

HOUSE BILL NO. 607

INTRODUCED BY QUILICI, PECK, NEUMAN, MARKS, ASAY,  
O'HARA, PAVLOVICH, ABRAMS, LYNCH, CRIPPEN, HIRSCH,  
MCCALLUM, B. WILLIAMS, HARP, D. BROWN, HARRINGTON,  
IVERSON, HOLLIDAY, MENAHAN, MANUEL, JACOBSON,  
HAFFEY, MAZUREK, SPAETH, BACHINI, JONES, GILBERT,  
BRANDEWIE, HANSON, M. WILLIAMS, WINSLOW,  
KOEHNKE, BENGTON, SANDS

BY REQUEST OF THE GOVERNOR

IN THE HOUSE

February 1, 1985	Introduced and referred to Committee on Taxation.
February 5, 1985	Fiscal Note requested.
February 8, 1985	Fiscal Note returned.  On motion by Chief Sponsor, Representatives Bachini, Jones, Gilbert, Brandewie, Hanson, M. Williams, Winslow, Koehnke, and Sands and Senator Bengtson added as sponsors.
February 27, 1985	On February 16, 1985, the Senate directed that the names of Senators Eck and Conover be removed from the bill.
March 21, 1985	Committee recommend bill do pass as amended. Report adopted.  Bill printed and placed on members' desks.
March 23, 1985	Motion pass consideration until 64th Legislative Day.
March 25, 1985	Second reading, do pass as amended.

March 26, 1985

Correctly engrossed.

March 27, 1985

Third reading, passed.

Transmitted to Senate.

#### IN THE SENATE

March 28, 1985

Introduced and referred to  
Committee on Taxation.

April 18, 1985

Committee recommend bill be  
concurrent in. Report adopted.

Second reading, concurred in.

April 19, 1985

Third reading, concurred in.  
Ayes, 37; Noes, 13.

Returned to House.

#### IN THE HOUSE

April 19, 1985

Received from Senate.

April 20, 1985

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 607  
 2 INTRODUCED BY *Julian Park Newman*  
 3 BY REQUEST OF THE GOVERNOR *Spuch*  
 4 *Hirsch B. Williams* *Joe Brown* *Jesse* *Hillman*  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A PRODUCTION  
 6 INCENTIVE TAX CREDIT TO THE COAL SEVERANCE TAX ON  
 7 INCREMENTAL PRODUCTION OF COAL MEETING CERTAIN REQUIREMENTS,  
 8 LIMITING THE PERIOD DURING WHICH PRODUCTION MAY QUALIFY FOR  
 9 THE CREDIT; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA;  
 10 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
 11 APPLICABILITY DATE."

13 WHEREAS, the coal industry has claimed that Montana's  
 14 30% coal severance tax limits sales and production of  
 15 Montana coal; and

16 WHEREAS, by providing a "window of opportunity", the  
 17 legislature challenges the coal industry to find new markets  
 18 and customers for Montana coal; and

19 WHEREAS, the present tax base on current Montana coal  
 20 production must be preserved in order to maintain existing  
 21 state revenues and services.

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

24 NEW SECTION. Section 1. Short title. [This section  
 25 and sections 3 through 6] may be cited as the "New Coal

1 Production Incentive Tax Credit Act of 1985".

2 Section 2. Section 15-35-102, MCA, is amended to read:  
 3 "15-35-102. Definitions. As used in this chapter, the  
 4 following definitions apply:

5 (1) "Agreement" means a signed contract that is valid  
 6 under Montana law between a coal mine operator and a  
 7 purchaser or broker for the sale of coal that is produced in  
 8 Montana.

9 (2) "Base consumption level" for a purchaser means the  
 10 greater of:

11 (a) the arithmetic average volume of coal purchased  
 12 during calendar years 1983 and 1984 from all Montana coal  
 13 mine operators; or

14 (b) 90% of the maximum tonnage provided for in any  
 15 agreement executed prior to January 1, 1985, for which the  
 16 highest scheduled minimum quantity of coal stipulated by the  
 17 terms of the agreement as they existed on January 1, 1985,  
 18 has not been purchased at any time during the term of the  
 19 agreement, plus the arithmetic average volume of coal  
 20 purchased during calendar years 1983 and 1984 from all  
 21 Montana coal mine operators under all other agreements.

22 (3) "Base production level" for a coal mine operator  
 23 means the arithmetic average volume of coal produced in  
 24 Montana and sold to a purchaser in calendar years 1983 and  
 25 1984.



1 (4) "Broker" means any person who resells Montana  
2 coal.

3 ††(5) "Contract sales price" means either the price  
4 of coal extracted and prepared for shipment f.o.b. mine,  
5 excluding that amount charged by the seller to pay taxes  
6 paid on production, or a price imputed by the department  
7 under 15-35-107. Contract sales price includes all royalties  
8 paid on production, no matter how such royalties are  
9 calculated. However, with respect to royalties paid to the  
10 government of the United States, the state of Montana, or a  
11 federally recognized Indian tribe, the contract sales price  
12 includes only:

13 (a) for quarterly periods ending on and after  
14 September 30, 1984, 15 cents per ton plus 75% of the  
15 difference between 15 cents per ton and the amount of such  
16 federal, state, and tribal government royalties actually  
17 paid;

18 (b) for quarterly periods ending on and after  
19 September 30, 1985, 15 cents per ton plus 50% of the  
20 difference between 15 cents per ton and the amount of such  
21 federal, state, and tribal government royalties actually  
22 paid;

23 (c) for quarterly periods ending on and after  
24 September 30, 1986, 15 cents per ton plus 25% of the  
25 difference between 15 cents per ton and the amount of such

1 federal, state, and tribal government royalties actually  
2 paid; and

3 (d) for quarterly periods ending on and after  
4 September 30, 1987, 15 cents per ton.

5 ††(6) "Department" means the department of revenue.

6 ††(7) "Energy conversion process" includes any  
7 process by which coal in the solid state is transformed into  
8 slurry, gas, electric energy, or any other form of energy.

9 (8) "Incremental production" means that quantity of  
10 coal produced annually by a coal mine operator and sold to a  
11 qualified purchaser that exceeds the base production level  
12 of the coal mine operator for that purchaser, but only to  
13 the extent the quantity of coal exceeds that purchaser's  
14 base consumption level from all Montana producers.

15 ††(9) "Produced" means severed from the earth.

16 (10) "Purchaser" means a person who purchases or  
17 contracts to purchase Montana coal directly from a coal mine  
18 operator or indirectly from a broker and who utilizes that  
19 coal in any industrial, commercial, or energy conversion  
20 process. A coal broker or any other third party intermediary  
21 is not a purchaser under the provisions of this chapter.

22 (11) "Qualified purchaser" means a purchaser whose  
23 purchases of Montana coal in any given year exceed his base  
24 consumption level. A purchaser of Montana coal who enters  
25 into a coal agreement with another purchaser or a broker

1 that causes a reduction in the base consumption level of a  
 2 purchaser is not a qualified purchaser.

3 ~~(5)~~(12) "Strip mining" or "surface mining" is defined  
 4 in 82-4-203.

5 ~~(6)~~(13) "Taxes paid on production" includes any tax  
 6 paid to the federal, state, or local governments upon the  
 7 quantity of coal produced as a function of either the volume  
 8 or the value of production and does not include any tax upon  
 9 the value of mining equipment, machinery, or buildings and  
 10 lands, any tax upon a person's net income derived in whole  
 11 or in part from the sale of coal, or any license fee.

12 ~~(7)~~(14) "Ton" means 2,000 pounds.

13 ~~(8)~~(15) "Underground mining" means a coal mining method  
 14 utilizing shafts and tunnels and as further defined in  
 15 82-4-203."

16 NEW SECTION. Section 3. New coal production incentive  
 17 tax credit allowed -- application limited. (1) A coal mine  
 18 operator is entitled to a new coal production incentive tax  
 19 credit of 33 1/3% of the tax imposed under 15-35-103 on any  
 20 incremental production produced and sold during calendar  
 21 years 1985 and 1986.

