed. But the coal and utility companies' assaults never stopped.

> The tax has been criticized as being repressive to the mining industry in this state, and a boon to nearby states where taxes are minuscule by comparison.
>
> Those who favor a lower tax contend the mining industry would grow and blossom if the burden were reduced.
>
> Those who favor keeping it at its present 30 percent level see little to substantiate the arguments of the mining industry and its supporters.
>
> They look beyond the immediate short-term benefits and see the need to alleviate the impact on communities that would experience growth at a rate beyond their capacity to deal with it.
>
> And they see the need to provide future generations with something more than a series of Berkeley-like pits dotting the countryside.
>
> The 30-percent severance tax is not too high a price for companies to pay for Montana's coal.
>
> Better that they pay now than that we pay later.

--Billings Gazette Editorial
November 30, 1983

The Schwinden Administration led the defense of the tax:

> Many factors threaten the viability of Montana's coal industry. Focusing on the coal severance tax as the cause of the coal industry's woes is like falling for the magician's slight of hand. The coal severance tax debate distracts us from the real culprits like transportation costs and acid rain containment. It is time for coal producers, their utility customers, other industry groups and state government to end this senseless and costly rhetorical battle about the rate of the severance tax.

--Governor Ted Schwinden,
to the Coal Tax Oversight Committee
January, 1984

The Governor's position was reiterated to the Coal Tax Oversight Committee in June of 1984. Studies for that Committee and for Governor Schwinden's Council on Economic Development confirmed that even drastic reductions in the coal severance tax would not have a significant impact on Montana coal production, and that the most important variable in the marketability of Montana coal was transportation cost.

Yet the debate raged on, and the coal severance tax became a major campaign issue:

> We supply a lot of coal, but we're not dominated by the coal industry. We have put the coal industry in its proper perspective, and now is not the time to lose that perspective.
>
> Why should we now believe those who say that we made the tax too high? Let's not turn our backs on our average taxpayers in order to pad the profit margins of out-of-state corporations.
>
> We don't want to become known first and foremost for our coal production. We want to continue to be known for the quality of Montana life, for our clear skies and streams, for our ability to face the future on our own terms.
>
> --Attorney General Mike Greeley
> Billings; September 25, 1984

> Some Montanans have argued that reducing our coal severance tax is the only way to increase coal production...However, our production taxes comprise only a small portion of the delivered price of coal.
>
> Those who argue that tax reductions are the only cure for the Montana coal industry should keep in mind that the 1983 Legislature reduced the effective rate of the coal tax by an estimated $20 million over five years.
>
> Instead of shadowboxing with the specter of production taxes, we must directly confront the real obstacle to increased coal production--transportation costs...
>
> I do not believe the public interest would be served if we reduced our severance tax and the lost revenue was transferred into Burlington Northern's bank account in the form of increased rail rates.
>
> Governor Ted Schwinden,
> Billings Gazette Guest Column
> October 14, 1984

The Bozeman Environmental Information Center

• P.O. Box 3865, Bozeman, Montana 59715

Exhibit 20
HB 607
2/14/85
Calvert, Jerry

TESTIMONY IN OPPOSITION
TO HB607
Feb. 14, 1985

Good morning, Mr. Chair, and members of the committee. My name is Jerry Calvert. I am speaking on behalf of the Bozeman Environmental Information Center. Bozeman EIC is an affiliate of the Montana EIC. I serve on the board of directors of both organizations. Bozeman EIC recommends that you give HB 607 a "do not pass" recommendation.

We believe in and support the reasoning behind the coal severance tax. We believe that the tax represents sound public policy and that any attempt to "temporarily" reduce the tax rate for new coal contracts ignores the purposes for which the tax was created in the first place.

The purpose of the tax is to insure that there will be money available to pay for the real environmental and social costs which resource development inevitably brings, and secondly, to provide for a trust fund for future generations once this non-renewable resource is depleted or replaced by other energy sources.

As you know the coal tax rate varies from 20 to 30% of the contract sales price for surface-mined coal, the percentage tax rate being determined by the coal's heating content. Most coal mined in Montana now is 30% coal. But the nominal rate of 30% is reduced by various deductions to an <u>effective</u> rate of 20.8% and it will drop further to 18.5% in the fall of 1987 when new royalty deduction provisions become fully phased in.

In 1984 the coal tax generated $82.8 million in revenue. During this fiscal year an estimated $85.9 million is expected, in 1986 $103.9, and in 1987 $112 million.

Fifty percent of the revenue is earmarked for the trust fund. The major portion of the trust fund is invested by the Board of Investment and earned a 13% rate of return last year. The remaining 50% of the coal tax proceeds is spent as follows--19% to the general fund, 10% to the education trust fund, 8.75% for park acquisition, and 2.25 % for alternative energy research. Smaller percentages are allocated to other programs including county land use planning and renewable resource research.

To understand the reasons behind imposing a 30% rate on strip-mined coal we have to look at the history of our "Treasure State". Between 1863 and 1981 Montana produced 8½ million tons of copper, 11.7 million troy ounces of gold, 885.6 million troy ounces of silver, and 300 million tons of coal.

Most of the wealth generated by the depletion of these natural resources flowed out of state. Montana's wealth helped fund the Los Angeles Symphony, the Stanford University Library, the Corcoran Art Gallery in Washington, D.C., and the University of Virginia Law School. The Billings Gazette in an editorial on November 30, 1983 evinced a clear understanding of what had happened and said of those who have defended the tax:

> They look beyond the immediate short-term benefits and see the need to alleviate the impact on communities that would experience growth at a rate beyond their capacity to deal with it.
>
> And they see the need to provide future generations with something more than a series of Berkeley-like pits dotting the countryside.
>
> The 30-percent severance tax is not too high a price for companies to pay for Montana's coal.
>
> Better that they pay now than we pay later.

In short, Mr. Clark got wealthy and got elected to the U.S. Senate. Stanford got a library, and Butte got the shaft. We don't want to see that happen. We don't want to see again a situation where mining companies don't pay their fair share. Montana got little for its resources in the old days. The reason, well documented in our history books, is that the mining companies had the political power to insure that they were taxed very little. We don't want to go back to those bad old days, and temporarily reducing the tax is the first big step in that direction.

Given the clearly-articulated reasoning behind the tax, we (and I am sure you were!) were greatly surprised by Governor Ted Schwinden's suggestion that the tax be reduced. The Governor seems to have forgotten, at least temporarily, what the tax is all about. In October, 1981, in testimony before the Energy and Commerce Subcommittee of the U.S. House of Representatives the Governor was quoted as saying: "For a century industrial interests from outside Montana have come into our state, taken the tresure and gone away. They left behind no jobs, no real industrial base, no pathway to a better future . . . . They left little behind in Montana but scarred earth." In defense of our tax then, the Governor said it's purpose was "to save something for our children".

Now it seems the governor has changed his mind. We urge you to examine closely the merits of the argument. If you do you will come to see that the reasoning behind this ill-conceived proposal is flawed in several respects as already alluded to here today.

First, there is little evidence that the temporary reduction will cause a signficant increase in new coal contracts for Montana mines. Speaking with editors of the Missoulian on January 24 the Governor admitted that he had no evidence the his proposed reduction would generate new production (A.P. story in the Bozeman Chronicle 1/25/85). In that same briefing, the Governor acknowledged as he must, that transportation costs were the major factor in the delivered price of Montana's coal as well he should have. Every piece of published evidence that I have seen over the past several years confirms the Governor's observation.

For example, in the booklet State Tax Fairness , a defense of the coal tax published by the state in 1982, figures for 1980 show that the coal tax on average accounted for 9.5% of the delivered price while railroad hauling charges accounted for an average of 54.9% of the delivered price. In our judgement a significant lowering in railroad freight rates would do more to encourage mining, but B.N. has already said that it does not intend to do so. In this regard I urge the committee to carefully read the just released study "Montana Coal Market To the Year 2000" by Duffield, Silverman, and Arnold whose analysis suggests that even a 50% reduction in the tax will have little impact in encouraging new mining given the current softness of Montana's northern midwestern market. In a word, the overwelming evidence suggests that the temporary reduction proposed in this bill will not have its intended consequences. But there will be other consequences that the committee should consider should this bill become law.

First, We believe that even a "temporary" tax reduction will set in motion growing pressure to permanently reduce the tax regardless what happens between now and June, 1987. If even one new contract is signed during this so-called "window of opportunity" those who want a permanent reduction will argue that they now have "proof" that the tax was too high as they have been alleging since 1975. On the other hand, if nothing happens, which is likely to be the case, they will say that more time is needed, that the market has been soft, that transportation costs are too high, etc, therefore please keep and extend the temporary reduction.

Second, we are convinced that the proposed reduction will seriously undercut the defense of the coal tax that we have been making before the U.S. Congress where efforts continue to be made to mandate a Federal coal severance tax standard which states may not exceed. So far these Congressional attempts to reduce the coal tax under the doctrine of Federal Preemption have failed. They have failed because our argument that the tax is fair and just have been persausive. They will be less so if the tax is now reduced. We will give aid and comfort to those who want to reduce the tax and we will demonstrate the allegations that we are the "greedy" "blue-eyed Arabs" of eastern Congressional imagination.

In summation the legislature in 1975 made a wise choice based upon a clear understanding of our past and a sensitive forecast of our probable future. You have before you perhaps the most important piece of legislation in this session. Look at very closely. Look carefully at all the testimony that has been given. Put this bill to sleep. Thank you, Mr. Chairman, and the members of the committee.

Exhibit 21
HB 607
2/14/85
Farris, Carol

WITNESS STATEMENT

NAME Carol Farris BILL NO. 607

ADDRESS 114 22nd St S Great Falls 59405 DATE 2-14-85

WHOM DO YOU REPRESENT? Montana State Democratic Womens Clubs

SUPPORT ______ OPPOSE X ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MSDWC opposes lowering the coal severance tax.

