HB 274 INTRODUCED BY ASAY, ET AL.
LOWERING COAL SEVERANCE TAX RATES

1/19	INTRODUCED
1/19	REFERRED TO TAXATION
1/19	FISCAL NOTE REQUESTED
1/26	FISCAL NOTE RECEIVED
1/28	HEARING
2/13	TABLED IN COMMITTEE

House BILL NO. 274

INTRODUCED BY Switzer Devlin Dimonte Stratford Donaldson Patterson Dave Brown Hanna NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT LOWERING COAL SEVERANCE TAX RATES; REVISING LEGISLATIVE FINDINGS AND DECLARATIONS OF PURPOSE; AMENDING SECTIONS 15-35-101 THROUGH 15-35-103 AND 15-35-202 THROUGH 15-35-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 15-35-101, MCA, is amended to read:

"15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) subbituminous coal and lignite coal in Montana~~,~~ ~~when--subbituminous--and--recoverable-by-strip-mining,-is-in sufficient-demand-that-at-least-one-third-of--the--price--it commands--at--the--mine--may--go--to--the--economic-rents-of royalties-and-production-taxes~~ have sufficiently different markets and value and therefore require different production taxes;

~~(f)--coal--in--the--lignite--form-is-in-less-demand-and producers-of-lignite-are--able--to--pay--lesser--amounts--of royalty--and--production-tax-than-producers-of-subbituminous can-pay;~~

~~(g)~~(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;

~~(h)~~(g) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

INTRODUCED BILL
HB-274

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry."

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~~ lesser of:

(a) the ~~arithmetic-average~~ volume of coal purchased during calendar ~~years--1983--and--1984~~ year 1986 from all Montana coal mine operators; or

(b) the greater of:

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

(ii) 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 purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(3) "Base production level" for a coal mine operator means the lesser of:

(a) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(b) the volume of coal produced in Montana and sold to a purchaser in 1986.

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

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department

under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

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

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

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

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

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

(7) "Energy conversion process" includes any process

by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

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

(9) "Lignite" means coal with a heating quality of 7,000 Btu's per pound or less.

~~(9)~~(10) "Produced" means severed from the earth.

~~(10)~~(11) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(11)~~(12) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(12)~~(13) "Strip mining" or "surface mining" is defined in 82-4-203.

(14) "Subbituminous" means coal with a heating quality of more than 7,000 Btu's per pound.

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

~~(14)~~(16) "Ton" means 2,000 pounds.

~~(15)~~(17) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 3. Section 15-35-103, MCA, is amended to read:

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

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

~~8,000-9,000~~	~~34-cents-or~~	~~10-cents-or~~
~~--~~	~~30%-of-value~~	~~4%-of-value~~
~~Over-9,000~~	~~40-cents-or~~	~~12-cents-or~~
~~--~~	~~30%-of-value~~	~~4%-of-value~~

(a) On surface-mined subbituminous coal:

In Fiscal Year Beginning:	% of Value of Base Consumption:	% of Value of Incremental Production:
July 1, 1987	30%	0%
July 1, 1988	23 1/2%	10%
July 1, 1989	17%	10%
After June 30, 1990	10%	10%

(b) On surface-mined lignite coal:

In Fiscal Year Beginning:	% of Value of Base Consumption:	% of Value of Incremental Production:
July 1, 1987	20%	0%
July 1, 1988	16%	7%
July 1, 1989	12%	7%
After June 30, 1990	7%	7%

(c) On underground-mined coal:

lignite, 3% of value

subbituminous, 4% of value

"Value" means the contract sales price.

~~(2)--The-formula-which-yields-the-greater-amount-of-tax~~

~~in-a-particular-case-shall-be-used-at--each--point--on--this schedule.~~

~~(3)~~(2) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

~~(4)~~(3) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202.

(4) For qualified purchasers of subbituminous coal whose base consumption level is zero, the tax rate is 20% of value for fiscal years beginning July 1, 1987, and July 1, 1988, 17% of value for the fiscal year beginning July 1, 1989, and 10% of value for fiscal years beginning after June 30, 1990."

Section 4. Section 15-35-202, MCA, is amended to read:

"15-35-202. New coal production incentive tax credit allowed -- application limited. (1) A coal mine operator is entitled to a new coal production incentive tax credit of 33 1/3% of the tax imposed under 15-35-103 on any incremental production produced and sold during calendar years 1985 and 1986.

(2) A coal mine operator is entitled to a new coal production incentive tax credit of 33 1/3% of the tax imposed under 15-35-103 on incremental production ~~for-the~~

~~entire--term--of--an--agreement,~~ except as provided in subsection (3), if the incremental production resulted from coal purchases under:

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

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

(3) No credit may be claimed for coal produced prior to January 1, 1985, or after June 30, 1987."

Section 5. Section 15-35-203, MCA, is amended to read:

"15-35-203. Calculation and application of credit. (1) The amount of new coal production incentive tax credit that a coal mine operator may claim against the tax imposed in 15-35-103 is calculated by:

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

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

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

33 1/3%; and

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

(2) When filing the quarterly statement required in 15-35-104, a coal mine operator may claim against the coal severance tax calculated for that quarter an amount equal to 25% of the new coal production incentive tax credit allowed on incremental production that occurred during the previous calendar year. Credits earned prior to July 1, 1987, may be claimed in accordance with this subsection.