22 (2) A coal mine operator is entitled to a new coal  
 23 production incentive tax credit of 33 1/3% of the tax  
 24 imposed under 15-35-103 on incremental production for the  
 25 entire term of an agreement, except as provided in

1 subsection (3), if the incremental production resulted from  
 2 coal purchases under:

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

6 (b) a new agreement that was executed between January  
 7 1, 1985, and June 30, 1987.

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

10 NEW SECTION. Section 4. Calculation and application  
 11 of credit. (1) The amount of new coal production incentive  
 12 tax credit that a coal mine operator may claim against the  
 13 tax imposed in 15-35-103 is calculated by:

14 (a) determining the incremental production for each of  
 15 his qualified purchasers that was produced during a calendar  
 16 year;

17 (b) determining the arithmetic average severance tax  
 18 per ton calculated prior to application of the credit on  
 19 coal sold to each qualified purchaser during the calendar  
 20 year;

21 (c) multiplying the incremental production for a  
 22 calendar year for a purchaser by the average severance tax  
 23 per ton for that purchaser; and

24 (d) totaling the amount so calculated for all  
 25 qualified purchasers.

1 (2) When filing the quarterly statement required in  
2 15-35-104, a coal mine operator may claim against the coal  
3 severance tax calculated for that quarter an amount equal to  
4 25% of the new coal production incentive tax credit allowed  
5 on incremental production that occurred during the previous  
6 calendar year.

7 (3) If in any calendar year a purchaser exceeds his  
8 base consumption level and he has purchased from more than  
9 one Montana coal mine operator during the year, the credit  
10 on the incremental production must be divided among the  
11 operators on a pro rata basis. To determine each coal mine  
12 operator's pro rata share of the tax credit, each operator  
13 shall divide his incremental production by the sum of all  
14 coal mine operators' incremental production for that  
15 purchaser and multiply the quotient by the purchases in  
16 excess of the base consumption level for that purchaser.

17 (4) Neither a coal mine operator nor a purchaser is  
18 entitled to a direct payment for the credit allowed in  
19 [section 3]. A credit terminates if not taken during the  
20 year following the year in which the incremental production  
21 occurred.

22 (5) Each coal mine operator must reduce the delivered  
23 price of coal sold to each qualified purchaser by an amount  
24 equal to the credit received on incremental production sold  
25 to that purchaser.

1 NEW SECTION. Section 5. Reporting requirements for  
2 credit -- duty of department. (1) Every Montana coal mine  
3 operator must provide to the department:

4 (a) on or before April 30, 1985, a list showing the  
5 amount of coal produced and sold in calendar years 1983 and  
6 1984 to every purchaser, including purchasers who obtained  
7 coal from the coal mine operator through a broker; and

8 (b) with the quarterly statement required by  
9 15-35-104, a list of the number of tons produced and sold to  
10 every purchaser during the quarter and the severance tax  
11 calculated prior to the application of the credit on these  
12 tons.

13 (2) To be eligible for the tax credit provided for in  
14 [section 3], a coal mine operator must furnish to the  
15 department:

16 (a) on or before April 30, 1985, copies of all  
17 existing coal sales agreements;

18 (b) with the quarterly statement required by  
19 15-35-104, a copy of any new coal sales agreements or  
20 extensions of existing agreements executed during the  
21 quarter;

22 (c) on or before January 31 of each year:

23 (i) a list of incremental production for all qualified  
24 purchasers during the previous calendar year;

25 (ii) a written statement from each qualified purchaser

1 verifying the volume of coal purchased in that year from all  
2 Montana coal mine operators; and

3 (iii) the necessary information on incremental  
4 production purchased through a broker to verify that such  
5 incremental production did not cause a reduction in the base  
6 consumption level of any other purchaser of Montana coal;  
7 and

8 (d) any other data, reports, evidence, or production  
9 data that may be necessary for the department to determine  
10 whether a purchaser is a qualified purchaser and the base  
11 consumption level for each purchaser.

12 (3) By July 1, 1985, the department shall prepare and  
13 publish for informational purposes only an unaudited  
14 compilation of the base production level for each coal mine  
15 operator and a compilation of the base consumption level for  
16 each purchaser.

17 NEW SECTION. Section 6. Returns and taxpayer  
18 information confidential. Except during proceedings before  
19 the state tax appeal board pursuant to 15-2-201, the returns  
20 and other information supplied by a coal mine operator  
21 pursuant to [sections 1 and 3 through 6], together with any  
22 corrections thereof which may have been made by the  
23 department, are open to inspection only upon the order of  
24 the governor, under rules to be prescribed by the  
25 department, or upon order of a court of competent

1 jurisdiction.

2 Section 7. Section 15-35-103, MCA, is amended to read:

3 "15-35-103. Severance tax -- rates imposed --  
4 exemptions. (1) A severance tax is imposed on each ton of  
5 coal produced in the state in accordance with the following  
6 schedule:

7 Heating quality	8 Surface	9 Underground
8 (Btu per pound	8 Mining	8 Mining
9 of coal):		
10 Under 7,000	12 cents or	5 cents or
11	20% of value	3% of value
12 7,000-8,000	22 cents or	8 cents or
13	30% of value	4% of value
14 8,000-9,000	34 cents or	10 cents or
15	30% of value	4% of value
16 Over 9,000	40 cents or	12 cents or
17	30% of value	4% of value

18 "Value" means the contract sales price.

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

22 (3) A person is not liable for any severance tax upon  
23 50,000 tons of the coal he produces in a calendar year,  
24 except that if he produces more than 50,000 tons of coal in  
25 a calendar year, he will be liable for severance tax upon

1 all coal produced in excess of the first 20,000 tons.

1 1984.

2 (4) A new coal production incentive tax credit may be  
3 claimed on certain coal as provided in [section 3]."

-End-

4 NEW SECTION. Section 8. Extension of rulemaking  
5 authority. The existing authority of the department of  
6 revenue under 15-35-122 to adopt rules necessary for the  
7 administration of [this act] is extended to the provisions  
8 of [this act]. Such rulemaking may begin upon passage and  
9 approval of [this act].

10 NEW SECTION. Section 9. Nonseverability and effect of  
11 invalidity. Each part of this act is essentially dependent  
12 upon every other part and if one part is held  
13 unconstitutional or invalid, all other parts are invalid.  
14 If a part of [this act] is declared invalid, the tax credit  
15 provided for in [this act] does not apply to any coal  
16 produced in Montana after the effective date of any such  
17 court decision.

18 NEW SECTION. Section 10. Codification instruction.  
19 Sections 1 and 3 through 6 are intended to be codified as an  
20 integral part of Title 15, chapter 35, and the provisions of  
21 Title 15, chapter 35, apply to sections 1 and 3 through 6.

22 NEW SECTION. Section 11. Effective and applicability  
23 dates. (1) [This act] is effective on passage and approval.

24 (2) [This act] applies retroactively, within the  
25 meaning of 1-2-109, to all occurrences after December 31,



## FISCAL NOTE

In compliance with a written request received February 5, 19 85, there is hereby submitted a Fiscal Note for H.B. 607 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:

An act to allow a production incentive tax credit to the coal severance tax on incremental production of coal meeting certain requirements; limiting the period during which production may qualify for the credit.

ASSUMPTIONS:

OBPP revenue estimates are based on present and future coal production from current contracts.

FISCAL IMPACT:

The proposed legislation does not effect revenue estimates for the coal severance tax base. Coal production currently contracted remains at the present tax rate in the FY 86-87 biennium. Any additional production due to the incentive tax credit would increase coal severance tax revenues. If the average coal severance tax per ton is \$3.00 (at the 30% rate), additional production due to the incentive would add \$2.00 per ton to coal severance tax revenues (.667 X \$3.00). Additional coal production would also increase revenues to the resource indemnity trust tax and the coal gross proceeds property tax (university levy and school foundation program).

