

MINUTES OF THE  
FREE CONFERENCE COMMITTEE  
GOVERNOR'S AMENDMENTS HOUSE BILL 252

April 20, 1987

Chairman Galt called the free conference committee meeting to order at 7:00 p.m. in Room 325, State Capitol. Senate members present were Senators Galt, Van Valkenburg and Hirsch. House members present were Representatives Marks, Marion Hanson and Dave Brown.

Chairman Galt stated that the purpose of the meeting was to discuss the Governor's amendments to House Bill No. 252.

Chairman Galt reminded the committee that most of the members of the committee were present at a meeting a couple of days ago where they decided to accept the Governor's amendments as they were corrected. He believes that the new sheet of amendments, which is attached as Exhibit 1, corrects the problem. Galt stated that he is willing to accept the amendments as they stand now.

Representative Marks cited the top of page 4, section (ii) of the Governor's amendments, which are attached as Exhibit 1. Marks said he felt that section should include the reasons why you should postpone or average the sales under the super window. He stated that if you wanted to give the industry a chance to meet the super window, you should give them an out for strikes. If you don't do that, you would be giving the organizers tremendous leverage in shutting down a plant. Rep. Marks said he thinks we should include "strikes or catastrophic act of God". If these two sections are added, it will do the same thing the Governor wants to do.

Chairman Galt stated that we are already plowing new ground here, amending Governor's amendments that are already 5 days old. This could set a dangerous precedent.

Senator Van Valkenburg said he is concerned if we consider anything other than what the Governor has submitted to us that we are going against what we agreed to last week, when we said we would put the bill in the form the Governor recommended and have the members of both houses vote on it. He stated that he thought everyone in the meeting had agreed to that, or at the very minimum, did not voice objection to that plan. Van Valkenburg further stated that we risk a legal challenge to the adoption of these amendments if we put anything in here other than what the Governor has recommended. The coal industry is too important to this state to let anyone take us to court. He thinks we should stick to what the Governor has proposed and what we have agreed

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to. He thinks it is reasonable at this point to stick with it as it is now. He said if there were a strike that would put this in jeopardy, the Governor or ourselves would be inclined to come in to session to deal with that. Secondly, if Rep. Marks is concerned that it could be a real problem, Van Valkenburg said he is willing to meet him halfway and put it into a bill coming out of the House, suspend the Rules in the Senate to accept it, so that we could deal with that specific issue. That way we wouldn't be messing with the Governor's amendments. He feels that we are risking too much with regard to our public commitments, our legal concerns and the precedent of the Legislature substantively amending a Governor's amendatory veto.

Rep. Brown wants the record to show that what we do here in this meeting is perfectly legal. He cited 16-32-4, Joint Rules, where it states clearly that we could re-do the entire bill if we want to. He stated that he is not advocating doing so, but we could under the Rules. He said the precedent is already set in the Rules.

MOTION: Senator Hirsch moved that the committee accept the Governor's amendments as the Senate adopted them today. He stated that he, too, is concerned about jeopardizing the bill.

Rep. Hanson said she feels that having strikes in there doesn't really change the Governor's amendments. This may not have even entered his mind.

Senator Van Valkenburg seconded the motion.

Chairman Galt said that any strike would be worked out in the original contracts made between the contracting parties.

Rep. Marks said that is a concern that goes beyond the contract. No matter what the contract says, we have to dig and sell 32 million tons to meet the threshold. Otherwise the 15% will not trigger.

MOTION: Rep. Marks made a substitute motion to revert to the body of the bill to amend the Governor's amendments, page four, section (ii), line three:

1. section (ii) page 4, line 3  
Following "mechanical failure," on line 3  
Insert: "strikes, or catastrophic acts of God,"

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Rep. Hanson seconded the motion.

Senator Van Valkenburg stated that this does not apply to coal mines. The strikes as Marks talks about applies to the utility plants that burn Montana coal. He asked Mr. Jim Mockler of the Montana Coal Council what the likelihood of a strike at one of the utilities plants is. Mr. Mockler said he has not known of any in the ten years he has been in the industry. He said he doubted if such a strike would shut down the plant. Van Valkenburg then stated that his point in asking the question is that, based on Mr. Mockler's answer, there is a very remote chance that a strike would happen let alone triggering a change in the rate. He feels we should not put that in there because we're taking too much of a chance that someone would come in and set this aside. He further stated that it is possible for Rep. Marks or others to argue that a strike even comes under the definition of "catastrophic acts of God".

