

HOUSE BILL NO. 829

Introduced: 02/15/83

Referred to Committee on Taxation: 02/15/83

Hearing: 3/7/83

Report: 03/07/83, Do Not Pass

Objection: 3/17/83

Referred to Committee on Taxation: 03/21/83

Died in Committee

House BILL NO. 829

INTRODUCED BY

*Seamus J. Smith, Jim Jensen, Earl J. Nisbet, Veltz Bandman, Manuel J. Jones*

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A SEVERANCE TAX ON THE SEVERANCE OF PALLADIUM, PLATINUM, OR ANY OTHER METAL OR PRECIOUS OR SEMIPRECIOUS GEMS OR STONES; PROVIDING EXEMPTIONS FOR SMALL MINES; CREATING THE HARD-ROCK MINING IMPACT TRUST ACCOUNT; PROVIDING LIMITATIONS ON USES OF THE ACCOUNT; AMENDING SECTIONS 90-6-205, 90-6-304, AND 90-6-305, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE; AND PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** Section 1. Purpose. The large-scale development of the state's metalliferous resources stimulates rapid growth in certain areas and strains the ability of nearby communities to provide essential public facilities and services. The purpose of [sections 1 through 11] is to provide a source of funds to assist affected local government units in providing these essential public facilities and services.

**NEW SECTION.** Section 2. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Invoice price" means either the price of the mineral extracted and prepared for shipment f.o.b. mine or a price imputed by the department under [section 7].

(3) "Mineral" means gold, silver, copper, lead, zinc, chromium, palladium, platinum, molybdenum, or any other metal or metals or precious or semiprecious gems or stones.

(4) "Produced" means severed from the earth.

**NEW SECTION.** Section 3. Severance tax -- rates imposed. (1) A severance tax is imposed on minerals produced in this state. The rate of tax is:

(a) 3% for all minerals produced before January 1, 1985; and

(b) for all minerals produced after January 1, 1985:

Annual Value of Product	Tax Rate
\$0 to \$250,000	0%
more than \$250,000 and less than \$500,000	1 1/2%
more than \$500,000 and less than \$1,000,000	2 1/2%
more than \$1,000,000	3 1/2%

(2) The annual value of product is the invoice price f.o.b. mine.

**NEW SECTION.** Section 4. Credits. (1) There is allowed as a credit against the tax imposed by [section 3] the amount of metalliferous mine license tax paid under Title 15, chapter 37, part 1.

(2) There is allowed a credit against the tax imposed

1 by [section 3] equal to 150% of all money contributed toward  
 2 services, facilities, and other normal governmental expenses  
 3 incurred by local governments prior to the opening of a mine  
 4 or the commencement of production, provided such money  
 5 payments are not otherwise required under Title 90, chapter  
 6 6, part 3. Before the credit is allowed, the contribution  
 7 must be approved by the hard-rock mining impact board as  
 8 being made for the type of expenses described in this  
 9 subsection.

10 **NEW SECTION.** Section 5. Quarterly statement and  
 11 payment of tax. (1) Each mine operator shall compute the  
 12 severance tax due on each quarter-year's worth of production  
 13 on forms prescribed by the department. The statement shall  
 14 include:

15 (a) gross yield of the mineral produced in  
 16 constituents of commercial value, which must be stated in  
 17 terms of the number of ounces of palladium, platinum, gold,  
 18 or silver; pounds of copper, lead, or zinc; or other  
 19 commercially valuable constituents of the mineral measured  
 20 by standard units of measure;

21 (b) the invoice price received for the production;

22 (c) the gross value of product as determined for  
 23 purposes of Title 15, chapter 37, part 1;

24 (d) any credit the mine operator may be entitled to;  
 25 and

1 (e) such other information as the department may  
 2 require.

3 (2) The completed form, in duplicate, with the tax  
 4 payment, must be delivered to the department not later than  
 5 30 days following the close of the quarter. The form must be  
 6 signed by an officer of the mine operator.

7 (3) A person operating more than one mine in this  
 8 state may include all of his mines in one statement.

9 (4) The department may grant a reasonable extension of  
 10 time for filing statements and payment of taxes due, upon  
 11 good cause shown therefor.

12 **NEW SECTION.** Section 6. Penalty for delinquent tax.  
 13 The department shall add to the amount of all delinquent  
 14 severance taxes a penalty of 10% of the delinquent amount  
 15 plus interest at the rate of 1 1/2% per month or fraction  
 16 thereof, computed from the date the severance tax was due to  
 17 the date of payment. The department shall mail to the person  
 18 required to file a quarterly report and pay any severance  
 19 tax a letter setting forth the amount of tax, penalty, and  
 20 interest due; and the letter shall further contain a  
 21 statement that if payment is not made within 15 days, a lien  
 22 may be filed as set forth in 15-23-806. The penalty amount  
 23 may be waived by the department if reasonable cause for the  
 24 failure or neglect to file the quarterly statement is  
 25 provided to the department.