At a time of decreased revenues to the state through regressive Federal policy, it makes no sense to give a tax break to others at the expense of Montanans. The Coal Severance Tax is the only tax Montana Dept of Revenue collects primarily from non-residents. Reducing the Coal Severance Tax for outsiders will mean Montana tax payers will either have to pay more themselves or be content with less. Consequently, a reduction in the Coal Severance Tax amounts to an increased burden for Montana tax payers.

Instead of sending valentines to the Midwest, the Committee on Taxation needs to keep consideration & regard at home in Montana.

Exhibit 22
HB 607
2/14/85
Reed, Don

TESTIMONY IN OPPOSITION TO HB 607

By Don Reed, Montana Environmental Information Center

February 14, 1985

Mr. Chairman and members of the House Taxation Committee, I'm Don Reed and I'm here on behalf of the members of the Montana Environmental Information Center in oppsition to HB 607.

The Montana EIC does not believe that the coal tax rebate incentive is wise policy for the state of Montana. One of the most important reasons for this is the degree to which HB 607 appears to be in direct reaction to threats from corporations outside of Montana. In particular, The Northern States Power Company (NSP), a Minnesota utility, has threatened to take its future coal contracts elsewhere if Montana does not lower its coal tax.

NSP currently buys Montana coal. Minnesota is historically a market for Montana coal. NSP has not yet signed a contract for coal to fire its Sherco #3, scheduled for late 1987 or 1988. NSP <u>may</u> also be looking for coal for another plant, Wisconsin Coal #1 in 1993. According to Silverman & Duffield, these combined contracts would total about four million tons of coal annually.

Even without reductions in the coal tax, Montana coal is able to compete well with Wyoming coal for the Sherco #3 plant. Again according to Silverman & Duffield, even assuming a low Wyoming bid and an average Montana bid, Montana coal has a $1.08 a ton advantage. With more reaslistic assumptions about Wyoming

(22)

coal bids, the Montana advantage is $2.08 a ton. With the original assumptions, that cost difference would mean $2 million annually or $60 million over the life of the plant.

The Sherco contract may well be a contract at the margin for which a coal tax reduction might make a difference. It is also quite possible that the tax will not make a difference for the Sherco contract.

At first blush, it appears that it is in NSP's best interests to buy Montana coal. So why is NSP threatening to go elsewhere for its coal? The answer is not mysterious. NSP would like to get the lowest possible price it can. Wyoming may not offer a better economic deal than Montana coal with the existing severance tax. Montana coal with a lower severance tax, however, does offer a better deal than Montana coal with a reduced severance tax.

In short, NSP is using its position of control to threaten Montana with failing to get the Sherco contract. NSP is also threatening its own consumers with unncessarily higher prices for electricity.

That kind of bold corporate threat was once common in Montana. What should our reaction be today in light of our history of domination from outside corporate interests?

Montana EIC believes that HB 607 would set a bad precedent of our state legislature rolling over to a single corporate interest. If an out-of-state utility is willing to threaten its own consumers with higher costs in order to make political hay, that is the business of Minnesota consumers. Our business is to respond soundly to the threat with a "No, we won't succomb to your threat. If you are foolish enough to walk away from the best economic deal for political reasons, that is your problem."

In summary, Montana EIC believes that HB 607 represents special interest legislation of the worst kind. It is targeted at a single purchaser who has threatened to go against its own economic special interst for political purposes.

We urge you to vote "Do Not Pass" on HB 607.

Thank you for this opportunity to comment.

Exhibit 23
HB 607
2/14/85
Murry, James

MONTANA STATE AFL-CIO
AFL CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 607 BEFORE THE HOUSE TAXATION COMMITTEE, FEBRUARY 14, 1985

I am Jim Murry, representing the Montana State AFL-CIO. I am here to voice our opposition to passage of House Bill 607.

The Montana labor movement has been supportive of Montana's progressive coal severance tax since the debate on this issue first began. Union members have passed resolutions in Montana State AFL-CIO conventions favoring this tax since the early 1970s.

Five out of nine resolutions passed supporting the coal severance tax by Montana organized workers over the last ten years have been submitted by various building trades organizations.

We have consistently believed that an investment must be made by those who have profitted so highly from the extraction of a non-renewable resource. That investment has been required by state lawmakers in the form of the most farsighted and progressive tax on natural resources in the nation. Requirements were set which guarantee that these dollars will be fed back into the state's economy. All Montana citizens, now and in the future, are to benefit from the revenue generated by our coal severance tax.

Trade unionists recognized the value and deep need for this kind of insurance for Montana's future back in 1974 when delegates to the Montana State AFL-CIO convention passed a resolution which stated, in part: We support the taxing of Montana coal at a level "...sufficient to ensure that future generations of Montanans will also benefit from the disposal of a resource that is a part of their heritage." Over the years since that endorsement, Montana workers have on several occasions reaffirmed our support of the 30% coal severance tax.

Mr. Chairman, members of the committee, we maintain that the need is just as great today to make that investment in our future. The Montana State AFL-CIO is firmly on record in opposition to the tax give-away proposed by House Bill 607, and we ask your support for our position.

Exhibit 24
HB 607
2/14/85
Jewett

MONTANA DEMOCRATIC PARTY

TESTIMONY

House Bill 607
2/14/85

Mr. Chairman, Members of the Committee. I am Tony Jewett, Executive Director of the Montana Democratic Party. The Democratic Party is in opposition to this legislation.

The decision that this committee will make on this bill is an historic decision and should not be viewed for anything less than the profound impact it will have on Montana and the shape of Montana's future for decades ahead. Your decision is not just yours; it is a community decision and the all the people of Montana are a part of that community.

Most of all, it is a decision that should be made based on the merits of the issue and the facts that support those merits.

The Democratic Party comes in opposition to this measure because we do not feel the facts of the case merit a reduction in the tax; we believe that 1) the tax is a minor factor in the delivered price of coal 2) that Montana coal has been proven to be more competitive in northern markets than that of our neighboring states 3) that much of Wyoming's competitiveness is based on low-production costs in comparison with Montana, primarily due to coal-seam size and depth 4) that production of coal is a function of demand, not the severance tax, and that production will not increase dramatically with a lowered severance tax, but will be subject to the demands of a slowly but steadily growing market, and that 5) the main culprit in the debate

Montana Democratic Central Committee • Steamboat Block, Room 306 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

24

over competitiveness of Montana coal is not the severance tax which adds less than 10% to the delivered cost of the coal, but Burlington Northern, whose monopolistic rail practices add over 50% to the delivered price and whose behavior is a gross insult to Montanans who depend on rail shipping for their livelihood.

It is because of those proven facts that we oppose this legislation.

But this legislation is not without merit, and the Democratic Party has struggled with one aspect of this issue from its beginning. That issue is the so-called "window of opportunity." The coal companies have put unrelenting pressure on Montana's elected officials to lower the tax.

The Governor's response has been this proposal, and the Democratic Party commends both the Governor and Rep. Quilici for this effort to call the coal companies' bluff.

Our fear is that a lowering of the severance tax now is a permanent lowering. If mining increases to even a minor degree during this period, the legislature will come under enormous pressure to extend the window. The Sherco contract will be signed this spring and will be used as living proof of the value of lowering the tax, when in fact the Sherco contract will go to Montana because Montana can deliver it much cheaper than Wyoming. If mining doesn't increase, coal producers will say that the window wasn't open long enough or the tax credit wasn't big enough, so extend it and lower it.

If anyone in this room believes this 'foot-in-the-door' philosophy is will not be at work, I would reference them to today's Great Falls Tribune where a spokesman for the Montana Coial Council is alreday saying that the Governor's proposal does not go far enough, and is advocating a longer and deeper reduction in the tax. The blood is on the table, and it is up to the legislature to control the flow.

Those considerations should not frame the discussion of the future of the tax. The merits and facts of the issue should.

With this in mind, the Democratic Party would offer to the committee an amendment to the legislation that would insure that the tax is debated from a rational rather than political and emotional ground.

We would ask the committee to add a section to the bill that places a constitutional referendum on the ballot. This referendum would, if passed by the people, would require a 2/3 vote of both chambers of the legislature to reduce the tax in the future. In doing so, the referendum would insure that the debate regarding the coal tax could not be controlled by partisanship, by interest group pressures, by industry pressures, or for political purposes. If the window is successful, it would be extended, and if not, it would not be extended. But the issue would be decided on the best interests of Montanans and on a factual basis. It would insure that the so-called window of opportunity is in fact a window, and not a floodgate. And it would insure that the coal companies would have to live up to the challenge given them, to 'put-up or shut-up' in their talk about the severance tax and its relation to production of coal in Montana.

WITNESS STATEMENT

NAME EARL J. REILLY BILL NO. 607

ADDRESS 3129 W. SHORE DRIVE DATE 2-14-85

WHOM DO YOU REPRESENT? MONT. SENIOR CITIZENS ASSOCIATION

SUPPORT ______ OPPOSE X AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: (1) A THINLY DISGUISED WINDFALL TO OUT-OF-STATE INTERESTS.

(2) THE THOUSANDS (MILLION) SPENT ON LOBBYING CONGRESS WILL BE WASTED.

(3) IN TEN YEARS OF EFFORT, THE OPPONENTS OF THIS TAX COULDN'T FIND A WAY TO GUT IT. THE GOVERNOR FOUND A WAY SINCE ELECTION (3 MONTHS)

(4) THE TAX DOES NOT ADD A SIGNIFICANT AMOUNT TO THE PRICE OF COAL, WHY DOESN'T THIS CROWD TAKE AFTER THE RAILROAD FREIGHT RATES, ([illegible])

(5) THIS IS AN INCREDIBLE, BIZZARE ATTEMPT TO ROB THE STATE OF IT'S REMAINING ASSETS,

(6) THIS IS ONLY THE FIRST STEP IN REDUCING THIS TAX. (JIM MOCKLER'S AMENDMENT)

(7) WE DON'T NEED ANOTHER BUTTE.

(8) WHAT A STRANGE TIME TO BE REDUCING TAXES. THESE OUT OF STATE INTERESTS HAVE BEEN ON THE WELFARE ROLLS LONG ENOUGH.

