

HB 643 INTRODUCED BY LORY, ET AL.
SETTING THE MAXIMUM SEVERANCE TAX RATE ON SURFACE
MINED COAL AT 18.5 PERCENT; DISALLOWING
DEDUCTION OF TAXES AND ROYALTIES FROM
CONTRACT SALES PRICE

2/06 INTRODUCED
2/06 REFERRED TO TAXATION
2/07 FISCAL NOTE REQUESTED
2/10 FISCAL NOTE RECEIVED
3/03 HEARING
3/06 TABLED IN COMMITTEE

1 *House* BILL NO. *643*
 2 INTRODUCED BY *Tom C. Smith, Bruce Jager, Rec*
 3 *Felix Roney, Bradley Vincent*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT SETTING THE MAXIMUM
 5 SEVERANCE TAX RATE ON SURFACE MINED COAL AT 18.5 PERCENT;
 6 DISALLOWING DEDUCTION OF TAXES AND ROYALTIES FROM CONTRACT
 7 SALES PRICE; AMENDING SECTIONS 15-35-101 THROUGH 15-35-103
 8 AND 15-35-202, MCA; AND PROVIDING APPLICABILITY DATES AND AN
 9 EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 15-35-101, MCA, is amended to read:
 13 "15-35-101. Legislative findings and declarations of
 14 purpose. (1) The legislature finds that while coal is
 15 extracted from the earth like metal minerals, there are
 16 differences between coal and metal minerals such that they
 17 should be classified in different categories for taxation
 18 purposes. The legislature finds that while coal can be
 19 utilized like petroleum products, there are differences
 20 between coal and petroleum such that they should be
 21 classified in different categories for taxation purposes.
 22 The legislature further finds that:
 23 (a) coal is the only mineral which can supply energy
 24 while being easily found in abundance in Montana;
 25 (b) coal is the only mineral which is so often

1 marketed through sales contracts of many years' duration;
 2 (c) coal, unlike most minerals, varies widely in
 3 composition and consequent value when marketed;
 4 (d) coal in Montana is subject to regional and
 5 national demands for development which could affect the
 6 economy and environment of a larger portion of the state
 7 than any other mineral development has done;
 8 (e) lignite or subbituminous coal in Montana, when
 9 ~~subbituminous--and~~ recoverable by strip mining, is in
 10 sufficient demand that at least ~~one-third~~ one-fifth of the
 11 price it commands at the mine may go to the ~~economic--rents~~
 12 ~~of-royalties-and~~ production taxes;
 13 ~~{f}--coal--in--the--lignite--form--is--in--less--demand--and~~
 14 ~~producers-of-lignite-are--able--to--pay--lesser--amounts--of~~
 15 ~~royalty--and--production-tax--than--producers-of-subbituminous~~
 16 ~~can-pay;~~
 17 ~~{g}{f}~~ coal produced in underground mines has higher
 18 production costs and underground producers are able to pay
 19 lesser amounts of royalty and production tax than strip-mine
 20 producers can pay;
 21 ~~{h}{g}~~ coal production in Montana has been subject to
 22 an uncoordinated array of taxes which overlap one another
 23 and yield revenue in an inconsistent and unpredictable
 24 manner.
 25 (2) The legislature declares that the purposes of this



1 chapter are to:

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

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

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

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

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) "Produced" means severed from the earth.

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

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

14 (12) "Strip mining" or "surface mining" is defined in
15 82-4-203.

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

23 (14) "Ton" means 2,000 pounds.

24 (15) "Underground mining" means a coal mining
25 method utilizing shafts and tunnels and as further defined

1 in 82-4-203."

2 Section 3. 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	Surface	Underground
8 (Btu per pound	Mining	Mining
9 of coal):		
10 Under 7,000	12-cents-or	5 cents or
	20% of value	3% of value
	<u>12.2% of value</u>	
13 7,000-8,000	22-cents-or	8 cents or
	30% of value	4% of value
	<u>18.5% of value</u>	
16 8,000-9,000	34-cents-or	10 cents or
	30% of value	4% of value
	<u>18.5% of value</u>	
19 Over 9,000	40-cents-or	12 cents or
	30% of value	4% of value
	<u>18.5% of value</u>	

22 "Value" means the contract sales price.

23 (2) The If an alternative is shown in the schedule in
24 subsection (1), the formula which yields the greater amount
25 of tax in a particular case shall must be used at each point

1 on this schedule.

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

7 (4) A new coal production incentive tax credit may be
8 claimed on certain coal as provided in 15-35-202, but that
9 incentive tax credit must be calculated on a tax imposed
10 under the rates in subsection (1) as it read on June 30,
11 1987."