*David L. Hunter*

BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Feb 8, 1985

HB 607

APPROVED BY COMMITTEE  
ON TAXATION

HOUSE BILL NO. 607

INTRODUCED BY QUILICI, PECK, NEUMAN, MARKS, ASAY,  
O'HARA, PAVLOVICH, ABRAMS, LYNCH, CRIPPEN, HIRSCH,  
MCCALLUM, B. WILLIAMS, HARP, D. BROWN, HARRINGTON,  
IVERSON, HOLLIDAY, MENAHAN, MANUEL, JACOBSON,  
HAFFEY, MAZUREK, SPAETH, BACHINI, JONES, GILBERT,  
BRANDEWIE, HANSON, M. WILLIAMS, WINSLOW,  
KOEHNKE, BENGTSON, SANDS  
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A PRODUCTION  
INCENTIVE TAX CREDIT TO THE COAL SEVERANCE TAX ON  
INCREMENTAL PRODUCTION OF COAL MEETING CERTAIN REQUIREMENTS;  
LIMITING THE PERIOD DURING WHICH PRODUCTION MAY QUALIFY FOR  
THE CREDIT; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA;  
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
APPLICABILITY DATE."

WHEREAS, the coal industry has claimed that Montana's  
30% coal severance tax limits sales and production of  
Montana coal; and

WHEREAS, by providing a "window of opportunity", the  
legislature challenges the coal industry to find new markets  
and customers for Montana coal; and

WHEREAS, the present tax base on current Montana coal

production must be preserved in order to maintain existing  
state revenues and services.

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

NEW SECTION. Section 1. Short title. [This section  
and sections 3 through 6] may be cited as the "New Coal  
Production Incentive Tax Credit Act of 1985".

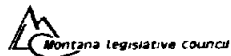
Section 2. Section 15-35-102, MCA, is amended to read:  
"15-35-102. Definitions. As used in this chapter, the  
following definitions apply:

(1) "Agreement" means a signed contract that is valid  
under Montana law between a coal mine operator and a  
purchaser or broker for the sale of coal that is produced in  
Montana.

(2) "Base consumption level" for a purchaser means the  
greater of:

(a) the arithmetic average volume of coal purchased  
during calendar years 1983 and 1984 from all Montana coal  
mine operators; or

(b) 90% of the maximum tonnage provided for in any  
agreement executed prior to January 1, 1985, for which the  
highest scheduled minimum quantity of coal stipulated by the  
terms of the agreement as they existed on January 1, 1985,  
has not been purchased at any time during the term of the  
agreement, plus the arithmetic average volume of coal



1 purchased during calendar years 1983 and 1984 from all  
 2 Montana coal mine operators under all other agreements.

3 (3) "Base production level" for a coal mine operator  
 4 means the arithmetic average volume of coal produced in  
 5 Montana and sold to a purchaser in calendar years 1983 and  
 6 1984.

7 (4) "Broker" means any person who resells Montana  
 8 coal.

9 ~~(1)~~(5) "Contract sales price" means either the price  
 10 of coal extracted and prepared for shipment f.o.b. mine,  
 11 excluding that amount charged by the seller to pay taxes  
 12 paid on production, or a price imputed by the department  
 13 under 15-35-107. Contract sales price includes all royalties  
 14 paid on production, no matter how such royalties are  
 15 calculated. However, with respect to royalties paid to the  
 16 government of the United States, the state of Montana, or a  
 17 federally recognized Indian tribe, the contract sales price  
 18 includes only:

19 (a) for quarterly periods ending on and after  
 20 September 30, 1984, 15 cents per ton plus 75% of the  
 21 difference between 15 cents per ton and the amount of such  
 22 federal, state, and tribal government royalties actually  
 23 paid;

24 (b) for quarterly periods ending on and after  
 25 September 30, 1985, 15 cents per ton plus 50% of the

1 difference between 15 cents per ton and the amount of such  
 2 federal, state, and tribal government royalties actually  
 3 paid;

4 (c) for quarterly periods ending on and after  
 5 September 30, 1986, 15 cents per ton plus 25% of the  
 6 difference between 15 cents per ton and the amount of such  
 7 federal, state, and tribal government royalties actually  
 8 paid; and

9 (d) for quarterly periods ending on and after  
 10 September 30, 1987, 15 cents per ton.

11 ~~(2)~~(6) "Department" means the department of revenue.

12 ~~(3)~~(7) "Energy conversion process" includes any  
 13 process by which coal in the solid state is transformed into  
 14 slurry, gas, electric energy, or any other form of energy.

15 (8) "Incremental production" means that quantity of  
 16 coal produced annually by a coal mine operator and sold to a  
 17 qualified purchaser that exceeds the base production level  
 18 of the coal mine operator for that purchaser, but only to  
 19 the extent the quantity of coal exceeds that purchaser's  
 20 base consumption level from all Montana producers.

21 ~~(4)~~(9) "Produced" means severed from the earth.

22 (10) "Purchaser" means a person who purchases or  
 23 contracts to purchase Montana coal directly from a coal mine  
 24 operator or indirectly from a broker and who utilizes that  
 25 coal in any industrial, commercial, or energy conversion

1 process. A coal broker or any other third party intermediary  
2 is not a purchaser under the provisions of this chapter.

3 (11) "Qualified purchaser" means a purchaser whose  
4 purchases of Montana coal in any given year exceed his base  
5 consumption level. A purchaser of Montana coal who enters  
6 into a coal agreement with another purchaser or a broker  
7 that causes a reduction in the base consumption level of a  
8 purchaser is not a qualified purchaser.

9 ~~†5†~~(12) "Strip mining" or "surface mining" is defined  
10 in 82-4-203.

11 ~~†6†~~(13) "Taxes paid on production" includes any tax  
12 paid to the federal, state, or local governments upon the  
13 quantity of coal produced as a function of either the volume  
14 or the value of production and does not include any tax upon  
15 the value of mining equipment, machinery, or buildings and  
16 lands, any tax upon a person's net income derived in whole  
17 or in part from the sale of coal, or any license fee.

18 ~~†7†~~(14) "Ton" means 2,000 pounds.

19 ~~†8†~~(15) "Underground mining" means a coal mining method  
20 utilizing shafts and tunnels and as further defined in  
21 82-4-203."

22 NEW SECTION. Section 3. New coal production incentive  
23 tax credit allowed -- application limited. (1) A coal mine  
24 operator is entitled to a new coal production incentive tax  
25 credit of 33 1/3% of the tax imposed under 15-35-103 on any

1 incremental production produced and sold during calendar  
2 years 1985 and 1986.

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

9 (a) an existing agreement which was extended between  
10 January 1, 1985, and June 30, 1987, for at least a 5-year  
11 period; or

12 (b) a new agreement that was executed between January  
13 1, 1985, and June 30, 1987.

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

16 NEW SECTION. Section 4. Calculation and application  
17 of credit. (1) The amount of new coal production incentive  
18 tax credit that a coal mine operator may claim against the  
19 tax imposed in 15-35-103 is calculated by:

20 (a) determining the incremental production for each of  
21 his qualified purchasers that was produced during a calendar  
22 year;

23 (b) determining the arithmetic average severance tax  
24 per ton calculated prior to application of the credit on  
25 coal sold to each qualified purchaser during the calendar

1 year;

2 (c) multiplying the incremental production for a  
3 calendar year for a purchaser by the average severance tax  
4 per ton for that purchaser AND MULTIPLYING THE TOTAL BY  
5 33 1/3%; and

6 (d) totaling the amount so calculated for all  
7 qualified purchasers.

8 (2) When filing the quarterly statement required in  
9 15-35-104, a coal mine operator may claim against the coal  
10 severance tax calculated for that quarter an amount equal to  
11 25% of the new coal production incentive tax credit allowed  
12 on incremental production that occurred during the previous  
13 calendar year.

14 (3) If in any calendar year a purchaser exceeds his  
15 base consumption level and he has purchased from more than  
16 one Montana coal mine operator during the year, the credit  
17 on the incremental production must be divided among the  
18 operators on a pro rata basis. To determine each coal mine  
19 operator's pro rata share of the tax credit, each operator  
20 shall divide his incremental production by the sum of all  
21 coal mine operators' incremental production for that  
22 purchaser and multiply the quotient by the purchases in  
23 excess of the base consumption level for that purchaser.