**NEW SECTION.** Section 7. When value of mineral may be imputed -- procedure. (1) The department may impute a value to the mineral that approximates market value f.o.b. mine whenever:

(a) the mineral is sold under a contract that is not an arm's-length agreement; or

(b) a person neglects or refuses to file a statement and tax return under [sections 1 through 11].

(2) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613 in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of the mineral is being imputed and copies of the contracts under which it is selling the mineral at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

**NEW SECTION.** Section 8. Disposition of severance tax. Severance taxes collected under the provisions of [sections 1 through 11] must be deposited each year as follows:

(1) 1/2 to the trust fund created by Article IX, section 5, of the Montana Constitution; and

(2) 1/2 to the credit of the hard-rock mining impact

trust account created in 90-6-304.

**NEW SECTION.** Section 9. Royalties as percentage of value. (1) If the board of land commissioners leases any state land for mining after [the effective date of this act] with the royalty to the state of Montana stated as a percentage of the value of the mineral produced, the contract shall define "value" as the invoice price as defined in [section 2].

(2) In any civil action involving a royalty to any person owning minerals in this state in which the royalty is stated as a percentage of the value of the mineral, such value must be construed by the court to be the invoice price as defined in [section 2] unless the terms of the contract plainly indicate a different definition of value.

**NEW SECTION.** Section 10. Penalties for failure to file or filing false statement. A person who fails, neglects, or refuses to file any statement required under [sections 1 through 11] or who makes a false statement commits a misdemeanor. A person convicted under this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

**NEW SECTION.** Section 11. Rulemaking authority. The department may adopt rules necessary for the taxation of property under [sections 1 through 11].

**NEW SECTION.** Section 12. Applications for trust

account grants. The governing body of a local government unit or state government unit or agency may apply for a grant from the hard-rock mining impact trust account to enable it to provide governmental services that are needed as a direct consequence of mineral development. The board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved.

**NEW SECTION.** Section 13. Limitations on trust account grants. (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project if the grant from the hard-rock mining impact trust account does not extend over more than 10 years and does not exceed reasonable revenue expectations for the trust account. No state agency may receive grants from the trust account that exceed 5% of the money allocated to the account.

(2) Grants from the hard-rock mining impact trust account may not be awarded for a period of 5 years after the issuance of a mine operating permit under 82-4-335 if impact assistance directly related to that permit is available under the provisions of Title 90, chapter 6, part 3.

**NEW SECTION.** Section 14. Loans to hard-rock mining impact trust account from local impact and education trust fund account. (1) Except as provided in subsection (3), the board may borrow funds from the local impact and education

trust fund account for the purpose of assisting local government units in meeting the financial impact of large-scale mineral development if the tax paid during the next 10 years by the mining company or companies that cause the impact can reasonably be expected to be sufficient to repay the loan.

(2) Unless otherwise provided by the legislature, loans made under the provisions of subsection (1) must be repaid to the local impact and education trust account from the revenues collected under [section 8] within 10 years. No interest may be charged for the loan.

(3) No more than \$1 million may be borrowed under this section during any biennium without approval from the legislature, except that if the legislature is not in regular session, the coal board may approve the loan.

Section 15. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board -- general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account; and

(4) award grants, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact

and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system.

~~(5) loan money from the local impact and education trust fund accounts at no interest to the hard-rock mining impact boards."~~

Section 16. Section 90-6-304, MCA, is amended to read:

"90-6-304. Account ~~Accounts~~ established. (1) There is within the earmarked revenue fund a hard-rock mining impact account. ~~Moneys are~~ Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

~~(2) There is within the earmarked revenue fund a hard-rock mining impact trust account. Money is payable into this account under [section 8]. The state treasurer shall~~

~~draw warrants from this account upon order of the hard-rock mining impact board."~~

Section 17. Section 90-6-305, MCA, is amended to read:

"90-6-305. Hard-rock mining impact board -- general powers. (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings;

(c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307; and

(f) accept grants and other funds to be used in carrying out this part; and

~~(g) borrow funds from the local impact and education trust fund account and repay funds so borrowed in accordance with the provisions of [section 14].~~

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

~~NEW SECTION.~~ Section 18. Codification instruction. Sections 12 through 14 are intended to be codified as an integral part of Title 90, chapter 6, part 3, and the

1 provisions of Title 90, chapter 6, part 3, apply to sections  
2 12 through 14.