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

13 "15-35-202. New coal production incentive tax credit
14 allowed -- application limited. (1) A coal mine operator is
15 entitled to a new coal production incentive tax credit of
16 33 1/3% of the tax imposed under 15-35-103 on any
17 incremental production produced and sold during calendar
18 years 1985 and 1986 provided that the tax before the credit
19 is calculated at the rates in 15-35-103 as it read on June
20 30, 1987.

21 (2) A coal mine operator is entitled to a new coal
22 production incentive tax credit of 33 1/3% of the tax
23 imposed under 15-35-103, provided that the tax before the
24 credit is calculated at the rates in 15-35-103 as it read on
25 June 30, 1987, on incremental production for the entire term

1 of an agreement, except as provided in subsection (3), if
2 the incremental production resulted from coal purchases
3 under:

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

7 (b) a new agreement that was executed between January
8 1, 1985, and June 30, 1987.

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

11 NEW SECTION. Section 5. Extension of authority. Any
12 existing authority of the department of revenue to make
13 rules on the subject of the provisions of this act is
14 extended to the provisions of this act.

15 NEW SECTION. Section 6. Saving clause. This act
16 does not affect rights and duties that matured, penalties
17 that were incurred, or proceedings that were begun before
18 the effective date of this act.

19 NEW SECTION. Section 7. Applicability. This act
20 applies to coal mined after March 31, 1987, and taxes
21 payable after June 30, 1987.

22 NEW SECTION. Section 8. Effective date. This act is
23 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 HB643, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act setting the maximum severance tax rate on surface mined coal at 18.5 percent; disallowing deduction of taxes and royalties from contract sales price; amending sections 15-35-101 through 15-35-103 and 15-35-202, MCA; and providing applicability dates and 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. Under the proposed law "contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, or a price imputed by the Department of Revenue. Contract sales price includes all royalties paid on production.
4. Contract sales price (actually F.O.B. price) under the proposed law will be \$12.52/ton each year (Based on gross proceeds data for production in CY85 and taxable in FY86.)
5. Proposed tax rates:
 - Coal under 7,000 BTU/lb. - 12.2% of value
 - Coal over 7,000 BTU/lb. - 18.5% of value
 - ("Value" means contract sales price.)
6. The new coal production incentive tax credit remains the same as under current law.
7. Coal severance tax collections under the proposed law will be \$65,384,000 in FY88 and \$67,612,000 in FY89.
8. The proposal will have no effect on the amount of coal produced in the biennium.

 DATE 2/9/87

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

 DATE 2/11/87

EARL LORY, PRIMARY SPONSOR

Fiscal Note for HB643, as introduced.

HB 643

Fiscal Note Request, HB643, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Coal Severance Tax	\$78,663,000	\$65,384,000	(\$13,279,000)	\$81,856,000	\$67,612,000	(\$14,244,000)
Fund Information:						
Coal Tax Trust Fund	\$39,331,500	\$32,692,000	(\$ 6,639,500)	\$40,928,000	\$33,806,000	(\$ 7,122,000)
Alternative Energy	1,345,137	1,118,066	(227,071)	1,399,738	1,156,165	(243,572)
Local Impact	5,231,090	4,348,036	(883,054)	5,443,424	4,496,198	(947,226)
Education Trust	5,978,388	4,969,184	(1,009,204)	6,221,056	5,138,512	(1,082,544)
School Equalization	2,989,194	2,484,592	(504,602)	3,110,528	2,569,256	(541,272)
County Land Planning	298,919	248,459	(50,460)	311,053	256,926	(54,127)
Renewable Resource	377,582	313,843	(63,739)	392,909	324,538	(68,371)
Parks Acquisition and Maintenance	0	0	0	0	0	0
State Library Commission	298,919	248,459	(50,460)	311,053	256,926	(54,127)
State General Fund	12,845,668	10,677,207	(2,168,461)	13,367,085	11,041,040	(2,326,045)
Water Development	377,582	313,843	(63,739)	392,909	324,538	(68,371)
Conservation Districts	149,460	124,230	(25,230)	155,526	128,463	(27,064)
Highway Fund	9,439,560	7,846,080	(1,593,480)	9,822,720	8,113,440	(1,709,280)
TOTAL	\$78,663,000	\$65,384,000	(\$13,279,000)	\$81,856,000	\$67,612,000	(\$14,244,000)

Trust Fund Interest Earnings (Revenue Decrease):

	FY88	FY89
Education Trust		
Adult Education Training/Vo-Tech	\$ 3,401	\$ 13,775
Foundation Program	22,952	92,980
Board of Regents	7,651	30,993
TOTAL	\$ 34,004	\$137,748
Permanent Trust		
General Fund	\$219,315	\$803,526
Permanent Trust	38,703	141,799
TOTAL	\$258,018	\$945,325

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Montana Economic Development Board financing would be reduced by \$3.3 million in FY89.