24 (4) Neither a coal mine operator nor a purchaser is  
25 entitled to a direct payment for the credit allowed in

1 [section 3]. A credit terminates if not taken during the  
2 year following the year in which the incremental production  
3 occurred. •

4 (5) Each coal mine operator must reduce the delivered  
5 price of coal sold to each qualified purchaser by an amount  
6 equal to the credit received on incremental production sold  
7 to that purchaser.

8 NEW SECTION. Section 5. Reporting requirements for  
9 credit -- duty of department. (1) Every Montana coal mine  
10 operator must provide to the department:

11 (a) on or before April 30, 1985, a list showing the  
12 amount of coal produced and sold in calendar years 1983 and  
13 1984 to every purchaser, including purchasers who obtained  
14 coal from the coal mine operator through a broker; and

15 (b) with the quarterly statement required by  
16 15-35-104, a list of the number of tons produced and sold to  
17 every purchaser during the quarter and the severance tax  
18 calculated prior to the application of the credit on these  
19 tons.

20 (2) To be eligible for the tax credit provided for in  
21 [section 3], a coal mine operator must furnish to the  
22 department:

23 (a) on or before April 30, 1985, copies of all  
24 existing coal sales agreements;

25 (b) with the quarterly statement required by

1 15-35-104, a copy of any new coal sales agreements or  
2 extensions of existing agreements executed during the  
3 quarter;

4 (c) on or before January 31 of each year:

5 (i) a list of incremental production for all qualified  
6 purchasers during the previous calendar year;

7 (ii) a written statement from each qualified purchaser  
8 verifying the volume of coal purchased in that year from all  
9 Montana coal mine operators; and

10 (iii) the necessary information on incremental  
11 production purchased through a broker to verify that such  
12 incremental production did not cause a reduction in the base  
13 consumption level of any other purchaser of Montana coal;  
14 and

15 (d) any other data, reports, evidence, or production  
16 data that may be necessary for the department to determine  
17 whether a purchaser is a qualified purchaser and the base  
18 consumption level for each purchaser.

19 (3) By July 1, 1985, the department shall prepare and  
20 publish for informational purposes only an unaudited  
21 compilation of the base production level for each coal mine  
22 operator and a compilation of the base consumption level for  
23 each purchaser.

24 (4) ANY COAL MINE OPERATOR OR PURCHASER MAY, FOR THE  
25 PURPOSE OF DETERMINING THE ELIGIBILITY OF COAL PRODUCTION

1 FOR THE NEW PRODUCTION INCENTIVE TAX CREDIT, FILE WITH THE  
2 DEPARTMENT A PETITION FOR A DECLARATORY RULING AS PROVIDED  
3 IN 2-4-501. THE DEPARTMENT SHALL ISSUE A RULING ON THE  
4 PETITION WITHIN 90 DAYS OF THE DATE THE PETITION WAS FILED  
5 WITH THE DEPARTMENT.

6 NEW SECTION. Section 6. Returns and taxpayer  
7 information ~~confidential~~; OPEN TO PUBLIC INSPECTION --  
8 CERTAIN EXCEPTIONS. (1) ALL INFORMATION FILED WITH THE  
9 DEPARTMENT IN ACCORDANCE WITH [SECTION 5] IS PUBLIC RECORD  
10 AND OPEN TO PUBLIC INSPECTION, EXCEPT THE INFORMATION  
11 REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL SALES  
12 AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)].

13 (2) Except during proceedings before the state tax  
14 appeal board pursuant to 15-2-201, ~~the returns and other~~  
15 ~~information supplied by a coal mine operator pursuant to~~  
16 ~~[sections 1 and 3 through 6], together with any corrections~~  
17 ~~thereof which may have been made by the department,~~ THE  
18 INFORMATION REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL  
19 SALES AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)]  
20 are open to inspection only upon the order of the governor,  
21 under rules to be prescribed by the department, or upon  
22 order of a court of competent jurisdiction.

23 Section 7. Section 15-35-103, MCA, is amended to read:  
24 "15-35-103. Severance tax -- rates imposed --  
25 exemptions. (1) A severance tax is imposed on each ton of

1 coal produced in the state in accordance with the following  
 2 schedule:

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

14 "Value" means the contract sales price.

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

18 (3) A person is not liable for any severance tax upon  
 19 50,000 tons of the coal he produces in a calendar year,  
 20 except that if he produces more than 50,000 tons of coal in  
 21 a calendar year, he will be liable for severance tax upon  
 22 all coal produced in excess of the first 20,000 tons.

23 (4) A new coal production incentive tax credit may be  
 24 claimed on certain coal as provided in [section 3]."

25 NEW SECTION. Section 8. Extension of rulemaking

1 authority. The existing authority of the department of  
 2 revenue under 15-35-122 to adopt rules necessary for the  
 3 administration of [this act] is extended to the provisions  
 4 of [this act]. Such rulemaking may begin upon passage and  
 5 approval of [this act].

6 NEW SECTION. Section 9. Nonseverability and effect of  
 7 invalidity. Each part of this act is essentially dependent  
 8 upon every other part and if one part is held  
 9 unconstitutional or invalid, all other parts are invalid.  
 10 If a part of [this act] is declared invalid, the tax credit  
 11 provided for in [this act] does not apply to any coal  
 12 produced in Montana after the effective date of any such  
 13 court decision.

14 NEW SECTION. Section 10. Codification instruction.  
 15 Sections 1 and 3 through 6 are intended to be codified as an  
 16 integral part of Title 15, chapter 35, and the provisions of  
 17 Title 15, chapter 35, apply to sections 1 and 3 through 6.

18 NEW SECTION. Section 11. Effective and applicability  
 19 dates. (1) [This act] is effective on passage and approval.

20 (2) [This act] applies retroactively, within the  
 21 meaning of 1-2-109, to all occurrences after December 31,  
 22 1984.

-End-

## 1 HOUSE BILL NO. 607

2 INTRODUCED BY QUILICI, PECK, NEUMAN, MARKS, ASAY,  
 3 O'HARA, PAVLOVICH, ABRAMS, LYNCH, CRIPPEN, HIRSCH,  
 4 MCCALLUM, B. WILLIAMS, HARP, D. BROWN, HARRINGTON,  
 5 IVERSON, HOLLIDAY, MENAHAN, MANUEL, JACOBSON,  
 6 HAFPEY, MAZUREK, SPAETH, BACHINI, JONES, GILBERT,  
 7 BRANDEWIE, HANSON, M. WILLIAMS, WINSLOW,  
 8 KOEHNKE, BENGTSON, SANDS  
 9 BY REQUEST OF THE GOVERNOR

10  
 11 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A PRODUCTION  
 12 INCENTIVE TAX CREDIT TO THE COAL SEVERANCE TAX ON  
 13 INCREMENTAL PRODUCTION OF COAL MEETING CERTAIN REQUIREMENTS;  
 14 LIMITING THE PERIOD DURING WHICH PRODUCTION MAY QUALIFY FOR  
 15 THE CREDIT; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA;  
 16 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
 17 APPLICABILITY DATE."  
 18

19 WHEREAS, the coal industry has claimed that Montana's  
 20 30% coal severance tax limits sales and production of  
 21 Montana coal; and

22 WHEREAS, by providing a "window of opportunity", the  
 23 legislature challenges the coal industry to find new markets  
 24 and customers for Montana coal; and

25 WHEREAS, the present tax base on current Montana coal

1 production must be preserved in order to maintain existing  
 2 state revenues and services.

3  
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. Section 1. Short title. [This section  
 6 and sections 3 through 6] may be cited as the "New Coal  
 7 Production Incentive Tax Credit Act of 1985".

8 Section 2. Section 15-35-102, MCA, is amended to read:  
 9 "15-35-102. Definitions. As used in this chapter, the  
 10 following definitions apply:

11 (1) "Agreement" means a signed contract that is valid  
 12 under Montana law between a coal mine operator and a  
 13 purchaser or broker for the sale of coal that is produced in  
 14 Montana.