(9) LET'S SHED THE COLONY IMAGE - WE DON'T NEED WYOMING MENTALITY RUNNING OUR STATE.

CS-34

(10) WYOMING WILL REDUCE THEIR TAX TO MATCH THIS.

(11) THE BN RAILROAD WILL SIMPLY ADD ANY TAX REDUCTION TO THEIR FREIGHT RATES.

(12) HOW DO WE KNOW THAT NEW CONTRACTS WITH THE REDUCED RATES WILL MINE THE COAL OR GENERATE NEW TAXES.

Exhibit 25-2
HB 607
2/14/85
Duffield

MONTANA COAL MARKET TO THE YEAR 2000: IMPACT OF SEVERANCE TAX, AIR POLLUTION CONTROL AND RECLAMATION COSTS

by

Professor John Duffield
Department of Economics
University of Montana

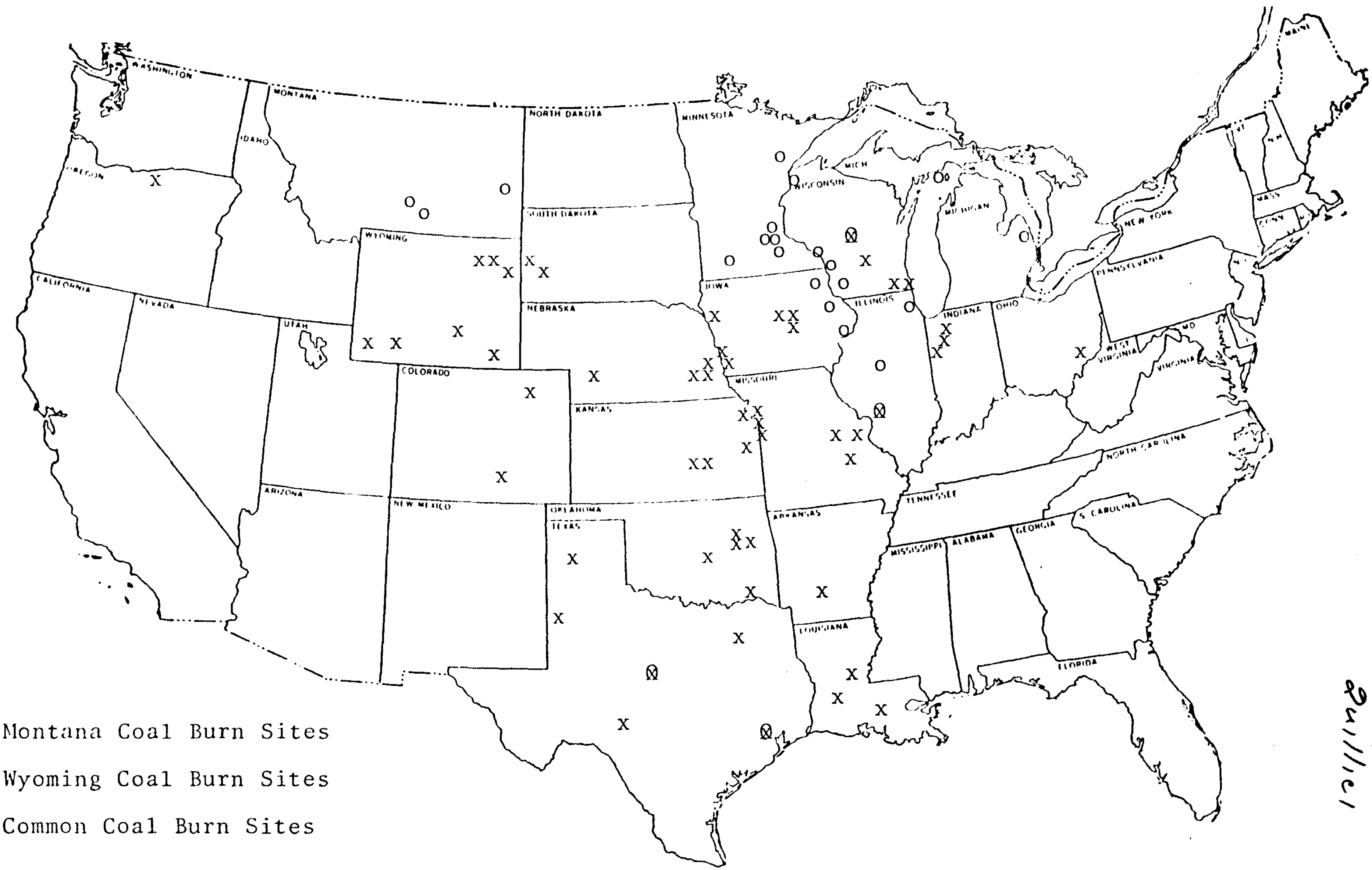
Professor Arnold Silverman
Department of Geology
Univrsity of Montana

John Tubbs
Department of Economics
University of Montana

Prepared for the
Montana Department of Commerce
Helena, Montana

January, 1985

Mon /Wyoming market areas: traditionally Mc a's coal market area has been the Nor tier of states (Minnesota, Wisconsin, Michigan and Illinois). While Wyoming's market has been the south-central states (Oklahoma, Arkansas, Kansas, Missouri, Iowa) and Wyoming burn sites.



o Montana Coal Burn Sites

x Wyoming Coal Burn Sites

⊠ Common Coal Burn Sites

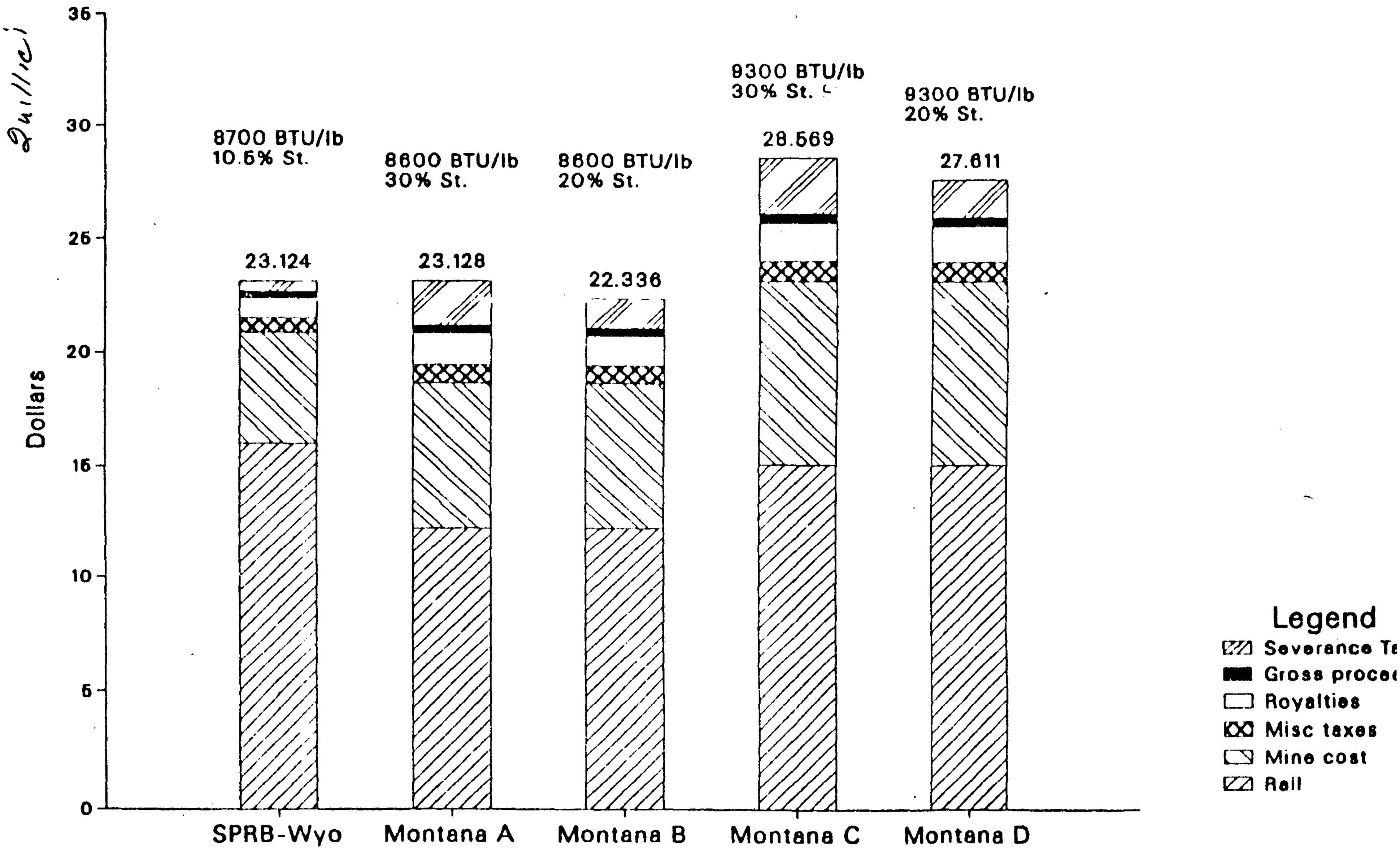
Exhibit 26
HB 607
2/14/85
Quilliel

(26)

Exhibit 37
HB 602
2/14/85
Quilici

(37)

Coal Pricing Summary (Cost per Ton to Sherco)