3 NEW SECTION. Section 19. Effective date --  
4 applicability date. If approved by the electorate, this act  
5 is effective on January 1, 1985, and applies to taxable  
6 years beginning after December 31, 1984.

7 NEW SECTION. Section 20. Submission to the  
8 electorate. The question of whether this act will become  
9 effective shall be submitted to the electors of the state of  
10 Montana at the general election to be held November 6, 1984,  
11 by printing on the ballot the full title of this act and the  
12 following:

- 13 ☐ FOR a 3 1/2% tax on hard-rock minerals.  
14 ☐ AGAINST a 3 1/2% tax on hard-rock minerals.

-End-

STATE OF MONTANA

REQUEST NO. 442-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 829 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 829 imposes a severance tax on the severance of palladium, platinum, or any other metal or precious or semiprecious gems or stones; provides exemptions for small mines; creates the hard-rock mining impact trust account; provides limitations on uses of account; provides an effective date and an applicability date; and provides that the proposed act be submitted to the electors of the State of Montana.

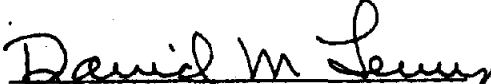
FISCAL IMPACT:

The bill would have no fiscal impact this biennium.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

No forecasts of the value of mineral production beyond FY 85 have been prepared. Assuming FY 85 will be fairly representative of production in FY 86, it appears the proposal would generate \$288,000 in FY 87 (only pick up 1 quarter) and \$1,152,000 thereafter. Revenues should increase substantially when the Stillwater Complex begins production.

FISCAL NOTE 14:P/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-83



1 *House* BILL NO. *829*  
 2 INTRODUCED BY *Senator Steve Spauld* *Jim Jensen*  
 3 *Barry Kelly* *Nisbet* *Usher* *Bandman* *Manuel*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A SEVERANCE  
 5 TAX ON THE SEVERANCE OF PALLADIUM, PLATINUM, OR ANY OTHER  
 6 METAL OR PRECIOUS OR SEMIPRECIOUS GEMS OR STONES; PROVIDING  
 7 EXEMPTIONS FOR SMALL MINES; CREATING THE HARD-ROCK MINING  
 8 IMPACT TRUST ACCOUNT; PROVIDING LIMITATIONS ON USES OF THE  
 9 ACCOUNT; AMENDING SECTIONS 90-6-205, 90-6-304, AND 90-6-305,  
 10 MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE;  
 11 AND PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE  
 12 ELECTORS OF THE STATE OF MONTANA."  
 13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 NEW SECTION. Section 1. Purpose. The large-scale  
 16 development of the state's metalliferous resources  
 17 stimulates rapid growth in certain areas and strains the  
 18 ability of nearby communities to provide essential public  
 19 facilities and services. The purpose of [sections 1 through  
 20 11] is to provide a source of funds to assist affected local  
 21 government units in providing these essential public  
 22 facilities and services.  
 23 NEW SECTION. Section 2. Definitions. As used in  
 24 [sections 1 through 11], the following definitions apply:  
 25 (1) "Department" means the department of revenue.

1 (2) "Invoice price" means either the price of the  
 2 mineral extracted and prepared for shipment f.o.b. mine or a  
 3 price imputed by the department under [section 7].  
 4 (3) "Mineral" means gold, silver, copper, lead, zinc,  
 5 chromium, palladium, platinum, molybdenum, or any other  
 6 metal or metals or precious or semiprecious gems or stones.  
 7 (4) "Produced" means severed from the earth.  
 8 NEW SECTION. Section 3. Severance tax -- rates  
 9 imposed. (1) A severance tax is imposed on minerals produced  
 10 in this state. The rate of tax is:  
 11 (a) 3% for all minerals produced before January 1,  
 12 1985; and  
 13 (b) for all minerals produced after January 1, 1985:  
 14 Annual Value of Product Tax Rate  
 15 \$0 to \$250,000 0%  
 16 more than \$250,000 and less than \$500,000 1 1/2%  
 17 more than \$500,000 and less than \$1,000,000 2 1/2%  
 18 more than \$1,000,000 3 1/2%  
 19 (2) The annual value of product is the invoice price  
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 21 NEW SECTION. Section 4. Credits. (1) There is allowed  
 22 as a credit against the tax imposed by [section 3] the  
 23 amount of metalliferous mine license tax paid under Title  
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1 by [section 3] equal to 150% of all money contributed toward  
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 7 must be approved by the hard-rock mining impact board as  
 8 being made for the type of expenses described in this  
 9 subsection.