15 (2) "Base consumption level" for a purchaser means the  
 16 greater of:

17 (a) the arithmetic average volume of coal purchased  
 18 during calendar years 1983 and 1984 from all Montana coal  
 19 mine operators; or

20 (b) 90% of the maximum tonnage provided for in any  
 21 agreement executed prior to January 1, 1985, for which the  
 22 highest scheduled minimum quantity of coal stipulated by the  
 23 terms of the agreement as they existed on January 1, 1985,  
 24 has not been purchased at any time during the term of the  
 25 agreement, plus the arithmetic average volume of coal



1 purchased during calendar years 1983 and 1984 from all  
 2 Montana coal mine operators under all other agreements.

3 (3) "Base production level" for a coal mine operator  
 4 means the arithmetic average volume of coal produced in  
 5 Montana and sold to a purchaser in calendar years 1983 and  
 6 1984.

7 (4) "Broker" means any person who resells Montana  
 8 coal.

9 ~~(5)~~ (5) "Contract sales price" means either the price  
 10 of coal extracted and prepared for shipment f.o.b. mine,  
 11 excluding that amount charged by the seller to pay taxes  
 12 paid on production, or a price imputed by the department  
 13 under 15-35-107. Contract sales price includes all royalties  
 14 paid on production, no matter how such royalties are  
 15 calculated. However, with respect to royalties paid to the  
 16 government of the United States, the state of Montana, or a  
 17 federally recognized Indian tribe, the contract sales price  
 18 includes only:

19 (a) for quarterly periods ending on and after  
 20 September 30, 1984, 15 cents per ton plus 75% of the  
 21 difference between 15 cents per ton and the amount of such  
 22 federal, state, and tribal government royalties actually  
 23 paid;

24 (b) for quarterly periods ending on and after  
 25 September 30, 1985, 15 cents per ton plus 50% of the

1 difference between 15 cents per ton and the amount of such  
 2 federal, state, and tribal government royalties actually  
 3 paid;

4 (c) for quarterly periods ending on and after  
 5 September 30, 1986, 15 cents per ton plus 25% of the  
 6 difference between 15 cents per ton and the amount of such  
 7 federal, state, and tribal government royalties actually  
 8 paid; and

9 (d) for quarterly periods ending on and after  
 10 September 30, 1987, 15 cents per ton.

11 ~~(6)~~ (6) "Department" means the department of revenue.

12 ~~(7)~~ (7) "Energy conversion process" includes any  
 13 process by which coal in the solid state is transformed into  
 14 slurry, gas, electric energy, or any other form of energy.

15 (8) "Incremental production" means that quantity of  
 16 coal produced annually by a coal mine operator and sold to a  
 17 qualified purchaser that exceeds the base production level  
 18 of the coal mine operator for that purchaser, but only to  
 19 the extent the quantity of coal exceeds that purchaser's  
 20 base consumption level from all Montana producers.

21 ~~(9)~~ (9) "Produced" means severed from the earth.

22 (10) "Purchaser" means a person who purchases or  
 23 contracts to purchase Montana coal directly from a coal mine  
 24 operator or indirectly from a broker and who utilizes that  
 25 coal in any industrial, commercial, or energy conversion

1 process. A coal broker or any other third party intermediary  
2 is not a purchaser under the provisions of this chapter.

3 (11) "Qualified purchaser" means a purchaser whose  
4 purchases of Montana coal in any given year exceed his base  
5 consumption level. A purchaser of Montana coal who enters  
6 into a coal agreement with another purchaser or a broker  
7 that causes a reduction in the base consumption level of a  
8 purchaser is not a qualified purchaser.

9 ~~(5)~~(12) "Strip mining" or "surface mining" is defined  
10 in 82-4-203.

11 ~~(6)~~(13) "Taxes paid on production" includes any tax  
12 paid to the federal, state, or local governments upon the  
13 quantity of coal produced as a function of either the volume  
14 or the value of production and does not include any tax upon  
15 the value of mining equipment, machinery, or buildings and  
16 lands, any tax upon a person's net income derived in whole  
17 or in part from the sale of coal, or any license fee.

18 ~~(7)~~(14) "Ton" means 2,000 pounds.

19 ~~(8)~~(15) "Underground mining" means a coal mining method  
20 utilizing shafts and tunnels and as further defined in  
21 82-4-203."

22 NEW SECTION. Section 3. New coal production incentive  
23 tax credit allowed -- application limited. (1) A coal mine  
24 operator is entitled to a new coal production incentive tax  
25 credit of 33 1/3% of the tax imposed under 15-35-103 on any

1 incremental production produced and sold during calendar  
2 years 1985 and 1986.

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

9 (a) an existing agreement which was extended between  
10 January 1, 1985, and June 30, 1987, for at least a 5-year  
11 period; or

12 (b) a new agreement that was executed between January  
13 1, 1985, and June 30, 1987.

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

16 NEW SECTION. Section 4. Calculation and application  
17 of credit. (1) The amount of new coal production incentive  
18 tax credit that a coal mine operator may claim against the  
19 tax imposed in 15-35-103 is calculated by:

20 (a) determining the incremental production for each of  
21 his qualified purchasers that was produced during a calendar  
22 year;

23 (b) determining the arithmetic average severance tax  
24 per ton calculated prior to application of the credit on  
25 coal sold to each qualified purchaser during the calendar

1 year;

2 (c) multiplying the incremental production for a  
3 calendar year for a purchaser by the average severance tax  
4 per ton for that purchaser AND MULTIPLYING THE TOTAL BY  
5 33 1/3%; and

6 (d) totaling the amount so calculated for all  
7 qualified purchasers.

8 (2) When filing the quarterly statement required in  
9 15-35-104, a coal mine operator may claim against the coal  
10 severance tax calculated for that quarter an amount equal to  
11 25% of the new coal production incentive tax credit allowed  
12 on incremental production that occurred during the previous  
13 calendar year.

14 (3) If in any calendar year a purchaser exceeds his  
15 base consumption level and he has purchased from more than  
16 one Montana coal mine operator during the year, the credit  
17 on the incremental production must be divided among the  
18 operators on a pro rata basis. To determine each coal mine  
19 operator's pro rata share of the tax credit, each operator  
20 shall divide his incremental production by the sum of all  
21 coal mine operators' incremental production for that  
22 purchaser and multiply the quotient by the purchases in  
23 excess of the base consumption level for that purchaser.

24 (4) Neither a coal mine operator nor a purchaser is  
25 entitled to a direct payment for the credit allowed in

1 [section 3]. A credit terminates if not taken during the  
2 year following the year in which the incremental production  
3 occurred.

4 (5) Each coal mine operator must reduce the delivered  
5 price of coal sold to each qualified purchaser by an amount  
6 equal to the credit received on incremental production sold  
7 to that purchaser.

8 NEW SECTION. Section 5. Reporting requirements for  
9 credit -- duty of department. (1) Every Montana coal mine  
10 operator must provide to the department:

11 (a) on or before April 30, 1985, a list showing the  
12 amount of coal produced and sold in calendar years 1983 and  
13 1984 to every purchaser, including purchasers who obtained  
14 coal from the coal mine operator through a broker; and

15 (b) with the quarterly statement required by  
16 15-35-104, a list of the number of tons produced and sold to  
17 every purchaser during the quarter and the severance tax  
18 calculated prior to the application of the credit on these  
19 tons.

20 (2) To be eligible for the tax credit provided for in  
21 [section 3], a coal mine operator must furnish to the  
22 department:

23 (a) on or before April 30, 1985, copies of all  
24 existing coal sales agreements;

25 (b) with the quarterly statement required by

1 15-35-104, a copy of any new coal sales agreements or  
2 extensions of existing agreements executed during the  
3 quarter;

4 (c) on or before January 31 of each year:

5 (i) a list of incremental production for all qualified  
6 purchasers during the previous calendar year;

7 (ii) a written statement from each qualified purchaser  
8 verifying the volume of coal purchased in that year from all  
9 Montana coal mine operators; and

10 (iii) the necessary information on incremental  
11 production purchased through a broker to verify that such  
12 incremental production did not cause a reduction in the base  
13 consumption level of any other purchaser of Montana coal;  
14 and

15 (d) any other data, reports, evidence, or production  
16 data that may be necessary for the department to determine  
17 whether a purchaser is a qualified purchaser and the base  
18 consumption level for each purchaser.