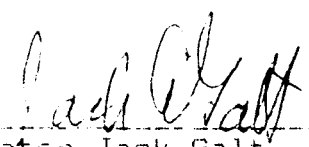
Question called. With Rep. Marks, Hanson and Brown voting yes, and Senators Van Valkenburg, Hirsch and Galt voting no, the substitute motion failed 3-3.

Chairman Galt stated that the committee will revert to Sen. Hirsch's original motion; that this committee accept the Governor's amendments.

Rep. Marks questioned what the original motion said. He wondered if the set of amendments we have before us is the correct set. Chairman Galt answered that they were the correct amendments.

Question called. With Senators Galt, Van Valkenburg and Hirsch and Representatives Marks and Hanson voting yes, and Representative Brown voting no, the motion carried 5-1.

ADJOURNMENT: There being no further business to come before the committee, the meeting adjourned at 7:18 p.m.

  
-----  
Senator Jack Galt  
Chairman

State of Montana  
Office of the Governor  
Helena, Montana 59620  
406-444-3111

TED SCHWINDEN  
GOVERNOR

April 6, 1987


The Honorable Robert Marks  
Speaker of the House  
State Capitol  
Helena, MT 59620

The Honorable William J. Norman  
President of the Senate  
State Capitol  
Helena, MT 59620

Dear Representative Marks and Senator Norman:

Proofreading of the amendments to House Bill No. 252 that I sent to you earlier today revealed several typographical errors. The attached amendments have been changed to correct those errors. Please substitute these amendments for those enclosed in my earlier letter.

Sincerely,



TED SCHWINDEN  
Governor

GOVERNOR'S AMENDMENTS  
TO HOUSE BILL NO. 252  
(Reference Copy)  
(April 6, 1987)

1. Title, lines 6 through 8.  
Following "RATES;" on line 6  
Strike: remainder of line 6 through "PURCHASED;" on  
line 8  
Insert: "PROVIDING A CONTINGENT PERMANENT  
REDUCTION; EXTENDING THE NEW PRODUCTION  
CREDIT"
2. Title, line 10.  
Following: "15-35-104"  
Strike: "AND"  
Insert: ", "  
Following: "15-35-202"  
Strike: "THROUGH 15-35-204"  
Insert: ", AND 15-35-203"
3. Page 3, line 25.  
Following: "purchaser"  
Insert: ", except as provided in (b),"
4. Page 3, line 25.  
Following: "MEANS"  
Insert: ": (a)"
5. Page 4, line 2.  
Following: line 1  
Strike: "(a)"  
Insert: "(i)"
6. Page 4, line 5.  
Following: line 4  
Strike: "(b)"  
Insert: "(ii)"
7. Page 4, line 6.  
Following: line 5  
Strike: "(i)"  
Insert: "(A)"
8. Page 4, line 9.  
Following: line 8  
Strike: "(i)"  
Insert: "(B)"
9. Page 4, line 17.  
Following: line 16

CORRECTED  
SECOND PRINTING

(a) Fiscal Year 1988 and 1989:

<u>Heating quality</u> <u>(Btu per pound</u> <u>of coal):</u>	<u>Surface</u> <u>Mining</u>	<u>Underground</u> <u>Mining</u>
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or .12 cents or 30% of value	4% of value

(b) Fiscal Year 1990:

<u>Heating quality</u> <u>(Btu per pound</u> <u>of coal):</u>	<u>Surface</u> <u>Mining</u>	<u>Underground</u> <u>Mining</u>
<u>Under 7,000</u>	<u>12 cents or</u> <u>13% of value</u>	<u>5 cents or</u> <u>3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or</u> <u>25 % of value</u>	<u>8 cents or</u> <u>4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or</u> <u>25% of value</u>	<u>10 cents or</u> <u>4% of value</u>
<u>Over 9,000</u>	<u>40 cents or</u> <u>25% of value</u>	<u>12 cents or</u> <u>4% of value</u>

(c) Fiscal Year 1991 and thereafter:

<u>Heating quality</u> <u>(Btu per pound</u> <u>of coal):</u>	<u>Surface</u> <u>Mining</u>	<u>Underground</u> <u>Mining</u>
<u>Under 7,000</u>	<u>12 cents or</u> <u>13% of value</u>	<u>5 cents or</u> <u>3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or</u> <u>20% of value</u>	<u>8 cents or</u> <u>4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or</u> <u>20% of value</u>	<u>10 cents or</u> <u>4% of value</u>
<u>Over 9,000</u>	<u>40 cents or</u> <u>20% of value</u>	<u>12 cents or</u> <u>4% of value</u>

(2)(a)(i) On or before October 1, 1988, the department shall determine the total number of tons of coal produced in Montana and sold from July 1, 1987 through June 30, 1988. If the department finds that these sales exceed 32.2 million tons (which is the average total yearly coal sales for calendar years 1983, 1984, 1985 and 1986), the rate of the coal severance tax is as set forth in subsections (2)(b) and (2)(c).

(3) "Value" means the contract sales price.

~~(2)~~(4) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

~~(3)~~(5) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

~~(4)~~(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202."

17. Page 9, line 20 through page 10, line 19.

Strike: section 4 in its entirety  
Renummer subsequent subsections

18. Page 11, line 15 through page 12, line 9.

Strike: section 6 in its entirety  
Insert: "Section 6. Section 15-35-202, MCA, is amended to read:

15-35-202. New coal production incentive tax credit allowed — application limited. (1) A coal mine operator is entitled to a new coal production incentive tax credit ~~of 33% of~~ against the tax imposed under 15-35-103 of:

(a) 33 1/3% for incremental production sold during calendar years 1985 and 1986;

(b) 50% for incremental production sold from January 1, 1987 until June 30, 1988; and

(c) 40% for incremental production sold from July 1, 1988 until June 30, 1990; provided, however, that if the production quota established in 15-35-103 (2)(a)(i) is not met, the tax credit for this period is 50% for fiscal year 1989 and 40% for fiscal year 1990.

~~(2)~~(a) A coal mine operator is entitled to a new coal production incentive tax credit ~~of 33-1/3% against~~ the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3) if the **incremental** production resulted from coal purchases under:

(i) an existing agreement which was extended between January 1, 1985, and ~~June 30, 1987~~ December 31, 1988, for at least a 5 year period; or

(ii) a new agreement that was executed between January 1, 1985, and ~~June 30, 1987~~ December 31, 1988.

Strike: remainder of line 8 through "subsection." on line 9

25. Page 14, line 4.

Strike: section 8 in its entirety

Renumber: subsequent sections

26. Page 16, lines 8 through 11.

Strike: section 10 in its entirety

Insert: "Section 10. Applicability. This act applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

-END-

legis1/HB 252



# CONFERENCE COMMITTEE REPORT

Report No. one

April 21 19 87

MR. PRESIDENT

We, your Free Conference Committee on

House Bill No. 252

met and considered ~~the Governor's amendments to House Bill No. 252~~

We recommend as follows: **That the Governor's amendments on the attached pages be adopted.**

And that this Conference Committee report be adopted.

FOR THE SENATE

\_\_\_\_\_  
Senator Galt, Chairman

\_\_\_\_\_  
Senator Hirsch

\_\_\_\_\_  
Senator Van Valkenburg

ADOPT      REJECT

FOR THE HOUSE

\_\_\_\_\_  
Representative Marks, Chairman

\_\_\_\_\_  
Representative Hanson

\_\_\_\_\_  
Representative D. Brown

1. Title, lines 6 through 8.  
Following "RATES;" on line 6  
Strike: remainder of line 6 through "PURCHASED;" on  
line 8  
Insert: "PROVIDING A CONTINGENT PERMANENT  
REDUCTION; EXTENDING THE NEW PRODUCTION  
CREDIT;"
2. Title, line 10.  
Following: "15-35-204"  
Strike: "AND"  
Insert: ", "  
Following: "15-35-202"  
Strike: "THROUGH 15-35-204"  
Insert: ", AND 15-35-203"
3. Page 3, line 25.  
Following: "(2)"  
Insert: "(a)"  
Following: "purchaser"  
Insert: ", except as provided in subsection (2)(b),"
4. Page 4, line 2.  
Following: line 1  
Strike: "(a)"  
Insert: "(1)"
5. Page 4, line 5.  
Following: line 4  
Strike: "(b)"  
Insert: "(11)"
6. Page 4, line 6.  
Following: line 5  
Strike: "(1)"  
Insert: "(A)"
7. Page 4, line 9.  
Following: line 8  
Strike: "(11)"  
Insert: "(3)"
8. Page 4, line 17.  
Following: line 16  
Insert: "(b) If the volume calculated in subsection (2)  
(a)(1) is less than one-third of the volume  
calculated in subsection (2)(a)(11), the base  
consumption level is the volume calculated in  
subsection (2)(a)(11)."