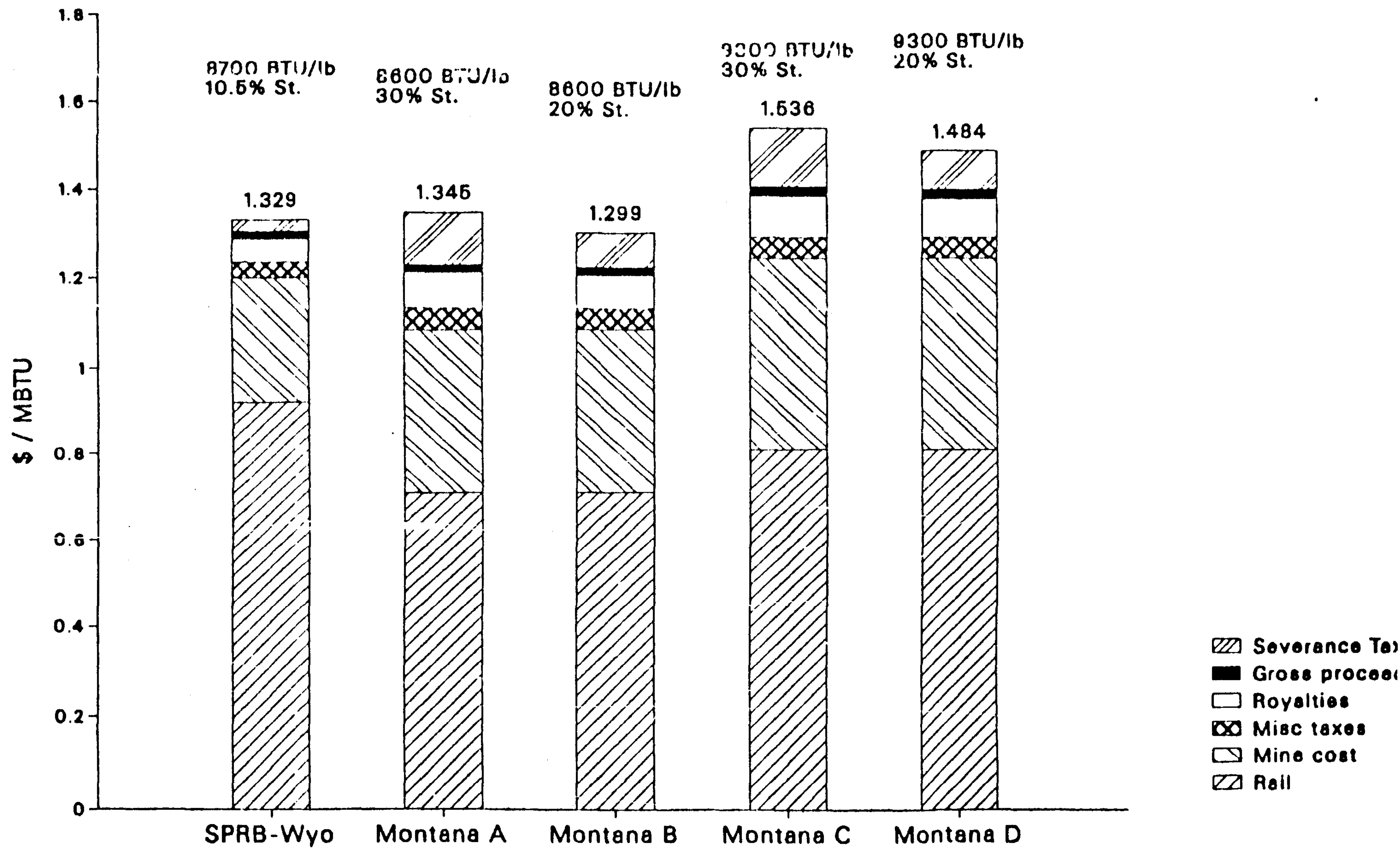


Coal Price Breakdown (Cost per Ton to Sherco)

Cost component	SPRB-Wyo	Montana A	Montana B	Montana C	Montana
Transportation	$ 16.00	$ 12.16	$ 12.16	$ 15.04	$ 15.04
Mine costs	$ 4.851	$ 6.474	$ 6.474	$ 8.070	$ 8.070
Royalties	$ 0.890	$ 1.371	$ 1.272	$ 1.691	$ 1.571
Federal fees	$ 0.625	$ 0.772	$ 0.741	$ 0.850	$ 0.834
Misc taxes	$ 0.000	$ 0.033	$ 0.033	$ 0.041	$ 0.042
Severance tax	$ 0.460	$ 1.987	$ 1.325	$ 2.466	$ 1.644
Severance tax rate	10.5 %	30.0 %	20.0 %	30.0 %	20.0 %
Gross proceeds (Ad valorem)	$ 0.298	$ 0.331	$ 0.331	$ 0.411	$ 0.411
Total	$ 23.124	$ 23.128	$ 22.336	$ 28.569	$ 27.611
Price of Coal	$ 7.124	$ 10.968	$ 10.176	$ 13.529	$ 12.571
Price w/$0.20 royalty	$ 6.400	$ 9.750	$ 9.061	$ 12.000	$ 11.145
BTU per pound	8700	8600	8600	9300	9300

Assumptions:
Coal costs - From Montana's Coal Industry (Facing an uncertain future); by Professor Paul E Polzin, University of Montana, Dec 1984 pp 9,15.
Royalties - Assumed to be $0.20/Ton now, but increases to 12.5 % in mid to late 1980s.
Rail costs - From talk given by John Hertog at Montana Coal Forum (15 - 16 mills per Ton-mile).
Rail mileage - Colstrip/Kuehn to Sherco 760
Southern Montana to Sherco 940
Wyoming to Sherco 1000
(from BN and/or C+NW)

Coal Pricing Summary (Cost / MBTU to Sherco)



Coal Price Breakdown (Cost / MBTU to Sherco)

Cost component	SPRB-Wyo	Montana A	Montana B	Montana C	Montana
Transportation	$ 0.920	$ 0.707	$ 0.707	$ 0.809	$ 0.809
Mine costs	$ 0.279	$ 0.376	$ 0.376	$ 0.434	$ 0.434
Royalties	$ 0.051	$ 0.080	$ 0.074	$ 0.091	$ 0.084
Federal fees	$ 0.036	$ 0.045	$ 0.044	$ 0.045	$ 0.045
Misc taxes	$ 0.000	$ 0.002	$ 0.002	$ 0.002	$ 0.002
Severance tax	$ 0.026	$ 0.116	$ 0.077	$ 0.133	$ 0.088
Severance tax rate	10.5 %	30.0 %	20.0 %	30.0 %	20.0 %
Gross proceeds (Ad valorem)	$ 0.017	$ 0.019	$ 0.019	$ 0.022	$ 0.022
Total	$ 1.329	$ 1.345	$ 1.299	$ 1.536	$ 1.484
Price of Coal	$ 0.409	$ 0.638	$ 0.592	$ 0.727	$ 0.676
Price w/$0.20 royalty	$ 0.368	$ 0.567	$ 0.527	$ 0.645	$ 0.599
BTU per pound	8700	8600	8600	9300	9300

Assumptions:

Coal costs - From Montana's Coal Industry (Facing an uncertain future); by Professor Paul E Polzin, University of Montana, Dec 1984 pp 9,15.

Royalties - Assumed to be $0.20/Ton now, but increases to 12.5 % in mid to late 1980s.

Rail costs - From talk given by John Hertog at Montana Coal Forum (15 - 16 mills per Ton-mile).

Rail mileage - Colstrip/Kuehn to Sherco 760
Southern Montana to Sherco 940
Wyoming to Sherco 1000
(from BN and/or C+NW)

Montana
Association of
Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

February 14, 1985

MR. CHAIRMAN AND MEMBERS OF THE HOUSE TAXATION COMMITTEE:

I am writing in opposition to HB 607.

The eleven denominational units of which the Montana Association of Churches is composed have unanimously adopted a position paper on Energy & Environment in which we urge the legislature to maintain the present coal severance tax.

Our vast coal reserves can be looked upon only as a transitional fuel, for the resource is exhaustible and non-renewable. Even coal may no longer be around in sufficient quantities late in the 21st century to meet the demands of our energy-hungry society.

The Christian faith sees the role of human beings in the world as that of a steward. Assuring that our present use of resources provides adequately for future generations is the essence of stewardship.

For this reason, I urge you to defeat HB 607.

Sincerely,

Cathy Campbell

Cathy Campbell
Legislative Liaison

DAIRYLAND POWER COOPERATIVE • P.O. BOX 817 • 2615 EAST AV SOUTH • LA CROSSE, WISCONSIN 54601
(608) 788-4000

February 18, 1985

Representative Gerald Devlin
Chairman, Committee on Taxation
House of Representatives
State of Montana
Helena, MT 59620

RE: House Bill 607 with Amendments

Dear Representative Devlin:

It has come to our attention that the Committee on Taxation will soon be considering the above captioned bill dealing with changes in the Montana Severance Tax. We are writing to indicate our support for this measure provided the proposed amendments are included.

We must be frank in stating that, in our opinion, the proposed changes in the Severance Tax do not go far enough. While we are encouraged that the State of Montana has finally addressed this difficult issue, a fundamental question of fairness remains. The tax has been, and remains, excessive to the extent that it raises serious doubts as to the economic viability of Montana coal as a fuel in existing and future generating units.

We appreciate the opportunity to share our views with your committee.

Sincerely,

DAIRYLAND POWER COOPERATIVE

Douglas D. Peterson
Director, Fuels Management

DDP:daj

cc: The Honorable Ted Schwinden
Governor, State of Montana
Helena, MT 59620

Mr. V. H. Wood
1400 W. 47th Street
Minneapolis, MN 55409

STATEMENT BY ATTORNEY GENERAL MIKE GREELY
TO THE HOUSE COMMITTEE ON TAXATION
Montana House of Representatives
House Bill 607
14 February 1985

Mr. Chairman, I request that you enter this statement into the record of testimony on House Bill 607.

Governor Ted Schwinden has worked hard to improve Montana's economic climate, and no one has greater respect for his efforts than I. His "Build Montana" theme has set a positive tone that is conducive to business growth, and he has taken meaningful steps to reduce the burden of state government on taxpayers. I am proud to have served as Attorney General with Ted Schwinden at the helm of our state, and I number myself among his staunchest supporters.