19 (3) By July 1, 1985, the department shall prepare and  
20 publish for informational purposes only an unaudited  
21 compilation of the base production level for each coal mine  
22 operator and a compilation of the base consumption level for  
23 each purchaser.

24 (4) ANY COAL MINE OPERATOR OR PURCHASER MAY, FOR THE  
25 PURPOSE OF DETERMINING THE ELIGIBILITY OF COAL PRODUCTION

1 FOR THE NEW PRODUCTION INCENTIVE TAX CREDIT, FILE WITH THE  
2 DEPARTMENT A PETITION FOR A DECLARATORY RULING AS PROVIDED  
3 IN 2-4-501. THE DEPARTMENT SHALL ISSUE A RULING ON THE  
4 PETITION WITHIN 90 DAYS OF THE DATE THE PETITION WAS FILED  
5 WITH THE DEPARTMENT.

6 NEW SECTION. Section 6. Returns and taxpayer  
7 information confidential; OPEN TO PUBLIC INSPECTION --  
8 CERTAIN EXCEPTIONS. (1) ALL INFORMATION FILED WITH THE  
9 DEPARTMENT IN ACCORDANCE WITH [SECTION 5] IS PUBLIC RECORD  
10 AND OPEN TO PUBLIC INSPECTION, EXCEPT THE INFORMATION  
11 REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL SALES  
12 AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)].

13 (2) Except during proceedings before the state tax  
14 appeal board pursuant to 15-2-201, ~~the returns and other~~  
15 ~~information supplied by a coal mine operator pursuant to~~  
16 ~~{sections 1 and 3 through 6}, together with any corrections~~  
17 ~~thereof which may have been made by the department, THE~~  
18 INFORMATION REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL  
19 SALES AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)]  
20 are open to inspection only upon the order of the governor,  
21 under rules to be prescribed by the department, or upon  
22 order of a court of competent jurisdiction.

23 Section 7. Section 15-35-103, MCA, is amended to read:

24 "15-35-103. Severance tax -- rates imposed --  
25 exemptions. (1) A severance tax is imposed on each ton of

1 coal produced in the state in accordance with the following  
2 schedule:

3 Heating quality	Surface	Underground
4 (Btu per pound	Mining	Mining
5 of coal):		
6 Under 7,000	12 cents or	5 cents or
7	20% of value	3% of value
8 7,000-8,000	22 cents or	8 cents or
9	30% of value	4% of value
10 8,000-9,000	34 cents or	10 cents or
11	30% of value	4% of value
12 Over 9,000	40 cents or	12 cents or
13	30% of value	4% of value

14 "Value" means the contract sales price.

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

18 (3) A person is not liable for any severance tax upon  
19 50,000 tons of the coal he produces in a calendar year,  
20 except that if he produces more than 50,000 tons of coal in  
21 a calendar year, he will be liable for severance tax upon  
22 all coal produced in excess of the first 20,000 tons.

23 (4) A new coal production incentive tax credit may be  
24 claimed on certain coal as provided in [section 3]."

25 NEW SECTION. Section 8. Extension of rulemaking

1 authority. The existing authority of the department of  
2 revenue under 15-35-122 to adopt rules necessary for the  
3 administration of [this act] is extended to the provisions  
4 of [this act]. Such rulemaking may begin upon passage and  
5 approval of [this act].

6 NEW SECTION. SECTION 9. COAL TAX OVERSIGHT  
7 SUBCOMMITTEE TO MONITOR NEW COAL PRODUCTION INCENTIVE TAX  
8 CREDIT. (1) THE COAL TAX OVERSIGHT SUBCOMMITTEE ESTABLISHED  
9 IN 5-18-201 SHALL REVIEW THE EFFECTS OF THE NEW COAL  
10 PRODUCTION TAX CREDIT PROVIDED IN [SECTION 3] DURING THE  
11 1985-86 LEGISLATIVE INTERIM. THIS REVIEW SHALL INCLUDE BUT  
12 NOT BE LIMITED TO:

- 13 (A) THE EFFECT OF THE TAX CREDIT ON:
  - 14 (I) COAL PRODUCTION GENERALLY;
  - 15 (II) THE NUMBER AND TERM OF NEW AGREEMENTS AND
  - 16 EXTENSIONS OF EXISTING AGREEMENTS;
  - 17 (III) THE RETENTION OR INCREASE OF MONTANA'S PRESENT
  - 18 LEVEL OF PRODUCTION;
  - 19 (IV) THE CURRENT AND FUTURE MARKETS FOR MONTANA COAL IN
  - 20 AND OUT OF THE STATE;
  - 21 (V) THE PHYSICAL, SOCIAL, AND ECONOMIC ENVIRONMENT;
- 22 (B) THE EXTENT TO WHICH THE TAX CREDIT IS CLAIMED BY
- 23 OR AWARDED TO COAL MINE OPERATORS WHO ARE NOT ENTITLED TO
- 24 IT; AND
- 25 (C) ANY OTHER FACTORS WHICH MAY AFFECT EITHER PRESENT

1 OR FUTURE SEVERANCE TAX REVENUES TO THE STATE OF MONTANA.

2 (2) THE COAL TAX OVERSIGHT SUBCOMMITTEE SHALL  
 3 INVESTIGATE AND CONDUCT PERIODIC HEARINGS FOR THE PURPOSE OF  
 4 GATHERING INFORMATION ON (1)(A) THROUGH (1)(C) ABOVE.

5 (3) THE COAL TAX OVERSIGHT SUBCOMMITTEE SHALL REPORT  
 6 ITS FINDINGS AND RECOMMENDATIONS TO THE REVENUE OVERSIGHT  
 7 COMMITTEE DURING THE INTERIM, AND THE REVENUE OVERSIGHT  
 8 COMMITTEE SHALL KEEP THE LEGISLATURE INFORMED OF THE  
 9 SUBCOMMITTEE'S FINDINGS AND PRESENT A REPORT AND  
 10 RECOMMENDATIONS TO THE LEGISLATURE.

11 NEW SECTION. Section 10. Nonseverability and effect  
 12 of invalidity. Each part of this act is essentially  
 13 dependent upon every other part and if one part is held  
 14 unconstitutional or invalid, all other parts are invalid.  
 15 If a part of [this act] is declared invalid, the tax credit  
 16 provided for in [this act] does not apply to any coal  
 17 produced in Montana after the effective date of any such  
 18 court decision.

19 NEW SECTION. Section 11. Codification instruction.  
 20 Sections 1 and 3 through 6 are intended to be codified as an  
 21 integral part of Title 15, chapter 35, and the provisions of  
 22 Title 15, chapter 35, apply to sections 1 and 3 through 6.

23 NEW SECTION. Section 12. Effective and applicability  
 24 dates. (1) [This act] is effective on passage and approval.

25 (2) [This act] applies retroactively, within the

1 meaning of 1-2-109, to all occurrences after December 31,  
 2 1984.

-End-

## 1 HOUSE BILL NO. 607

2 INTRODUCED BY QUILICI, PECK, NEUMAN, MARKS, ASAY,  
 3 O'HARA, PAVLOVICH, ABRAMS, LYNCH, CRIPPEN, HIRSCH,  
 4 MCCALLUM, B. WILLIAMS, HARP, D. BROWN, HARRINGTON,  
 5 IVERSON, HOLLIDAY, MENAHAN, MANUEL, JACOBSON,  
 6 HAPPEY, MAZUREK, SPAETH, BACHINI, JONES, GILBERT,  
 7 BRANDEWIE, HANSON, M. WILLIAMS, WINSLOW,

8 KOEHNKE, BENGTON, SANDS

9 BY REQUEST OF THE GOVERNOR

10  
 11 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A PRODUCTION  
 12 INCENTIVE TAX CREDIT TO THE COAL SEVERANCE TAX ON  
 13 INCREMENTAL PRODUCTION OF COAL MEETING CERTAIN REQUIREMENTS;  
 14 LIMITING THE PERIOD DURING WHICH PRODUCTION MAY QUALIFY FOR  
 15 THE CREDIT; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA;  
 16 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
 17 APPLICABILITY DATE."  
 18

19 WHEREAS, the coal industry has claimed that Montana's  
 20 30% coal severance tax limits sales and production of  
 21 Montana coal; and

22 WHEREAS, by providing a "window of opportunity", the  
 23 legislature challenges the coal industry to find new markets  
 24 and customers for Montana coal; and

25 WHEREAS, the present tax base on current Montana coal

1 production must be preserved in order to maintain existing  
 2 state revenues and services.