9. Page 4, line 17.  
 Following: "(3)"  
 Insert: "(a)"  
 Strike: "base"  
 Insert: "Except as provided in subsection (3)(b), "base"  
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10. Page 4, line 19.  
 Following: line 18  
 Strike: "(a)"  
 Insert: "(1)"
11. Page 4, line 22.  
 Following: "line 21"  
 Strike: "(b)"  
 Insert: "(1)"
12. Page 4, line 24.  
 Following: line 23  
 Insert: "(b) If the amount calculated in subsection (3)(a)(11) is less than one-third of the amount calculated in subsection (3)(a)(1), the base production level is the amount calculated in subsection (3)(a)(1)."
13. Page 6, lines 13 and 14.  
 Following: line 12  
 Strike: subsection (9) in its entirety  
 Renumber: subsequent subsections
14. Page 7, lines 5 and 6.  
 Following: line 4  
 Strike: subsection (14) in its entirety  
 Renumber: subsequent subsections
15. Page 7, line 18 through page 9, line 19.  
 Strike: section 3 in its entirety  
 Insert: "Section 3. Section 15-35-103, MCA, is amended to read:

"15-35-103. Severance tax -- rates imposed -- exemptions. (1) Except as provided in subsection (2), a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

(a) Fiscal Years 1988 and 1989:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	14 cents or 4% of value

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(b) Fiscal Year 1990:

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<u>Heating quality (Btu per pound of coal):</u>	<u>Surface Mining</u>	<u>Underground Mining</u>
<u>Under 7,000</u>	<u>12 cents or 13% of value</u>	<u>5 cents or 3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or 25 % of value</u>	<u>8 cents or 4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or 25% of value</u>	<u>10 cents or 4% of value</u>
<u>Over 9,000</u>	<u>40 cents or 25% of value</u>	<u>12 cents or 4% of value</u>

(c) Fiscal Year 1991 and Thereafter:

<u>Heating quality (Btu per pound of coal):</u>	<u>Surface Mining</u>	<u>Underground Mining</u>
<u>Under 7,000</u>	<u>12 cents or 13% of value</u>	<u>5 cents or 3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or 20% of value</u>	<u>8 cents or 4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or 20% of value</u>	<u>10 cents or 4% of value</u>
<u>Over 9,000</u>	<u>40 cents or 20% of value</u>	<u>12 cents or 4% of value</u>

(2)(a)(i) On or before October 1, 1988, the department shall determine the total number of tons of coal produced in Montana and sold from July 1, 1987, through June 30, 1988. If the department finds that these sales exceed 32.2 million tons (which is the average total yearly coal sales for calendar years 1983, 1984, 1985, and 1986), the rate of the coal severance tax is as set forth in subsections (2)(b) through (2)(d).

(ii) If any facility that burned Montana coal at any time from July 1, 1987, to June 30, 1988, does not operate during a portion of that period due to mechanical failure or catastrophic act of God, the department shall determine the average monthly sales of Montana coal to the facility during its operation and multiply this figure by 12. The department shall include the product of this calculation in making its determination of coal produced in Montana and sold from July 1, 1987, through June 30, 1988.

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(b) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1988, through June 30, 1990, is:

<u>Heating quality (Btu per pound of coal):</u>	<u>Surface Mining</u>	<u>Underground Mining</u>
<u>Under 7,000</u>	<u>12 cents or 17% of value</u>	<u>5 cents or 3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or 25% of value</u>	<u>8 cents or 4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or 25% of value</u>	<u>10 cents or 4% of value</u>
<u>Over 9,000</u>	<u>40 cents or 25% of value</u>	<u>12 cents or 4% of value</u>

(c) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1990, through June 30, 1991, is:

<u>Heating quality (Btu per pound of coal):</u>	<u>Surface Mining</u>	<u>Underground Mining</u>
<u>Under 7,000</u>	<u>12 cents or 13% of value</u>	<u>5 cents or 3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or 20% of value</u>	<u>8 cents or 4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or 20% of value</u>	<u>10 cents or 4% of value</u>
<u>Over 9,000</u>	<u>40 cents or 20% of value</u>	<u>12 cents or 4% of value</u>

