

HB 456 INTRODUCED BY BROWN, D., ET AL.  
REVISE RATE OF COAL SEVERANCE TAX; EXTEND "WINDOW OF  
OPPORTUNITY" TO 1988

1/26 INTRODUCED  
1/26 REFERRED TO TAXATION  
1/26 FISCAL NOTE REQUESTED  
1/28 HEARING  
1/28 FISCAL NOTE RECEIVED  
1/28 SPONSOR FISCAL NOTE REQUESTED  
1/30 TABLED IN COMMITTEE

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Smith  
Kirsch  
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Early  
Kirsch  
Lundberg  
Jensen*

*House* BILL NO. 456  
*Mark*  
*Raymer*  
*STRATFORD*  
*HARP*  
*Brown*  
*Lewis*  
*Gilbert*  
*Hand*  
*Chambers*  
*Smith*  
*Russell*  
*Dick*  
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1 INTRODUCTION BY ONE BROWN

2

3 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE

4 RATE STRUCTURE OF THE MONTANA COAL SEVERANCE TAX; IMPOSING A

5 SLIDING SCALE RATE SCHEDULE FOR SURFACE-MINED SUBBITUMINOUS

6 COAL BASED ON THE AMOUNT OF COAL PURCHASED; EXTENDING THE

7 "WINDOW OF OPPORTUNITY" FOR THE NEW COAL PRODUCTION

8 INCENTIVE TAX CREDIT TO JULY 1, 1988; REQUIRING THE COAL TAX

9 OVERSIGHT SUBCOMMITTEE TO CONDUCT A FEASIBILITY STUDY ON THE

10 ESTABLISHMENT OF A MONTANA COAL DEVELOPMENT INSTITUTE;

11 AMENDING SECTIONS 15-23-701, 15-35-102 THROUGH 15-35-104,

12 AND 15-35-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE

13 DATE, A DELAYED EFFECTIVE DATE, AND AN APPLICABILITY DATE."

14

15

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

17 Section 1. Section 15-23-701, MCA, is amended to read:

18 "15-23-701. Reporting gross yield from coal. (1) Each

19 person engaged in mining coal must, on or before March 31

20 each year, file with the department of revenue a statement

21 of the gross yield from each coal mine owned or worked by

22 such person in the preceding calendar year and the value

23 thereof. The statement shall be in the form prescribed by

24 the department, which may be coordinated with the form used

25 under 15-35-104 and must be verified by an officer of the

1 firm. The statement shall include:

2 (a) the name and address of the owner or lessee or

3 operator of the mine;

4 (b) the location of the mine;

5 (c) the tons of coal extracted, treated, and sold from

6 the mine during the taxable period;

7 (d) the gross yield or value in dollars and cents

8 derived from the contract sales price as defined in

9 15-35-102(1).

10 (2) Whenever value is imputed under 15-35-107(1)(b),

11 that value shall be used for purposes of reporting the value

12 of the gross yield of coal under this section."

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

14 "15-35-102. Definitions. As used in this chapter, the

15 following definitions apply:

16 (1) "Agreement" means a signed contract that is valid

17 under Montana law between a coal mine operator and a

18 purchaser or broker for the sale of coal that is produced in

19 Montana.

20 (2) "Base consumption level" for a purchaser means the

21 greater of:

22 (a) the arithmetic average volume of coal purchased

23 during calendar years 1983 and 1984 from all Montana coal

24 mine operators; or

25 (b) 90% of the maximum tonnage provided for in any

1 agreement executed prior to January 1, 1985, for which the  
 2 highest scheduled minimum quantity of coal stipulated by the  
 3 terms of the agreement as they existed on January 1, 1985,  
 4 has not been purchased at any time during the term of the  
 5 agreement, plus the arithmetic average volume of coal  
 6 purchased during calendar years 1983 and 1984 from all  
 7 Montana coal mine operators under all other agreements.