3  
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. Section 1. Short title. [This section  
 6 and sections 3 through 6] may be cited as the "New Coal  
 7 Production Incentive Tax Credit Act of 1985".

8 Section 2. Section 15-35-102, MCA, is amended to read:

9 "15-35-102. Definitions. As used in this chapter, the  
 10 following definitions apply:

11 (1) "Agreement" means a signed contract that is valid  
 12 under Montana law between a coal mine operator and a  
 13 purchaser or broker for the sale of coal that is produced in  
 14 Montana.

15 (2) "Base consumption level" for a purchaser means the  
 16 greater of:

17 (a) the arithmetic average volume of coal purchased  
 18 during calendar years 1983 and 1984 from all Montana coal  
 19 mine operators; or

20 (b) 90% of the maximum tonnage provided for in any  
 21 agreement executed prior to January 1, 1985, for which the  
 22 highest scheduled minimum quantity of coal stipulated by the  
 23 terms of the agreement as they existed on January 1, 1985,  
 24 has not been purchased at any time during the term of the  
 25 agreement, plus the arithmetic average volume of coal

REFERENCE BILL

1 purchased during calendar years 1983 and 1984 from all  
 2 Montana coal mine operators under all other agreements.

3 (3) "Base production level" for a coal mine operator  
 4 means the arithmetic average volume of coal produced in  
 5 Montana and sold to a purchaser in calendar years 1983 and  
 6 1984.

7 (4) "Broker" means any person who resells Montana  
 8 coal.

9 ~~††~~(5) "Contract sales price" means either the price  
 10 of coal extracted and prepared for shipment f.o.b. mine,  
 11 excluding that amount charged by the seller to pay taxes  
 12 paid on production, or a price imputed by the department  
 13 under 15-35-107. Contract sales price includes all royalties  
 14 paid on production, no matter how such royalties are  
 15 calculated. However, with respect to royalties paid to the  
 16 government of the United States, the state of Montana, or a  
 17 federally recognized Indian tribe, the contract sales price  
 18 includes only:

19 (a) for quarterly periods ending on and after  
 20 September 30, 1984, 15 cents per ton plus 75% of the  
 21 difference between 15 cents per ton and the amount of such  
 22 federal, state, and tribal government royalties actually  
 23 paid;

24 (b) for quarterly periods ending on and after  
 25 September 30, 1985, 15 cents per ton plus 50% of the

1 difference between 15 cents per ton and the amount of such  
 2 federal, state, and tribal government royalties actually  
 3 paid;

4 (c) for quarterly periods ending on and after  
 5 September 30, 1986, 15 cents per ton plus 25% of the  
 6 difference between 15 cents per ton and the amount of such  
 7 federal, state, and tribal government royalties actually  
 8 paid; and

9 (d) for quarterly periods ending on and after  
 10 September 30, 1987, 15 cents per ton.

11 ~~†~~(6) "Department" means the department of revenue.

12 ~~†~~(7) "Energy conversion process" includes any  
 13 process by which coal in the solid state is transformed into  
 14 slurry, gas, electric energy, or any other form of energy.

15 (8) "Incremental production" means that quantity of  
 16 coal produced annually by a coal mine operator and sold to a  
 17 qualified purchaser that exceeds the base production level  
 18 of the coal mine operator for that purchaser, but only to  
 19 the extent the quantity of coal exceeds that purchaser's  
 20 base consumption level from all Montana producers.

21 ~~††~~(9) "Produced" means severed from the earth.

22 (10) "Purchaser" means a person who purchases or  
 23 contracts to purchase Montana coal directly from a coal mine  
 24 operator or indirectly from a broker and who utilizes that  
 25 coal in any industrial, commercial, or energy conversion



1 process. A coal broker or any other third party intermediary  
2 is not a purchaser under the provisions of this chapter.

3 (11) "Qualified purchaser" means a purchaser whose  
4 purchases of Montana coal in any given year exceed his base  
5 consumption level. A purchaser of Montana coal who enters  
6 into a coal agreement with another purchaser or a broker  
7 that causes a reduction in the base consumption level of a  
8 purchaser is not a qualified purchaser.

9 ~~(5)~~(12) "Strip mining" or "surface mining" is defined  
10 in 82-4-203.

11 ~~(6)~~(13) "Taxes paid on production" includes any tax  
12 paid to the federal, state, or local governments upon the  
13 quantity of coal produced as a function of either the volume  
14 or the value of production and does not include any tax upon  
15 the value of mining equipment, machinery, or buildings and  
16 lands, any tax upon a person's net income derived in whole  
17 or in part from the sale of coal, or any license fee.

18 ~~(7)~~(14) "Ton" means 2,000 pounds.

19 ~~(8)~~(15) "Underground mining" means a coal mining method  
20 utilizing shafts and tunnels and as further defined in  
21 82-4-203."

22 NEW SECTION. Section 3. New coal production incentive  
23 tax credit allowed -- application limited. (1) A coal mine  
24 operator is entitled to a new coal production incentive tax  
25 credit of 33 1/3% of the tax imposed under 15-35-103 on any

1 incremental production produced and sold during calendar  
2 years 1985 and 1986.

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

9 (a) an existing agreement which was extended between  
10 January 1, 1985, and June 30, 1987, for at least a 5-year  
11 period; or

12 (b) a new agreement that was executed between January  
13 1, 1985, and June 30, 1987.

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

16 NEW SECTION. Section 4. Calculation and application  
17 of credit. (1) The amount of new coal production incentive  
18 tax credit that a coal mine operator may claim against the  
19 tax imposed in 15-35-103 is calculated by:

20 (a) determining the incremental production for each of  
21 his qualified purchasers that was produced during a calendar  
22 year;

23 (b) determining the arithmetic average severance tax  
24 per ton calculated prior to application of the credit on  
25 coal sold to each qualified purchaser during the calendar

1 year;

2 (c) multiplying the incremental production for a  
3 calendar year for a purchaser by the average severance tax  
4 per ton for that purchaser AND MULTIPLYING THE TOTAL BY  
5 33 1/3%; and

6 (d) totaling the amount so calculated for all  
7 qualified purchasers.

8 (2) When filing the quarterly statement required in  
9 15-35-104, a coal mine operator may claim against the coal  
10 severance tax calculated for that quarter an amount equal to  
11 25% of the new coal production incentive tax credit allowed  
12 on incremental production that occurred during the previous  
13 calendar year.

14 (3) If in any calendar year a purchaser exceeds his  
15 base consumption level and he has purchased from more than  
16 one Montana coal mine operator during the year, the credit  
17 on the incremental production must be divided among the  
18 operators on a pro rata basis. To determine each coal mine  
19 operator's pro rata share of the tax credit, each operator  
20 shall divide his incremental production by the sum of all  
21 coal mine operators' incremental production for that  
22 purchaser and multiply the quotient by the purchases in  
23 excess of the base consumption level for that purchaser.

24 (4) Neither a coal mine operator nor a purchaser is  
25 entitled to a direct payment for the credit allowed in

1 [section 3]. A credit terminates if not taken during the  
2 year following the year in which the incremental production  
3 occurred.

4 (5) Each coal mine operator must reduce the delivered  
5 price of coal sold to each qualified purchaser by an amount  
6 equal to the credit received on incremental production sold  
7 to that purchaser.

8 NEW SECTION. Section 5. Reporting requirements for  
9 credit -- duty of department. (1) Every Montana coal mine  
10 operator must provide to the department:

11 (a) on or before April 30, 1985, a list showing the  
12 amount of coal produced and sold in calendar years 1983 and  
13 1984 to every purchaser, including purchasers who obtained  
14 coal from the coal mine operator through a broker; and

15 (b) with the quarterly statement required by  
16 15-35-104, a list of the number of tons produced and sold to  
17 every purchaser during the quarter and the severance tax  
18 calculated prior to the application of the credit on these  
19 tons.