(d) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state after June 30, 1991, is:

<u>Heating quality (Btu per pound of coal):</u>	<u>Surface Mining</u>	<u>Underground Mining</u>
<u>Under 7,000</u>	<u>12 cents or 13% of value</u>	<u>5 cents or 3% of value</u>
<u>7,000-8,000</u>	<u>22 cents or 15% of value</u>	<u>8 cents or 4% of value</u>
<u>8,000-9,000</u>	<u>34 cents or 15% of value</u>	<u>10 cents or 4% of value</u>
<u>Over 9,000</u>	<u>40 cents or 15% of value</u>	<u>12 cents or 4% of value</u>

(3) "Value" means the contract sales price.

(4) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule these schedules.

~~(3)~~(5) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

~~(4)~~(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202."

16. Page 9, line 20 through page 10, line 19.  
Strike: section 4 in its entirety  
Renumber subsequent sections

17. Page 11, line 15 through page 12, line 9.  
Strike: section 6 in its entirety  
Insert: "Section 5. Section 15-35-202, MCA, is amended to read:

"15-35-202. New coal production incentive tax credit allowed -- application limited. (1) A coal mine operator is entitled to a new coal production incentive tax credit of ~~33-1/3%~~ against the tax imposed under 15-35-103 on any of:

~~(a)~~ 33 1/3% for incremental production produced and sold during calendar years 1985 and 1986;

(b) 50% for incremental production sold from January 1, 1987, until June 30, 1988; and

(c) 40% for incremental production sold from July 1, 1988, until June 30, 1990; provided, however, that if the production quota established in 15-35-103 ~~(2)(a)(1)~~ is not met, the tax credit for this period is 50% for fiscal year 1989 and 40% for fiscal year 1990.

~~(2)(a)~~ A coal mine operator is entitled to a new coal production incentive tax credit of ~~33-1/3%~~ against the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3), if the incremental production resulted from coal purchases under:

~~(a)~~(1) an existing agreement which was extended between January 1, 1985, and ~~June 30, 1987~~ December 31, 1988, for at least a 5-year period; or

~~(b)~~(1) a new agreement that was executed between January 1, 1985, and ~~June 30, 1987~~ December 31, 1988.

(b) The rate of credit allowed under subsection (2)(a) is:

(i) 33 1/3% for incremental production sold from January 1, 1985, until December 31, 1986;

(ii) 50% for any incremental production sold from January 1, 1987, until June 30, 1988;

(iii) 40% for any incremental production sold from July 1, 1988, until June 30, 1990. However, if the production quota established in 15-35-103 (2)(a)(i) is not met, the tax credit for this period is 50% for fiscal year 1989 and 40% for fiscal year 1990.

(iv) 25% for any incremental production sold from July 1, 1990, until June 30, 1991; and

(v) 25% after June 30, 1991, if the production quota in 15-35-103 (2)(a)(i) has not been met.

(3) No credit may be claimed for coal produced prior to January 1, 1985."

18. Page 12

Following: line 17

Insert: "(b) distributing the incremental production among the quarters in the calendar year in the same proportion as the total volume of coal sold each quarter to each respective purchaser and summing the amounts for all purchasers to determine the coal mine operator's incremental production for each quarter;"

Renumber: subsequent subsections

19. Page 12, line 20.

Following: "purchaser"

Insert: "each quarter"

20. Page 12, line 23.

Following: line 22

Strike: "calendar year"

Insert: "quarter"

21. Page 12, line 25.

Following: line 24

Strike: "33 1/3 %"

Insert: "the appropriate percentage as provided in 15-35-202 for each quarter"

22. Page 13, line 2.

Following: "purchasers"

Insert: "for all four quarters of the calendar year"

23. Page 13, lines 8 and 9.  
Following: "year." on line 8  
Strike: remainder of line 8 through "subsection." on  
line 9
24. Page 14, line 4.  
Strike: section 8 in its entirety  
Renumber: subsequent sections
25. Page 16, line 8  
Following: "Applicability."  
Strike: remainder of section 10 in its entirety  
Insert: "Sections 2 and 5 apply retroactively,  
within the meaning of 1-2-109, to tax  
periods beginning after December 31, 1986.

-END-

legisl/HB 252