8 (3) "Base production level" for a coal mine operator  
 9 means the arithmetic average volume of coal produced in  
 10 Montana and sold to a purchaser in calendar years 1983 and  
 11 1984.

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

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

24 (a) for quarterly periods ending on and after  
 25 September 30, 1984, 15 cents per ton plus 75% 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 (b) for quarterly periods ending on and after  
 5 September 30, 1985, 15 cents per ton plus 50% of the  
 6 difference between 15 cents per ton and the amount of such  
 7 federal, state, and tribal government royalties actually  
 8 paid;

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

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

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

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

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

1 (9) "Lignite coal" means coal having a heating  
 2 quality, measured in Btu per pound, of 7,000 or less.

3 ~~(9)~~(10) "Produced" means severed from the earth.

4 (11) "Purchase" means the actual transfer of possession  
 5 of coal f.o.b. mine from the producer to the purchaser. A  
 6 contract or agreement to purchase coal is not a purchase.

7 ~~(10)~~(12) "Purchaser" means a person who purchases or  
 8 contracts to purchase Montana coal directly from a coal mine  
 9 operator or indirectly from a broker and who utilizes that  
 10 coal in any industrial, commercial, or energy conversion  
 11 process. A coal broker or any other third party intermediary  
 12 is not a purchaser under the provisions of this chapter.

13 ~~(11)~~(13) "Qualified purchaser" means a purchaser whose  
 14 purchases of Montana coal in any given year exceed his base  
 15 consumption level. A purchaser of Montana coal who enters  
 16 into a coal agreement with another purchaser or a broker  
 17 that causes a reduction in the base consumption level of a  
 18 purchaser is not a qualified purchaser.

19 ~~(12)~~(14) "Strip mining" or "surface mining" is defined  
 20 in 82-4-203.

21 (15) "Subbituminous coal" means coal having a heating  
 22 quality, measured in Btu per pound, in excess of 7,000.

23 ~~(13)~~(16) "Taxes paid on production" includes any tax  
 24 paid to the federal, state, or local governments upon the  
 25 quantity of coal produced as a function of either the volume

1 or the value of production and does not include any tax upon  
 2 the value of mining equipment, machinery, or buildings and  
 3 lands, any tax upon a person's net income derived in whole  
 4 or in part from the sale of coal, or any license fee.

5 ~~(14)~~(17) "Ton" means 2,000 pounds.

6 ~~(15)~~(18) "Underground mining" means a coal mining  
 7 method utilizing shafts and tunnels and as further defined  
 8 in 82-4-203."

9 Section 3. Section 15-35-103, MCA, is amended to read:  
 10 "15-35-103. Severance tax -- rates imposed --  
 11 exemptions. (1) A severance tax is imposed on the purchase  
 12 of each ton of coal produced in the state.

13 (2) The rate of tax for surface-mined subbituminous  
 14 coal produced in the state must be in accordance with the  
 15 following schedule:

16 Heating-quality	Surface--	Underground
17 {Btu-per-pound	Mining--	Mining---
18 ---of-coal}:	--	--
19 Under-77000	12-cents-or	5-cents-or
20 --	20%-of-value	3%-of-value
21 77000-87000	22-cents-or	8-cents-or
22 --	30%-of-value	4%-of-value
23 87000-97000	34-cents-or	10-cents-or
24 --	38%-of-value	4%-of-value
25 Over-97000	40-cents-or	12-cents-or