House Bill 607 is one aspect of the Governor's program, however, that I cannot support. The bill would provide a tax credit to coal producers against Montana's 30-percent coal severance tax, a "window of opportunity" through which coal producers could see their way clear, ostensibly, to increase coal production dramatically. The tax credit would apply to coal contracts signed or extended between January 1, 1985, and June 30, 1987. The effect of the credit would be a reduction of the coal severance tax rate to 20 percent.

The proposed tax credit, in the Governor's words, is an incentive to produce more coal. The Governor apparently expects this incentive to increase production so dramatically that the state will realize a net gain in revenues--at a 20-percent coal severance tax rate--over what we would collect at the present rate.

Implicit in the Governor's reasoning are two assumptions. Assumption one: Montana wants and needs a dramatic increase in coal production in order to reap the economic "benefits" of large-scale industrial development. Assumption two: State government needs more coal tax revenue so badly that it can justify subsidizing the coal industry in order to get it.

Mr. Chairman, I respectfully submit that both these assumptions are wrong.

Montana established its 30-percent coal severance tax in 1975 after exhaustive analyis and debate in both houses of the Legislature. I remember that debate vividly, because I participated in it as a member of the Montana Senate. I can attest that the Legislature did not act arbitrarily or capriciously in setting the coal severance tax rate at 30 percent. In setting that rate, the Legislature expressed a prevailing public sentiment that I'll summarize as follows:

--We Montanans are willing to develop our coal resources in order to meet the energy requirements of the nation, but only on our own terms. We insist on maintaining control of Montana's future, and we will not stand for the degradation of land, our economy, or our communities.

--We want those who profit from coal mining to pay the costs of mining.

--Because the public must endure the costs of "boom and bust" communities, together with the costs of more community services to handle the influx of population, the public should share in the profits of coal mining.

--A severance tax of 30 percent ensures not only an appropriate share of the profit to the public, but also discourages the kind of runaway industrial development that devastates the land and results in overproduction.

Since enacting the 30-percent coal severance tax, Montana has faced an onslaught of special-interest attackers who want to reduce our tax or get rid of it altogether. During my first term as your Attorney General, a consortium of energy companies sued Montana, claiming that our severance tax impeded interstate commerce and was thus unconstitutional. The Legislature, with strong bipartisan support, appropriated to my office the resources necessary to fight that battle in three courts--state district court, the Montana Supreme Court, and the United States Supreme Court. Despite the fact that our opponents' resources dwarfed our own, and despite the fact that their lawyer was William Rogers, a former Secretary of State under President Nixon, we won our case in all three courts. The United States Supreme Court determined that our 30-percent coal severance tax does not impede interstate commerce, and that Montana has the right to impose the tax. The ruling effectively ended the legal challenge to our tax.

The arena shifted thereafter to the Congress of the United States and to the State Capitol of Montana. Our bipartisan congressional delegation has done yeoman work in beating back legislative attempts to limit the states' authority to tax resources. The Legislature, with bipartisan support, has appropriated a substantial sum to retain a Washington lobbying firm to assist our congressional delegation in meeting this challenge. In short, Mr. Chairman, Montana's response to the critics of our coal severance tax has been bipartisan and strong.

I have seen no indication that public sentiment in Montana has changed with respect to our 30-percent coal severance tax. In my view, this committee would be wise to consider whether H.B. 607 would achieve the results that the Governor foresees, and whether those anticipated results reflect public sentiment on the issue of strip mining and coal taxation. A good starting point would be the newly completed study by Professors John Duffield, Arnold Silverman, and John Tubbs of the University of Montana: Montana Coal Market to the Year 2000: Impact of Severance Tax, Air Pollution Control and Reclamation Costs (prepared for the Montana Department of Commerce).

The study is useful in clarifying several important points relating to coal severance taxation. Among these is the often heard lament that Montana is losing coal business to Wyoming because our severance tax is so much higher than Wyoming's. Actually, the effective rate of Montana's coal severance tax, according to the Montana Department of Revenue, is slightly less than 21 percent after coal producers apply currently existing deductions and credits for gross proceeds taxes and other levies. The Department of Revenue projects that Montana's effective rate of coal severance taxation will drop even further by the fall of 1987, down to 18.5 percent, even if the Legislature does not enact H.B. 607. Wyoming's effective rate of taxation is about 14 percent--not much lower than Montana's.

Duffield, Silverman, and Tubbs point out that Montana and Wyoming have well defined "spatial" markets for their coal, meaning that location is a major factor in the marketability of coal. Within the 19-state area of the Montana-Wyoming coal market, Montana's share of the market has remained at a stable 10 percent since 1971; Wyoming's share of that same market has jumped from 16 percent to 53 percent during the same period. Why? Several reasons, say Duffield, Silverman, and Tubbs. After the Arab oil embargo of

1973-74, south-central states began a massive changeover from oil and gas to coal in generating electrical power. Of the 51 coal-fired plants built in that region since 1976, forty-one burned Wyoming coal, simply because Gillette, Wyoming, lies so much closer than Colstrip, Montana, to that market area. As a result, Wyoming's production jumped about 66 millions tons per year. By contrast, Montana's production grew about 4 million tons per year.

The point to remember, stress Duffield, Silverman, and Tubbs, is that Montana's 30-percent coal tax has had nothing to do with the dramatic growth of Wyoming coal production in contrast to the much more stable market share that Montana producers enjoy. The difference between Montana's and Wyoming's coal taxes, say the researchers, has had "an insignificant market impact."

The study also finds that most users and suppliers of Montana coal will renew their contracts whether the Legislature reduces the severance tax or not. Based on industry projections and other data, Montana's coal industry will experience a steady 3-4 percent annual growth rate through 1988, reaching 42 million tons per year. Beyond that, Montana's annual coal production will grow substantially, reaching a level between 48 million and 85 million tons in the year 2000, depending on the growth of electrical consumption in the market area.

The most dramatic conclusion of the study is that a severance tax reduction will "in no case generate sufficient increased production" to make up for the amount of tax money that Montana would have collected at the 30-percent rate. Herein lies the crux of the issue. The Legislature must decide what the people of Montana can gain by reducing the coal severance tax. I submit that any anticipated "gains" are illusory. Though I agree that dramatically increased strip mining would provide more jobs and would result in some economic benefit during the short term, I must also point out that dramatically increased strip mining would generate tremendous environmental, social, and long-term economic impacts. Someone must pay the cost of coping with those impacts. Someone must pay for the additional police and fire protection in the rapidly growing mining communities, for the improved highways and roads to and from the mines, for the new schools, for the enlarged courthouses and hospitals, for the upgraded water and sewage systems, and all else that a rapidly growing coal industry would bring. That <u>someone</u>, of course, is Montana's taxpayers. The faster the coal industry grows, the more demand we will see for coal tax revenues to cope with the impacts of that growth. Does it make sense to risk reducing those revenues in order to have faster growth in strip mining? I think not. A legislator who votes for H.B. 607 will send a message back to the taxpayers of his or her district, and that message is: "<u>I don't believe that you taxpayers are paying a big enough share of the costs associated with strip mining. And I believe that the corporations who profit from strip mining are paying too much. So, with my vote for H.B. 607, I will increase the share that average taxpayers pay, while increasing profits for the corporations.</u>"

I doubt that any serious analyst of Montana's political scene would suggest that the Legislature could ever return to a 30-percent level of coal severance taxation, if H.B. 607 were to become law. Were coal production to increase dramatically within the two-and-one-half-year period that the bill specifies, the coal companies would threaten production cutbacks if the

Legislature reinstates the 30 percent rate. If production does not increase substantially, the companies will argue that the "window of opportunity" was not open far enough, that the trial period was not long enough, or that the tax credit was not big enough. Moreover, the Legislature would have jettisoned the rationale for the 30-percent coal severance tax--the rationale that emphasizes slow, steady, orderly growth of the strip mining industry, a rationale that the voters of Montana endorsed at the polls in 1976. Reinstating that rationale would be difficult indeed.

Mr. Chairman, I offer this testimony not because I question the good intentions of the Governor or the sponsors of H.B. 607. I offer this testimony because I have serious doubts about the perceived "benefits" of reducing the effective rate of coal severance taxation.

During the 10-year history of our 30-percent coal severance tax, Montana's coal industry has grown. Our industry has received more new contracts since passage of the 30-percent coal severance tax than it had received before the tax. Two recent contracts, the Bellriver and Colstrip 4, will increase Montana's coal production by about 9 million tons annually. Independent researchers like Duffield, Silverman, and Tubbs, tell us that the industry will continue to grow. It may not grow as fast as Wyoming's coal industry, but neither will it overbuild its production capacity to the tune of 60 million excess tons annually, requiring cut-rate bidding, as Wyoming's industry has done.

The researchers tell us that all taxes, including Montana's coal tax, represent only 9.8 percent of the delivered price of coal, compared to 20 percent for mining costs, 60 percent for transportation, and 10.2 percent for company profit. They also tell us that hard analysis does not support the expectation of a net gain to the state from a reduction of the coal severance tax.

We know, too, that the coal market is presently weak, which suggests strongly that now is not the time to contemplate changes in our coal taxation policy. Perhaps more appropriate at this time is a discussion of how the state should allocate its coal tax revenues. Having served in the Legislature that enacted the 30-percent tax, I know that the Legislature did not intend the present revenue allocation formula to remain inviolate forever. The Legislature knew that needs would change. Perhaps now is a good time to assess our needs with an eye to re-allocating coal tax money where appropriate. Our agriculture industry is in desperate straits, facing inadequate prices, tight credit, and a debate over ending federal farm price supports. Agriculture is a much bigger industry in Montana than coal mining; our family farms and ranches are much more in need of a few percentage points of profit than the coal corporations. Perhaps now is a good time to discuss some form of state help to farmers and ranchers.

Our local governments are in equally desperate straits. Revenues are down, demand for services is up. Too long the Legislature has neglected local government's problems, ignoring the fact that local government is the government closest to the people. Perhaps we should discuss ways to allocate coal tax revenue to shore up the most important government structures in our society--the local ones.