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

(4) Neither a coal mine operator nor a purchaser is entitled to a direct payment for the credit allowed in 15-35-202. A credit terminates if not taken during the year following the year in which the incremental production occurred.

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

Section 6. Section 15-35-204, MCA, is amended to read:

"15-35-204. Reporting requirements for credit -- duty of department. (1) Every Montana coal mine operator must provide to the department:

(a) on or before April 30, ~~1985~~ 1987, a list showing the amount of coal produced and sold in calendar years 1983, and 1984, and 1986 to every purchaser, including purchasers who obtained coal from the coal mine operator through a broker; and

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

(2) To be eligible for the tax credit provided for in 15-35-202, a coal mine operator must furnish to the department:

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

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

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

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

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

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

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

(3) By July 1, ~~1985~~ 1987, the department shall prepare and publish for informational purposes only an unaudited compilation of the base production level for each coal mine operator and a compilation of the base consumption level for each purchaser.

(4) Any coal mine operator or purchaser may, for the purpose of determining the eligibility of coal production for the new production incentive tax credit, file with the

department a petition for a declaratory ruling as provided in 2-4-501. The department shall issue a ruling on the petition within 90 days of the date the petition was filed with the department."

NEW SECTION. Section 7. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 8. Effective date. This act is effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB274, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act lowering coal severance tax rates; revising legislative findings and declarations of purpose; and providing an effective date.

ASSUMPTIONS:

1. The Revenue Estimating Advisory Council's coal severance tax estimates provide the basis of comparison.
2. Coal severance tax collections under current law will be $78,663,000 in FY88, and $81,856,000 in FY89.
3. Coal severance tax collections under the proposed law will be $77,400,000 in FY88, and $62,500,000 in FY89 (based on REAC assumptions of incremental production).
4. The proposed legislation will have no impact in FY87.
5. The proposal will have no effect on the amount of coal produced in biennium.

FISCAL IMPACT:

Revenue:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Coal Severance Tax	$78,663,000	$ 77,400,000	($1,263,000)	$81,856,000	$ 62,500,000	($19,356,000)

Fund Information:

Fund	Revenue Under Current Law	Revenue Under Proposed Law	Difference	Revenue Under Current Law	Revenue Under Proposed Law	Difference
Coal Tax Trust Fund	$39,331,500	$38,700,000	($ 631,500)	$40,928,000	$ 31,250,000	($ 9,678,000)
Alternative Energy	1,345,137	1,323,540	(21,597)	1,399,738	1,068,750	(330,988)
Local Impact	5,231,090	5,147,100	(83,990)	5,443,424	4,156,250	(1,287,174)
Education Trust	5,978,388	5,882,400	(95,988)	6,221,056	4,750,000	(1,471,056)
School Equalization	2,989,194	2,941,200	(47,994)	3,110,528	2,375,000	(735,528)
County Land Planning	298,919	294,120	(4,799)	311,053	237,500	(73,553)
Renewable Resource	377,582	371,520	(6,062)	392,909	300,000	(92,909)
Parks Acquis. & Maint.	0	0	0	0	0	0
State Library Commission	298,919	294,120	(4,799)	311,053	237,500	(73,553)
State General Fund	12,845,668	12,639,420	(206,248)	13,367,085	10,206,250	(3,160,835)
Water Development	377,582	371,520	(6,062)	392,909	300,000	(92,909)
Conservation Districts	149,460	147,060	(2,400)	155,526	118,750	(36,776)
Highway Fund	9,439,560	9,288,000	(151,560)	9,822,720	7,500,000	(2,322,720)
Total	$78,663,000	$77,400,000	(1,263,000)	$81,856,000	$ 62,500,000	(19,356,000)

David L. Hunter DATE 1/24/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

DATE

TOM ASAY, PRIMARY SPONSOR

Fiscal Note for HB274, as introduced.

HB-274

FISCAL IMPACT (continued):	FY88	FY89	FY90	FY91
Trust Fund Interest Earnings (Revenue Decrease):				
Education Trust				
Adult Education Training/Vo-Tech	$ 795	$ 7,331	$ 25,331	$ 53,660
Foundation Program	5,362	49,483	170,986	362,202
Board of Regents	1,788	16,494	56,995	120,734
TOTAL	$ 7,945	$ 73,308	$ 253,312	$ 536,596
Permanent Trust				
General Fund	$51,230	$450,846	$1,490,007	$3,109,474
Permanent Trust	9,040	79,561	262,942	548,731
TOTAL	$60,270	$530,407	$1,752,949	$3,658,205

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:
Montana Economic Development Board financing would be reduced by $2.6 million in FY89, $4.8 million in FY90 and $7.7 million in FY91.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Coal severance tax collections would be $46.0 million in FY90 and $28.2 million in FY91 under the proposal.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:
Section 5 of the proposed legislation (amending section 15-35-203) dealing with the calculation and application of the credit refers to calendar years. Because the credit may be claimed on coal produced until June 30, 1987, the reference should be to quarters.

HB-274