1                                    30%-of-value                    4%-of-value  
 2    "Value" means the contract sales price;  
 3        (2) The formula which yields the greater amount of tax  
 4    in a particular case shall be used at each point on this  
 5    schedule;  
 6        (3) A person is not liable for any severance tax upon  
 7    50,000 tons of the coal he produces in a calendar year,  
 8    except that if he produces more than 50,000 tons of coal in  
 9    a calendar year, he will be liable for severance tax upon  
 10   all coal produced in excess of the first 20,000 tons;  
 11        (a) 20% for all tonnage up to 2.5 million tons a year;  
 12        (b) 18% for all tonnage provided that the purchaser  
 13    purchases in excess of 2.5 million tons a year but less than  
 14    5 million tons a year;  
 15        (c) 16% for all tonnage provided that the purchaser  
 16    purchases in excess of 5 million tons a year but less than  
 17    7.5 million tons a year;  
 18        (d) 14% for all tonnage provided that the purchaser  
 19    purchases in excess of 7.5 million tons a year but less than  
 20    10 million tons a year;  
 21        (e) 12 1/2% for all tonnage provided that the  
 22    purchaser purchases in excess of 10 million tons a year.  
 23        (3) The rate of the tax for coal produced in the state  
 24    from underground mines is as follows:  
 25        (a) for lignite coal, 3% of the contract sales price

1    for all such coal purchased; and  
 2                    (b) for subbituminous coal, 4% of the contract sales  
 3    price for all such coal produced.  
 4                    (4) The rate of tax for surface-mined lignite coal  
 5    produced in the state and purchased is 12 1/2% of the  
 6    contract sales price.  
 7                    (5) The tax imposed by subsections (2) through (4) is  
 8    imposed on the purchaser at the time of purchase.  
 9                    (4)(6) A new coal production incentive tax credit may  
 10   be claimed on certain coal as provided in 15-35-202."  
 11        Section 4. Section 15-35-104, MCA, is amended to read:  
 12        "15-35-104. Quarterly statement and payment of tax.  
 13        (1) Each coal mine operator purchaser shall compute the  
 14    severance tax due on each quarter-year's worth of production  
 15    coal purchased on forms prescribed by the department. The  
 16    statement shall must indicate the tonnage produced  
 17    purchased, the average Btu value of the production coal  
 18    purchased, the contract sales price received for the  
 19    production purchase, and such other information as the  
 20    department may require.  
 21        (2) The amount of severance tax due must be determined  
 22    by:  
 23                    (a) multiplying the total tonnage purchased from all  
 24    Montana coal producers during the immediately preceding  
 25    quarter-year by 4; and

1 (b) multiplying the product determined under  
 2 subsection (2)(a) by the appropriate rate as provided in  
 3 15-35-103.

4 (3) The completed form in duplicate, with the tax  
 5 payment, shall be delivered to the department not later than  
 6 30 days following the close of the quarter. The form shall  
 7 be signed by the operator if the operator is an individual  
 8 or by an officer of the ~~coal-mine-operator~~ purchaser if the  
 9 operator purchaser is a business entity. A ~~person--operating~~  
 10 purchaser who purchases coal from more than one coal mine in  
 11 this state may must include all of his mines coal purchases  
 12 in one statement. The department may grant a reasonable  
 13 extension of time for filing statements and payment of taxes  
 14 due upon good cause shown therefor.

15 (4) The department shall annually determine the total  
 16 amount of severance tax due from each purchaser for the  
 17 preceding year. If the purchaser has paid an amount in  
 18 excess of his total liability, the department shall credit  
 19 the excess amount paid to the next succeeding quarters'  
 20 statements until the excess has been eliminated. If the  
 21 purchaser has paid an amount less than the amount due, the  
 22 department shall notify the purchaser of the amount due. The  
 23 purchaser shall pay the amount due at the time he files the  
 24 next subsequent statement required in 15-35-104."

25 Section 5. Section 15-35-202, MCA, is amended to read:

1 "15-35-202. New coal production incentive tax credit  
 2 allowed -- application limited. (1) A coal mine operator is  
 3 entitled to a new coal production incentive tax credit of  
 4 33 1/3% of the tax imposed under 15-35-103 on any  
 5 incremental production produced and sold during calendar  
 6 years 1985 and 1986.