In my view, Mr. Chairman, these are problems more worthy of this Committee's consideration than H.B. 607. Thank-you very much.

AMENDMENTS TO HOUSE BILL ~~706~~ 607

1. Page 6, Line 23

   Following: "purchaser" "
   Insert: "and multiplying the total by 33-1/3%"

2. Page 9, Line 18

   Following: "information"
   Strike: "confidential"
   Insert: "open to public inspection -- certain exceptions. All the information filed with the department in accordance with [section 5] is public record and open to public inspection, except the coal sales agreements as specified in (2)(a) and (b) of [Section 5].

3. Page 9, Line 19 through 23

   Following: "15-2-201,"
   Strike: "the returns", lines 20 - 22 in their entirety, and "department," in line 23
   Insert: "coal sales agreements specified in [section 5] (2)(a) and (b)"

WITNESS STATEMENT

NAME John C. Brower BILL NO. HB607

ADDRESS Montana Tech DATE 2-14-85

WHOM DO YOU REPRESENT? Self

SUPPORT ✓ OPPOSE ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: See my report, "Economic Impact of Coal Mining in Montana"

WITNESS STATEMENT

NAME Paul Polzin BILL NO. 60

ADDRESS 4411 Timberlane MSLA DATE 2-11-85

WHOM DO YOU REPRESENT? Univ. of Mont

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Jerry Calvert BILL NO. 604

ADDRESS 611 E. Lamme, Bozeman, MT 59715 DATE 2-14-85

WHOM DO YOU REPRESENT? Montana ElC

SUPPORT ______ OPPOSE X AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

CS-34

WITNESS STATEMENT

NAME Martin White BILL NO. 607

ADDRESS 8 Bittersweet Dr, Butte DATE 5/14/85

WHOM DO YOU REPRESENT? Western Energy Co.

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Cathy Campbell BILL NO. HB 607

ADDRESS 7011 York Rd Helena DATE Feb 14, 1985

WHOM DO YOU REPRESENT? Montana Association of Churches

SUPPORT ______ OPPOSE HB 607 AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: See attached

VISITORS' REGISTER

______________________ COMMITTEE

BILL NO. HB 107 DATE 2-14-85

SPONSOR ______________________

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Glenn Moore	Willard MT	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME James D. [illegible] BILL NO. HB 637

ADDRESS [illegible] DATE [illegible]

WHOM DO YOU REPRESENT? ______

SUPPORT ______ OPPOSE ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

_______________________ COMMITTEE

BILL NO. HB 607 DATE 2-14-85

SPONSOR _______________________

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
[illegible] Marble	Helena MT	✓	
Brett Boedecker	Glendive MT	✓	
Ken Williams	Butte, Western Energy	✓	
Vernon Bertelsen	Ovando Mont		✓
F.H. Boles	Helena Mt Chamber	✓	
Ward Shanahan	Helena Montana Mining	✓	
CAROL FARRIS	Great Falls MSDWC		✓
Shirley [illegible]	" " MDCC.		✓
Rep Bob Pavlovich	HD 70 Butte	✓	
Cathy Campbell	MT Assn of Churches		✓
EARL J. REILLY	Mont Senior Citizens		✓
Morgan Taylor	Meridian Minerals Co	✓	
Mary Faye [illegible]	[illegible] Helena	✓	
Bob McCarthy	Butte Community Union		✓
Susan Cottingham	Mt. Chpt. Sierra Club		✓
John Driscoll	Hamilton, MT		X
[illegible]	Bozeman MT LWV		✓
JIM JENSEN	129 Alderson Billings		X
Tony Jewett	MT. Demo Party		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

_______________ COMMITTEE

BILL NO. HB 607 DATE 2-14-85

SPONSOR Quilici

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Russ Brown	Helena N.P.R.C.		✓
J.R McPherson	Sheridan, Wy	✓	
JOE PRESLEY	Billings Mt	✓	
VICTOR H. WOOD	Minneapolis, MN	✓	
[illegible] McC[illegible]	B[illegible] Mt	✓	
Keith Powell	Tongue River Miles City		✓
Howard Best	Broadus MT.		✓
[illegible]	B[illegible] MT		✓
[illegible]	Billings MT	✓	
BILL ROBINSON	BUTTE, MT	✓	
MARTIN WHITE	Butte, Mt	✓	
LANNY ICENOGLE	Billings MT. Montco	✓	
Pat Wilson	Billings, MT "	✓	
DON REED	Helena, MEIC		✓
[illegible]	" " Gov Office	✓	
Mike Fitzgerald	Mt. Trade Com.	✓	
Irene [illegible]	Helena, MT		✓
[illegible]	[illegible] MT	✓	
John [illegible]	[illegible]	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Jim Stephens	415 Walter Lane Bzn. Mt.	✓	

CS-33

VISITORS' REGISTER

______________________ COMMITTEE

BILL NO. HB 607 DATE 2-14-85

SPONSOR QUILICI

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
GEO. OCHENSKI	HELENA E.I.C.		X
[illegible]	Helena	✓	
Leon F. Blancher	Helena	✓	
[illegible]	BILLINGS CHAMBER	✓	
[illegible]	[illegible]	✓	
Mike [illegible]	Helena WETA	✓	
[illegible]	[illegible]	✓	
[illegible]	Helena	✓	
Jim Murry	[illegible] AFL-CIO		X
[illegible]	[illegible]		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Brett A. Boedecker BILL NO. H.B 601

ADDRESS P.O. Box 777, Glendive MT. 59330 DATE 5/14/85

WHOM DO YOU REPRESENT? Glendive Forward

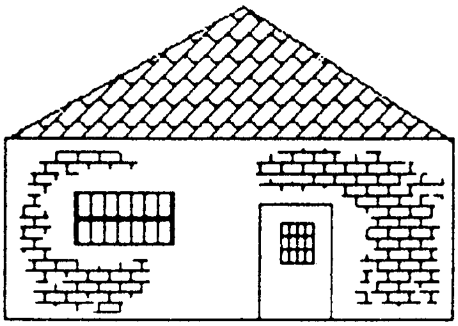
SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Exhibit 6
HB 651
2/13/85
Winslow

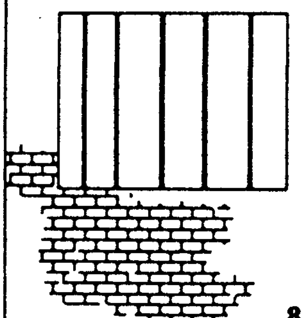
MONTANA JAILS



HB 651

6

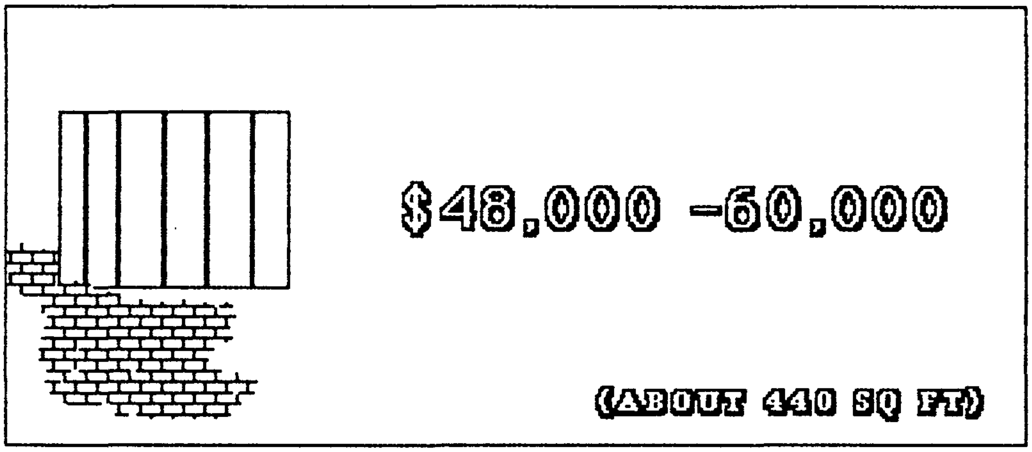
MONTANA JAIL FACTS



1. 45 JAILS AND 8 72 HOUR HOLDS
2. 1,071 JAIL CELLS AND 54 HOLDING CELLS
3. OLDEST OPERATING JAIL BUILT IN 1881
4. AVERAGE STAY IN JAILS IS ABOUT 1 WEEK
5. STATEWIDE ON 1 DAY THERE WERE 432 INMATES
6. 86% ARE MALES
7. THE MEDIAN AGE IS ABOUT 27 YEARS OLD
8. 68% ARE LOCAL (COUNTY) RESIDENTS