10 NEW SECTION. Section 5. Quarterly statement and  
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 12 severance tax due on each quarter-year's worth of production  
 13 on forms prescribed by the department. The statement shall  
 14 include:

15 (a) gross yield of the mineral produced in  
 16 constituents of commercial value, which must be stated in  
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 18 or silver; pounds of copper, lead, or zinc; or other  
 19 commercially valuable constituents of the mineral measured  
 20 by standard units of measure;

21 (b) the invoice price received for the production;

22 (c) the gross value of product as determined for  
 23 purposes of Title 15, chapter 37, part 1;

24 (d) any credit the mine operator may be entitled to;  
 25 and

1 (e) such other information as the department may  
 2 require.

3 (2) The completed form, in duplicate, with the tax  
 4 payment, must be delivered to the department not later than  
 5 30 days following the close of the quarter. The form must be  
 6 signed by an officer of the mine operator.

7 (3) A person operating more than one mine in this  
 8 state may include all of his mines in one statement.

9 (4) The department may grant a reasonable extension of  
 10 time for filing statements and payment of taxes due, upon  
 11 good cause shown therefor.

12 NEW SECTION. Section 6. Penalty for delinquent tax.  
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 15 plus interest at the rate of 1 1/2% per month or fraction  
 16 thereof, computed from the date the severance tax was due to  
 17 the date of payment. The department shall mail to the person  
 18 required to file a quarterly report and pay any severance  
 19 tax a letter setting forth the amount of tax, penalty, and  
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 21 statement that if payment is not made within 15 days, a lien  
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 23 may be waived by the department if reasonable cause for the  
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(b) a person neglects or refuses to file a statement and tax return under [sections 1 through 11].

(2) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613 in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of the mineral is being imputed and copies of the contracts under which it is selling the mineral at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

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(1) 1/2 to the trust fund created by Article IX, section 5, of the Montana Constitution; and

(2) 1/2 to the credit of the hard-rock mining impact

trust account created in 90-6-304.

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(2) In any civil action involving a royalty to any person owning minerals in this state in which the royalty is stated as a percentage of the value of the mineral, such value must be construed by the court to be the invoice price as defined in [section 2] unless the terms of the contract plainly indicate a different definition of value.

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1 account grants. The governing body of a local government  
 2 unit or state government unit or agency may apply for a  
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 4 enable it to provide governmental services that are needed  
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 13 not extend over more than 10 years and does not exceed  
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17 (2) Grants from the hard-rock mining impact trust  
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 19 issuance of a mine operating permit under 82-4-335 if impact  
 20 assistance directly related to that permit is available  
 21 under the provisions of Title 90, chapter 6, part 3.

22 NEW SECTION. Section 14. Loans to hard-rock mining  
 23 impact trust account from local impact and education trust  
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 25 board may borrow funds from the local impact and education

1 trust fund account for the purpose of assisting local  
 2 government units in meeting the financial impact of  
 3 large-scale mineral development if the tax paid during the  
 4 next 10 years by the mining company or companies that cause  
 5 the impact can reasonably be expected to be sufficient to  
 6 repay the loan.

7 (2) Unless otherwise provided by the legislature,  
 8 loans made under the provisions of subsection (1) must be  
 9 repaid to the local impact and education trust account from  
 10 the revenues collected under [section 8] within 10 years. No  
 11 interest may be charged for the loan.

12 (3) No more than \$1 million may be borrowed under this  
 13 section during any biennium without approval from the  
 14 legislature, except that if the legislature is not in  
 15 regular session, the coal board may approve the loan.

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- 20 (2) adopt rules governing its proceedings;
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 22 impact and education trust fund account; and
- 23 (4) award grants, subject to 90-6-207, not to exceed  
 24 in any one year seven-elevenths and after June 30, 1979,  
 25 seven-fifteenths of the revenue paid into the local impact

and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system.

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(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

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(c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307; and

(f) accept grants and other funds to be used in carrying out this part; and

~~(g) borrow funds from the local impact and education trust fund account and repay funds so borrowed in accordance with the provisions of [section 14].~~

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

NEW SECTION. Section 18. Codification instruction. Sections 12 through 14 are intended to be codified as an integral part of Title 90, chapter 6, part 3, and the

1 provisions of Title 90, chapter 6, part 3, apply to sections  
2 12 through 14.

3 NEW SECTION. Section 19. Effective date --  
4 applicability date. If approved by the electorate, this act  
5 is effective on January 1, 1985, and applies to taxable  
6 years beginning after December 31, 1984.

7 NEW SECTION. Section 20. Submission to the  
8 electorate. The question of whether this act will become  
9 effective shall be submitted to the electors of the state of  
10 Montana at the general election to be held November 6, 1984,  
11 by printing on the ballot the full title of this act and the  
12 following:

13 ☐ FOR a 3 1/2% tax on hard-rock minerals.

14 ☐ AGAINST a 3 1/2% tax on hard-rock minerals.

-End-