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

13 (a) an existing agreement which was extended between  
 14 January 1, 1985, and June 30, ~~1987~~ 1988, for at least a  
 15 5-year period; or

16 (b) a new agreement that was executed between January  
 17 1, 1985, and June 30, ~~1987~~ 1988.

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

20 NEW SECTION. Section 6. Coal tax oversight  
 21 subcommittee to conduct feasibility study. (1) The coal tax  
 22 oversight subcommittee created in 5-18-201 shall, during the  
 23 1987-88 interim, conduct a feasibility study of the merits  
 24 of establishing a Montana coal development institute.

25 (2) The scope of the study should focus on the

1 advisability of:

2 (a) establishing the institute for the purpose of  
3 selecting and funding specific projects that show promise  
4 for increasing the marketability of Montana coal through  
5 innovative research and development;

6 (b) establishing a board of directors for the  
7 institute. The majority of the board may be comprised of  
8 members from the coal industry and the remaining members  
9 from other private or public enterprises.

10 (c) identifying potential sources of funding for the  
11 institute. Such sources may include but should not be  
12 limited to a nominal fee or surcharge, not to exceed 5 cents  
13 per ton, on coal purchased in Montana.

14 (d) using existing research and development facilities  
15 for conducting the institute's activities;

16 (e) requiring that any project submitted to the  
17 institute for possible selection and funding have prior  
18 funding or the potential for funding from other public or  
19 private sources; and

20 (f) giving priority attention to cooperative  
21 agreements between the institute and federal, state, or  
22 private entities.

23 (3) The subcommittee shall submit its findings,  
24 conclusions, and recommendations to the 51st legislature no  
25 later than the fifth legislative day.

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

5 NEW SECTION. Section 8. Effective dates --  
6 applicability. (1) Section 6 and this section are effective  
7 on passage and approval.

8 (2) Sections 1 through 5 and section 7 are effective  
9 July 1, 1988, and apply to coal purchased on or after July  
10 1, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB456, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the rate structure of the Montana Coal Severance Tax; imposing a sliding scale rate schedule for surface-mined subbituminous coal based on the amount of coal purchased; extending the "Window of Opportunity" for the new coal production incentive tax credit to July 1, 1988; requiring the Coal Tax Oversight sub-Committee to conduct a feasibility study on the establishment of a Montana Coal Development Institute; amending sections 15-23-701, 15-35-102 through 15-35-104, and 15-35-202, MCA; and providing an immediate effective date, a delayed effective date, and an applicability date.

FISCAL IMPACT:

Expenditures:

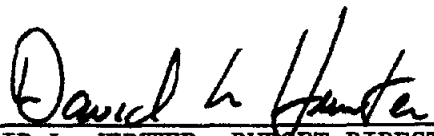
The proposed legislation would add duties to the administration of the Coal Severance Tax. It is anticipated that three additional revenue agents would be required. Additional expenditures would be about \$85,000 a year.

Revenues:

The fiscal impact of the proposal cannot be estimated. The purchasing behavior of the coal purchasers cannot be predicted. Assuming the tax rate on surface-mined subbituminous coal applies to contract sales price (CSP), there would be a significant decrease in coal severance tax collections.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

The severance tax rate (Section 3, 15-35-103, MCA) for surface-mined subbituminous coal does not specify whether it applies to FOB price or CSP. The proposed legislation imposes the tax on the purchaser, while the new coal production tax incentive remains on the coal mine operator. This will cause administrative problems.

 DATE 1/27/88

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

DATE

DAVE BROWN, PRIMARY SPONSOR

Fiscal Note for HB456, as introduced.