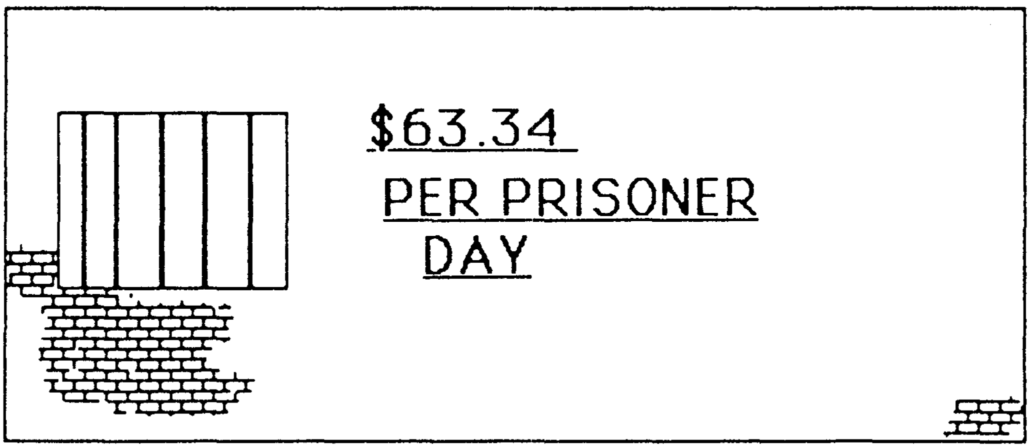
SOURCE: MONTANA BOARD OF CRIME CONTROL

JAIL CONSTRUCTION COSTS PER CELL



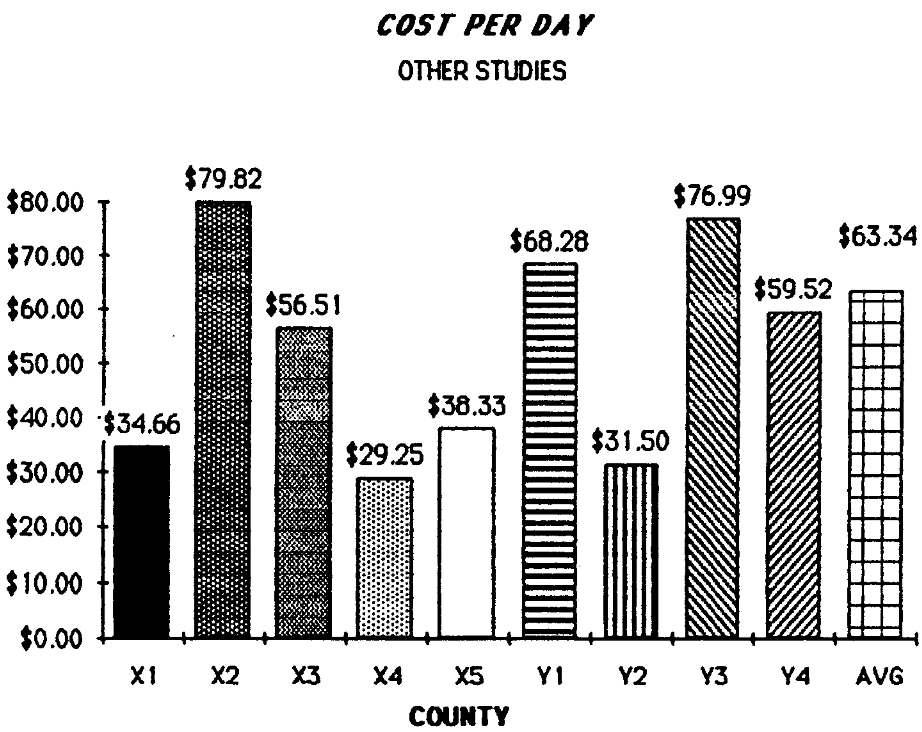
SOURCE: COST OF CONSTITUTIONAL JAILS 1982