HB 643

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB643, as introduced.

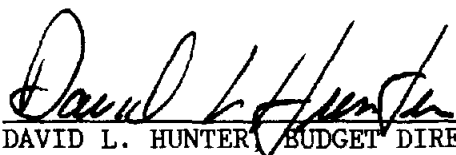
REVISED FISCAL NOTE

DESCRIPTION OF PROPOSED LEGISLATION:

An act setting the maximum severance tax rate on surface mined coal at 18.5 percent; disallowing deduction of taxes and royalties from contract sales price; amending sections 15-35-101 through 15-35-103 and 15-35-202, MCA; and providing applicability dates and an effective date.

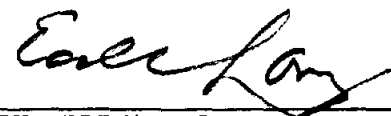
ASSUMPTIONS:

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. Under the proposed law "contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, or a price imputed by the Department of Revenue. Contract sales price includes all royalties paid on production.
4. The Revenue Estimating Advisory Council's "current law CSP" estimates, by company, were used to estimate the proposed law CSP estimates, (FOB mine price) by company.
5. Under the proposal the coal severance tax, resource indemnity trust tax, and gross proceeds tax are based on the new definition of CSP (FOB mine price.)
6. Under the proposal the federal black lung tax of 4.4% was based on FOB mine price, except where the FOB mine price was greater than \$12.50 and thus the tax was capped at \$.55/ton.
7. Under the proposal royalty deductions, at a rate of 12.5% less \$.15/ton, were based on FOB mine price.
8. Proposed tax rates:
 - Coal under 7,000 BTU/lb. - 12.2% of value
 - Coal over 7,000 BTU/lb. - 18.5% of value
 - ("Value" means contract sales price.)
9. The new coal production incentive tax credit remains the same as under current law. (See technical note).
10. The proposal will have no effect on the amount of coal produced in the biennium.



DATE 2/16/87

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



DATE

EARL LORY, PRIMARY SPONSOR

Fiscal Note for HB643, as introduced.

REVISED FISCAL NOTE

HB643

#2

Fiscal Note Request, HB643, as introduced. REVISED FISCAL NOTE
 Form BD-15
 Page 2

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
Coal Severance Tax	\$78,663,000	\$82,153,000	\$ 3,490,000	\$81,856,000	\$85,404,000	\$ 3,548,000
<u>Fund Information:</u>						
Coal Tax Trust Fund	\$39,331,500	\$41,076,500	\$ 1,745,000	\$40,928,000	\$42,702,000	\$ 1,774,000
Alternative Energy	1,345,137	1,404,816	59,679	1,399,738	1,460,408	60,671
Local Impact	5,231,090	5,463,175	232,085	5,443,424	5,679,366	235,942
Education Trust	5,978,388	6,243,628	265,240	6,221,056	6,490,704	269,648
School Equalization	2,989,194	3,121,814	132,620	3,110,528	3,245,352	134,824
County Land Planning	298,919	312,181	13,262	311,053	324,535	13,482
Renewable Resource	377,582	394,334	16,752	392,909	409,939	17,030
Parks Acquisition and Maintenance	0	0	0	0	0	0
State Library Commission	298,919	312,181	13,262	311,053	324,535	13,482
State General Fund	12,845,668	13,415,585	569,917	13,367,085	13,946,473	579,388
Water Development	377,582	394,334	16,752	392,909	409,939	17,030
Conservation Districts	149,460	156,091	6,631	155,526	162,268	6,741
Highway Fund	9,439,560	9,858,360	418,800	9,822,720	10,248,480	425,760
TOTAL	\$78,663,000	\$82,153,000	\$ 3,490,000	\$81,856,000	\$85,404,000	\$ 3,548,000

Trust Fund Interest Earnings (Revenue Increase):

	FY88	FY89
<u>Education Trust</u>		
Adult Education Training/Vo-Tech	\$ 237	\$ 1,142
Foundation Program	1,597	7,718
Board of Regents	532	2,573
TOTAL	\$ 2,366	\$ 11,433
<u>Permanent Trust</u>		
General Fund	\$ 15,256	\$ 67,733
Permanent Trust	2,692	11,953
TOTAL	\$ 17,948	\$ 79,686

Fiscal Note Request, HB643, as introduced. REVISED FISCAL NOTE

Form BD-15

Page 3

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

Two sets of contract sales prices, the proposed law definition for regular production, and the current law definition for qualified new production, would have to be calculated by taxpayers. The new coal production incentive tax credit is based on the "rates in section 15-30-103 as it read on June 30, 1987." (Section 4, 15-35-202(2)).

FOB mine price is not defined within the legislation.