HB-456



STATE OF MONTANA - SPONSOR'S FISCAL NOTE - HB 456

In compliance with a written request, there is hereby submitted a Fiscal Note for HB 456, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act generally revising the rate structure of the Montana coal severance tax; imposing a sliding scale rate schedule for surface mined sub-bituminous coal based on the amount of coal purchased; extending the "window of opportunity" for new coal production incentive tax credit to July 1, 1988; requiring the coal tax oversight subcommittee to conduct a feasibility study on the establishment of a Montana coal development institute; amending Sections 15-23-701, 15-35-102 through 15-35-104, and 15-35-202, MCA; and providing an immediate effective date, a delayed date, and an applicability 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 FY 88, and \$53,800,000 in FY 89.
4. The proposed legislation will have no impact in FY 87.
5. The proposed legislation will have no effect on the amount of coal produced in FY 88, but will increase the amount of coal produced in FY 89 by 3.9 million tons.
6. The long range effects of the proposed legislation excludes the following:  
(See next page.)

FISCAL IMPACT:

FY 88

Revenue:

	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Coal Severance Tax	\$78,663,000	\$78,100,000	(\$563,000)
<u>Fund:</u>	<u>Revenue Under</u>	<u>Revenue Under</u>	<u>Difference</u>
	<u>Current Law</u>	<u>Proposed Law</u>	
Coal Tax Trust Fund	39,331,500	39,050,000	(281,500)
Alternative Energy	1,345,137	1,335,510	( 9,627)
Local Impact	5,231,090	5,193,650	( 37,440)
Education Trust	5,978,388	5,935,600	( 42,788)
School Equalization	2,989,194	2,967,800	( 21,394)
County Land Planning	298,919	296,780	( 2,139)
Renewable Resource	377,582	374,880	( 2,703)
Parks Acquis. and Maint.	0	0	
State Library Commission	298,919	296,780	( 2,139)
State General Fund	12,845,668	12,753,730	( 91,938)
Water Development	377,582	374,880	( 2,702)
Conservation Districts	149,460	148,390	( 1,070)
Highway Fund	<u>9,439,560</u>	<u>9,372,000</u>	<u>( 67,560)</u>
TOTAL	78,663,000	78,100,000	(563,000)

FY 89 FIGURES NEXT PAGE (3)

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FISCAL IMPACT:

FY 89

	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Coal Severance Tax	\$81,856,000	\$53,800,000	(28,056,000)

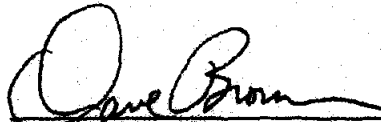
Fund:	<u>Revenue Under Current Law</u>	<u>Revenue Under Proposed Law</u>	<u>Difference</u>
Coal Tax Trust Fund	40,928,000	26,900,000	(14,028,000)
Alternative Energy	1,399,738	919,980	( 479,758)
Local Impact	5,443,424	3,577,700	( 1,865,724)
Education Trust	6,221,056	4,088,800	( 2,132,256)
School Equalization	3,110,528	2,044,400	( 1,066,128)
County Land Planning	311,053	204,440	( 106,613)
Renewable Resource	392,909	258,240	( 134,669)
Parks Acquis. and Maint.	0	0	0
State Library Commission	311,053	204,440	( 106,613)
State General Fund	13,367,085	6,785,540	( 4,581,545)
Water Development	392,909	258,240	( 134,669)
Conservation Districts	155,526	102,220	( 53,306)
Highway Fund	<u>9,922,720</u>	<u>6,456,000</u>	<u>( 3,366,720)</u>
TOTAL	81,856,000	53,800,000	(28,056,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Coal severance tax collections would be \$55.8 million in FY 90 and \$56.5 million in FY 91. Total coal purchased would be 35.7 million tons in FY 89, 37.0 million tons in FY 90 and 38.4 million tons in FY 91.

TONNAGE FORECAST EXCLUDES:

1. The development of new generation facilities in Montana's market area, including new onsite generation in Montana.
2. Geographical extension of Montana coal market reach by 1992.
3. Development of industrial buyers.
4. Expansion of utilities into non-utility coal businesses.
5. Economic benefits (i.e. jobs, wages, broader tax base) resulting from increased production level.



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David R. Brown, Sponsor  
HB 456

DRB/rf

HB 456