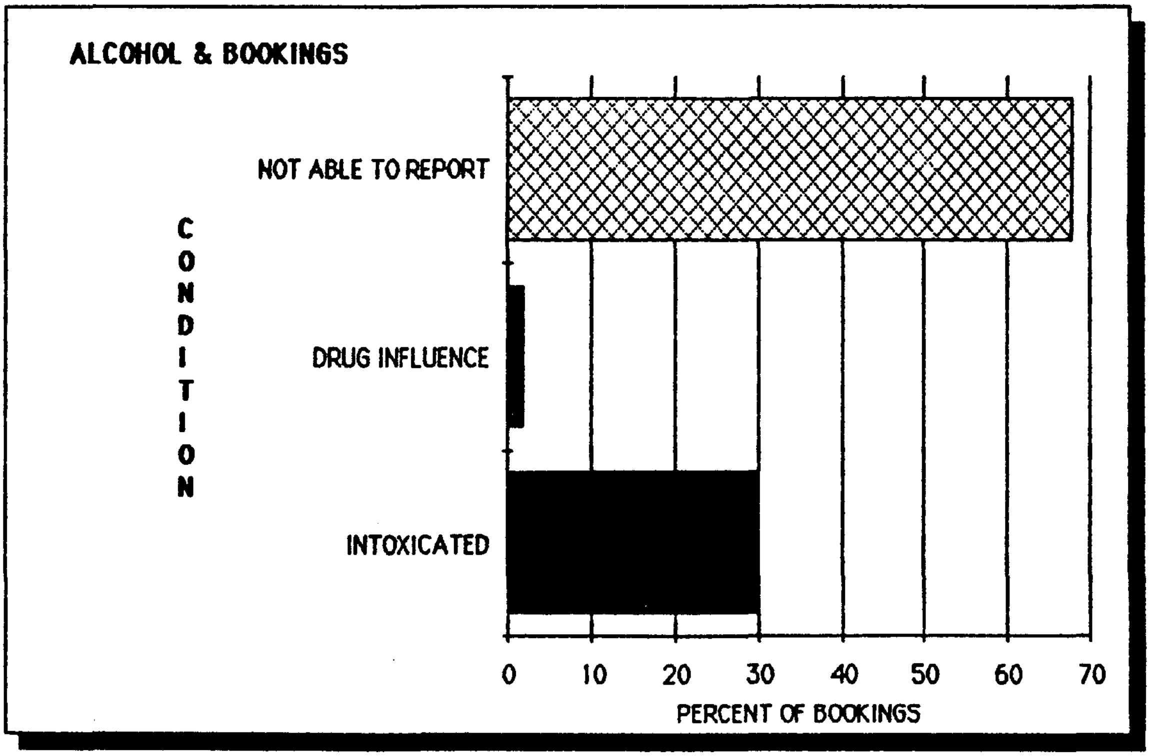
DAILY JAIL OPERATIONS COSTS



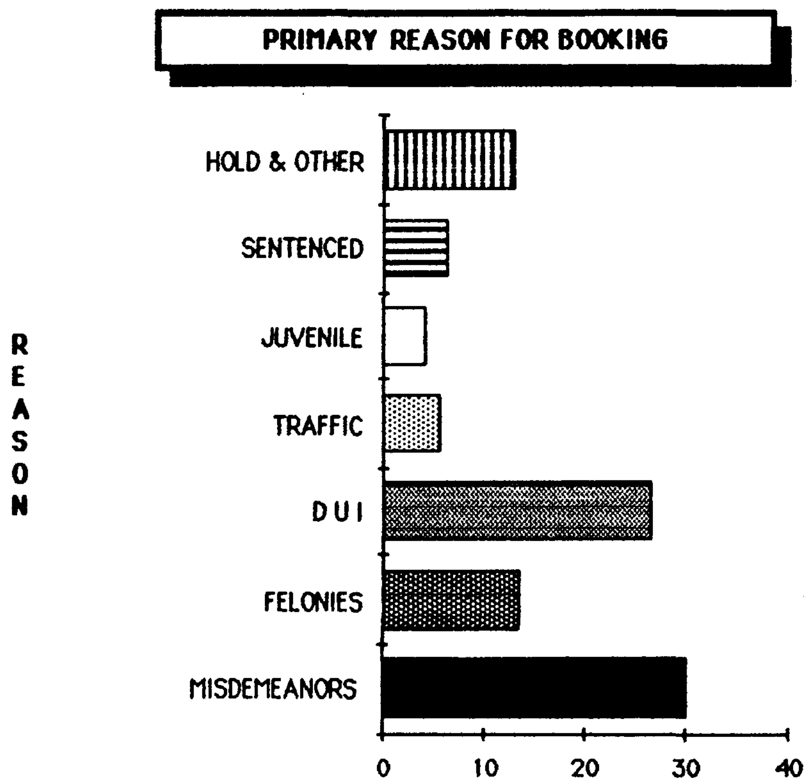
SOURCE: 9 MONTANA JAILS-1984 : MBCC

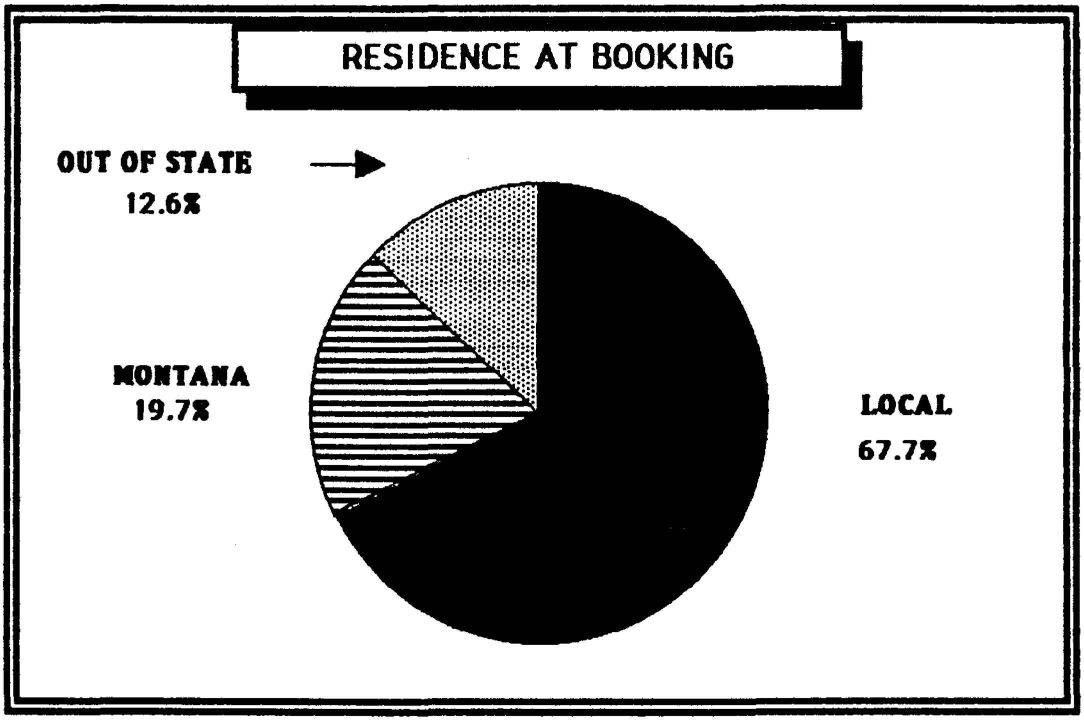
NINE COUNTY JAILS--1984 other studies



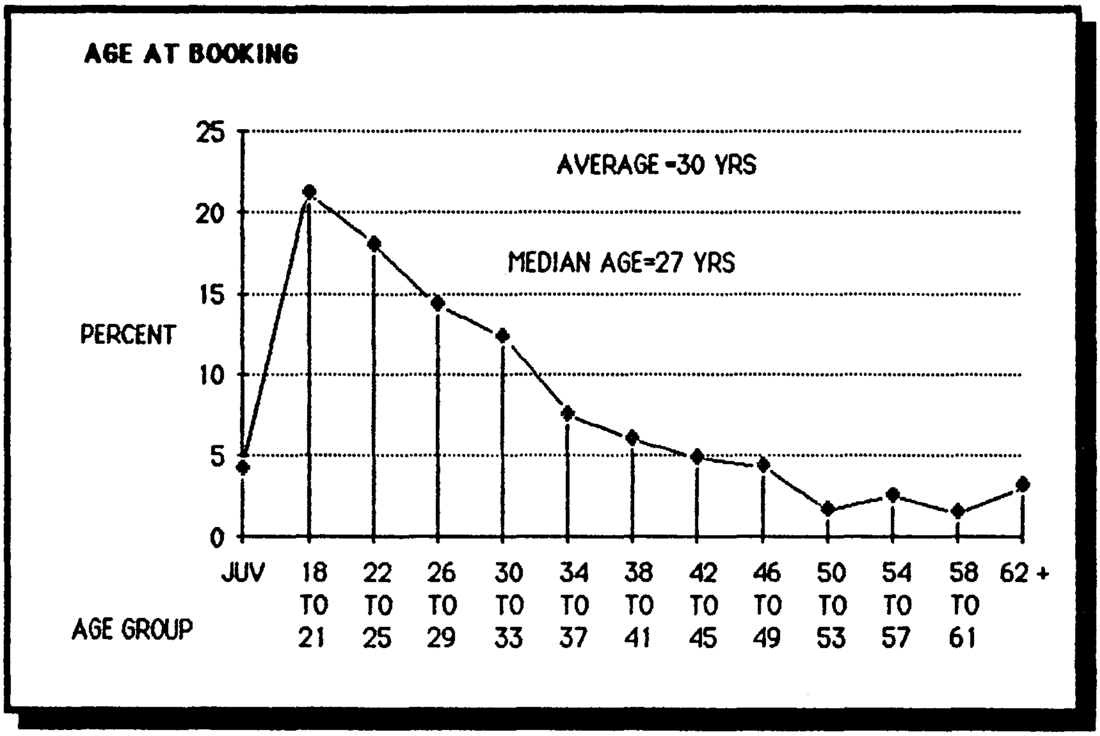

ALCOHOL & BOOKINGS
NOT ABLE TO REPORT
DRUG INFLUENCE
INTOXICATED
CONDITION
0
10
20
30
40
50
60
70
PERCENT OF BOOKINGS

NINE COUNTY JAILS--1984

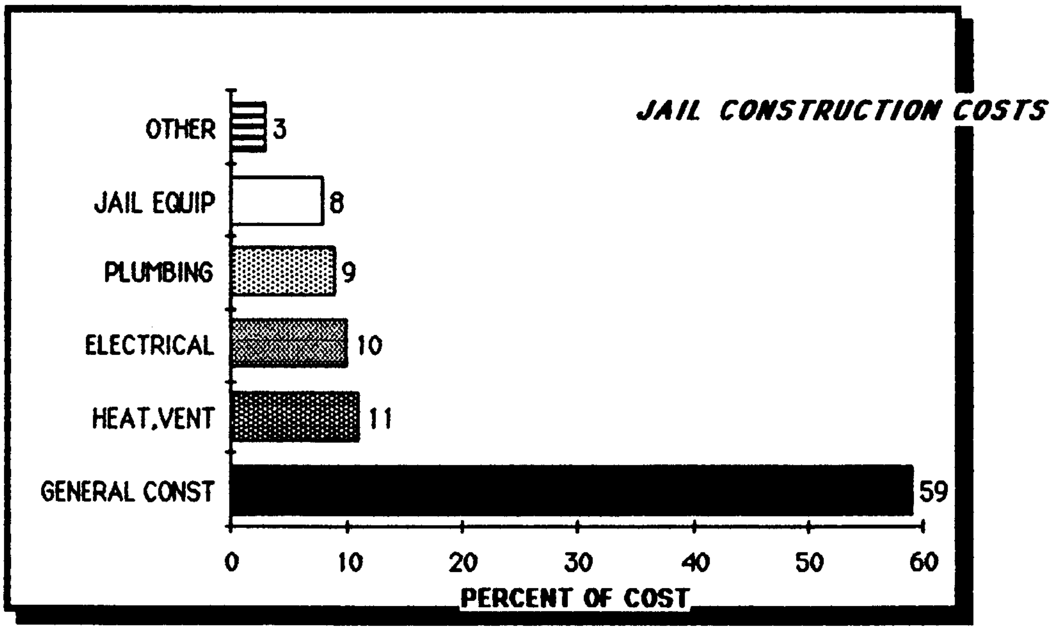



RESIDENCE AT BOOKING
OUT OF STATE
12.6%
MONTANA
19.7%
LOCAL
67.7%

NINE COUNTY JAILS--1984



THE COST OF JAIL CONSTRUCTION



source: Cost Of Constitutional Jails-1982

SINGLE DAY JAIL INMATE COUNT--Statewide

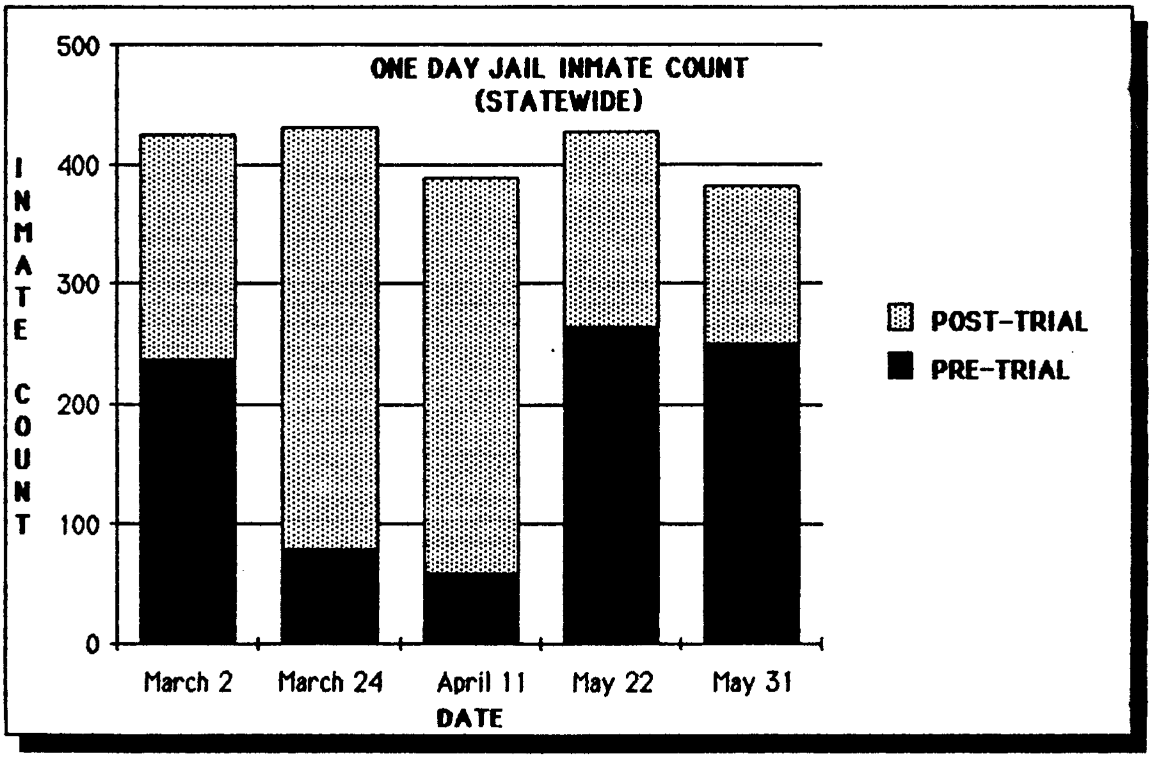


Exhibit 7
HB651
2/15/85
Roger Tippy

BEFORE THE TAXATION COMMITTEE
MONTANA HOUSE OF REPRESENTATIVES

House Bill 651 by Winslow Raising Beer, Wine & Liquor Taxes to Build Jails	)))	STATEMENT IN OPPOSITION -- MONTANA BEER & WINE WHOLESALERS ASSOCIATION

I am Roger Tippy of Helena, representing the Montana Beer & Wine Wholesalers Association. The 45 firms who distribute beer and wine in the state and who remit the excise taxes each month all oppose HB651. This bill would increase the price of beer and wine and add to the decline in beer sales which has been going on for several years now. 1984 sales were down 3% from 1983 levels, and 1983 was below earlier years. The effects of new DUI laws, a possible minimum age increase to 21, and other restrictions have reduced or will reduce consumption further.

The $34 million that the bond issue would raise would go, one suspects, to those communities which need new jails and haven't built them yet. The communities which went out and bonded themselves and built new jails already would get little if anything. Helena and Lewis and Clark County are nearing completion of a new jail here, for example. Why can't other communities follow our example and get the job done? There are revenue sources right in the alcohol area appropriate for defraying local construction costs. The $1.50 a barrel portion of the beer tax which now goes to the cities and towns for law enforcement purposes, or the increased court fine revenue from the new DUI laws, are two such sources.

The idea that just one of the many causative agents of a particular problem should bear all the cost of handling that problem is objectionable in itself. It's like taxing eggs to pay for coronary care units in the hospitals because some people might suffer heart attacks from eating too many eggs. People get heart attacks for a lot of other reasons, just like people go to jail for a lot of other reasons besides drinking too much. Please defeat HB651.

DATED: February 13, 1985.