20 (2) To be eligible for the tax credit provided for in  
21 [section 3], a coal mine operator must furnish to the  
22 department:

23 (a) on or before April 30, 1985, copies of all  
24 existing coal sales agreements;

25 (b) with the quarterly statement required by

1 15-35-104, a copy of any new coal sales agreements or  
2 extensions of existing agreements executed during the  
3 quarter;

4 (c) on or before January 31 of each year:

5 (i) a list of incremental production for all qualified  
6 purchasers during the previous calendar year;

7 (ii) a written statement from each qualified purchaser  
8 verifying the volume of coal purchased in that year from all  
9 Montana coal mine operators; and

10 (iii) the necessary information on incremental  
11 production purchased through a broker to verify that such  
12 incremental production did not cause a reduction in the base  
13 consumption level of any other purchaser of Montana coal;  
14 and

15 (d) any other data, reports, evidence, or production  
16 data that may be necessary for the department to determine  
17 whether a purchaser is a qualified purchaser and the base  
18 consumption level for each purchaser.

19 (3) By July 1, 1985, the department shall prepare and  
20 publish for informational purposes only an unaudited  
21 compilation of the base production level for each coal mine  
22 operator and a compilation of the base consumption level for  
23 each purchaser.

24 (4) ANY COAL MINE OPERATOR OR PURCHASER MAY, FOR THE  
25 PURPOSE OF DETERMINING THE ELIGIBILITY OF COAL PRODUCTION

1 FOR THE NEW PRODUCTION INCENTIVE TAX CREDIT, FILE WITH THE  
2 DEPARTMENT A PETITION FOR A DECLARATORY RULING AS PROVIDED  
3 IN 2-4-501. THE DEPARTMENT SHALL ISSUE A RULING ON THE  
4 PETITION WITHIN 90 DAYS OF THE DATE THE PETITION WAS FILED  
5 WITH THE DEPARTMENT.

6 NEW SECTION. Section 6. Returns and taxpayer  
7 information confidential; OPEN TO PUBLIC INSPECTION --  
8 CERTAIN EXCEPTIONS. (1) ALL INFORMATION FILED WITH THE  
9 DEPARTMENT IN ACCORDANCE WITH [SECTION 5] IS PUBLIC RECORD  
10 AND OPEN TO PUBLIC INSPECTION, EXCEPT THE INFORMATION  
11 REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL SALES  
12 AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)].

13 (2) Except during proceedings before the state tax  
14 appeal board pursuant to 15-2-201, the-returns-and-other  
15 information-supplied-by-a-coal--mine--operator--pursuant--to  
16 {sections--1-and-3-through-6},-together-with-any-corrections  
17 thereof-which-may-have-been--made--by--the--department, THE  
18 INFORMATION REQUIRED UNDER [SECTION 5(1)(B)] AND THE COAL  
19 SALES AGREEMENTS SPECIFIED IN [SECTION 5(2)(A) AND (2)(B)]  
20 are open to inspection only upon the order of the governor,  
21 under rules to be prescribed by the department, or upon  
22 order of a court of competent jurisdiction.

23 Section 7. Section 15-35-103, MCA, is amended to read:  
24 "15-35-103. Severance tax -- rates imposed --  
25 exemptions. (1) A severance tax is imposed on each ton of

1 coal produced in the state in accordance with the following  
 2 schedule:

3 Heating quality	Surface	Underground
4 (Btu per pound	Mining	Mining
5 of coal):		
6 Under 7,000	12 cents or	5 cents or
7	20% of value	3% of value
8 7,000-8,000	22 cents or	8 cents or
9	30% of value	4% of value
10 8,000-9,000	34 cents or	10 cents or
11	30% of value	4% of value
12 Over 9,000	40 cents or	12 cents or
13	30% of value	4% of value

14 "Value" means the contract sales price.

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

18 (3) A person is not liable for any severance tax upon  
 19 50,000 tons of the coal he produces in a calendar year,  
 20 except that if he produces more than 50,000 tons of coal in  
 21 a calendar year, he will be liable for severance tax upon  
 22 all coal produced in excess of the first 20,000 tons.

23 (4) A new coal production incentive tax credit may be  
 24 claimed on certain coal as provided in [section 3]."

25 NEW SECTION. Section 8. Extension of rulemaking

1 authority. The existing authority of the department of  
 2 revenue under 15-35-122 to adopt rules necessary for the  
 3 administration of [this act] is extended to the provisions  
 4 of [this act]. Such rulemaking may begin upon passage and  
 5 approval of [this act].

6 NEW SECTION. SECTION 9. COAL TAX OVERSIGHT  
 7 SUBCOMMITTEE TO MONITOR NEW COAL PRODUCTION INCENTIVE TAX  
 8 CREDIT. (1) THE COAL TAX OVERSIGHT SUBCOMMITTEE ESTABLISHED  
 9 IN 5-18-201 SHALL REVIEW THE EFFECTS OF THE NEW COAL  
 10 PRODUCTION TAX CREDIT PROVIDED IN [SECTION 3] DURING THE  
 11 1985-86 LEGISLATIVE INTERIM. THIS REVIEW SHALL INCLUDE BUT  
 12 NOT BE LIMITED TO:

- 13 (A) THE EFFECT OF THE TAX CREDIT ON:
- 14 (I) COAL PRODUCTION GENERALLY;
- 15 (II) THE NUMBER AND TERM OF NEW AGREEMENTS AND  
 16 EXTENSIONS OF EXISTING AGREEMENTS;
- 17 (III) THE RETENTION OR INCREASE OF MONTANA'S PRESENT  
 18 LEVEL OF PRODUCTION;
- 19 (IV) THE CURRENT AND FUTURE MARKETS FOR MONTANA COAL IN  
 20 AND OUT OF THE STATE;
- 21 (V) THE PHYSICAL, SOCIAL, AND ECONOMIC ENVIRONMENT;
- 22 (B) THE EXTENT TO WHICH THE TAX CREDIT IS CLAIMED BY  
 23 OR AWARDED TO COAL MINE OPERATORS WHO ARE NOT ENTITLED TO  
 24 IT; AND
- 25 (C) ANY OTHER FACTORS WHICH MAY AFFECT EITHER PRESENT

1 OR FUTURE SEVERANCE TAX REVENUES TO THE STATE OF MONTANA.

1 meaning of 1-2-109, to all occurrences after December 31,

2 (2) THE COAL TAX OVERSIGHT SUBCOMMITTEE SHALL

2 1984.

3 INVESTIGATE AND CONDUCT PERIODIC HEARINGS FOR THE PURPOSE OF

-End-

4 GATHERING INFORMATION ON (1)(A) THROUGH (1)(C) ABOVE.

5 (3) THE COAL TAX OVERSIGHT SUBCOMMITTEE SHALL REPORT

6 ITS FINDINGS AND RECOMMENDATIONS TO THE REVENUE OVERSIGHT

7 COMMITTEE DURING THE INTERIM, AND THE REVENUE OVERSIGHT

8 COMMITTEE SHALL KEEP THE LEGISLATURE INFORMED OF THE

9 SUBCOMMITTEE'S FINDINGS AND PRESENT A REPORT AND

10 RECOMMENDATIONS TO THE LEGISLATURE.

11 NEW SECTION. Section 10. Nonseverability and effect  
12 of invalidity. Each part of this act is essentially  
13 dependent upon every other part and if one part is held  
14 unconstitutional or invalid, all other parts are invalid.  
15 If a part of [this act] is declared invalid, the tax credit  
16 provided for in [this act] does not apply to any coal  
17 produced in Montana after the effective date of any such  
18 court decision.

19 NEW SECTION. Section 11. Codification instruction.  
20 Sections 1 and 3 through 6 are intended to be codified as an  
21 integral part of Title 15, chapter 35, and the provisions of  
22 Title 15, chapter 35, apply to sections 1 and 3 through 6.

23 NEW SECTION. Section 12. Effective and applicability  
24 dates. (1) [This act] is effective on passage and approval.

25 (2) [This act] applies retroactively, within the