

HOUSE BILL 33

Introduced by Scott, et al.

7/09	Introduced
7/09	Referred to Taxation
7/09	First Reading
7/09	Fiscal Note Requested
7/10	Hearing
7/10	Fiscal Note Received
7/11	Fiscal Note Printed
	Died in Committee

House BILL NO. 33

INTRODUCED BY

John F. Smith, David Whalen, Randy Morrison, Roger McCall, Matt Medison, Selby Taylor

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE COAL SEVERANCE TAX ON COAL MINED UNDERGROUND TO THE SAME TAX RATE IMPOSED ON SURFACE-MINED COAL; AMENDING SECTIONS 15-35-101, 15-35-102, 15-35-103, AND 82-4-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY 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 have sufficiently different markets and value and therefore require different production taxes; and

~~(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; and~~

~~(g)(f)~~ 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.

(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,

1 reducing tax overlap and improving the predictability of tax
2 projections; and

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

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

8 "15-35-102. **Definitions.** As used in this chapter, the
9 following definitions apply:

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

14 (2) (a) "Base consumption level" for a purchaser,
15 except as provided in subsection (2)(b), applies only for
16 the term of an agreement in effect as of December 31, 1984,
17 and means the lesser of:

18 (i) the volume of coal purchased during calendar year
19 1986 from all Montana coal mine operators; or

20 (ii) the greater of:

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

24 (B) 90% of the maximum tonnage provided for in any
25 agreement executed prior to January 1, 1985, for which the

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

7 (b) If the volume calculated in subsection (2)(a)(i) is
8 less than one-third of the volume calculated in subsection
9 (2)(a)(ii), the base consumption level is the volume
10 calculated in subsection (2)(a)(ii).

11 (3) (a) Except as provided in subsection (3)(b), "base
12 production level" for a coal mine operator applies only for
13 the term of an agreement in effect as of December 31, 1984,
14 and means the lesser of:

15 (i) the arithmetic average volume of coal produced in
16 Montana and sold to a purchaser in calendar years 1983 and
17 1984; or

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

20 (b) If the amount calculated in subsection (3)(a)(ii)
21 is less than one-third of the amount calculated in
22 subsection (3)(a)(i), the base production level is the
23 amount calculated in subsection (3)(a)(i).

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

25 (5) "Contract sales price" means either the price of

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

10 (a) for quarterly periods ending on and after September
 11 30, 1984, 15 cents per ton plus 75% of the difference
 12 between 15 cents per ton and the amount of such federal,
 13 state, and tribal government royalties actually paid;

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

18 (c) for quarterly periods ending on and after September
 19 30, 1986, 15 cents per ton plus 25% of the difference
 20 between 15 cents per ton and the amount of such federal,
 21 state, and tribal government royalties actually paid; and

22 (d) for quarterly periods ending on and after September
 23 30, 1987, 15 cents per ton.

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

25 (7) "Energy conversion process" includes any process by

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

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

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

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

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

22 (12) "Strip mining" is defined in 82-4-203 and includes
 23 "surface mining".

24 (13) "Taxes paid on production" includes any tax paid to
 25 the federal, state, or local governments upon the quantity

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

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

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

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

11 "15-35-103. Severance tax -- rates imposed. (1) Subject
 12 to the provisions of 15-35-202 allowing a new coal
 13 production incentive tax credit, a severance tax is imposed
 14 on each ton of coal produced in the state in accordance with
 15 the following schedule:

16 ~~(a)--After-June-30,1987-and-before-July-1,1990:~~

17 Heating-quality	Surface--	Underground
18 (Btu-per-pound	Mining--	Mining---
19 ---of-coal):	-	
20 Under-7,000	17%-of-value	3%-of-value
21 7,000-and-over	25%-of-value	4%-of-value

22 ~~(b)--After-June-30,1990-and-before-July-1,1991:~~

1 Heating-quality	Surface--	Underground
2 (Btu-per-pound	Mining--	Mining---
3 ---of-coal):	-	
4 Under-7,000	13%-of-value	3%-of-value
5 7,000-and-over	20%-of-value	4%-of-value

6 ~~(c)--After-June-30,1991:~~

7 Heating quality	Surface--	Underground
8 (Btu per pound	Mining--	Mining
9 of coal):		
10 Under 7,000	10% of value	3%-of-value
11 7,000 and over	15% of value	4%-of-value

12 (2) "Value" means the contract sales price.

13 (3) The formula which yields the greater amount of tax
 14 in a particular case shall be used at each point on these
 15 schedules this schedule.

16 (4) A person is not liable for any severance tax upon
 17 50,000 tons of the coal he produces in a calendar year,
 18 except that if he produces more than 50,000 tons of coal in
 19 a calendar year, he will be liable for severance tax upon
 20 all coal produced in excess of the first 20,000 tons.

21 (5) A new coal production incentive tax credit may be
 22 claimed on certain coal as provided in 15-35-202."

23 **Section 4.** Section 82-4-203, MCA, is amended to read:

24 "82-4-203. Definitions. Unless the context requires
 25 otherwise, in this part the following definitions apply:

1 (1) "Abandoned" means an operation where no mineral is
2 being produced and where the department determines that the
3 operation will not continue or resume.

4 (2) "Alluvial valley floor" means the unconsolidated
5 stream-laid deposits holding streams where water
6 availability is sufficient for subirrigation or flood
7 irrigation agricultural activities; but the term does not
8 include upland areas which are generally overlain by a thin
9 veneer of colluvial deposits composed chiefly of debris from
10 sheet erosion, deposits by unconcentrated runoff or slope
11 wash, together with talus, other mass movement accumulation,
12 and windblown deposits.

13 (3) "Aquifer" means any geologic formation or natural
14 zone beneath the earth's surface that contains or stores
15 water and transmits it from one point to another in
16 quantities which permit or have the potential to permit
17 economic development as a water source.

18 (4) "Area of land affected" means the area of land from
19 which overburden is to be or has been removed and upon which
20 the overburden is to be or has been deposited and includes
21 all land overlying any tunnels, shafts, or other excavations
22 used to extract the mineral, lands affected by the
23 construction of new railroad loops and roads or the
24 improvement or use of existing railroad loops and roads to
25 gain access and to haul the mineral, processing facilities

1 at or near the mine site or other mine associated
2 facilities, waste deposition areas, treatment ponds, and any
3 other surface or subsurface disturbance associated with
4 strip mining or underground mining, and all activities
5 necessary and incident to the reclamation of such
6 operations.

7 (5) "Bench" means the ledge, shelf, table, or terrace
8 formed in the contour method of strip mining.

9 (6) "Board" means the board of land commissioners
10 provided for in Article X, section 4, of the constitution of
11 this state.

12 (7) "Coal conservation plan" means the planned course
13 of conduct of a strip- or underground-mining operation to
14 include plans for the removal and utilization of minable and
15 marketable coal located within the area planned to be mined.

16 (8) "Coal preparation" means the chemical or physical
17 processing of coal and its cleaning, concentrating, or other
18 processing or preparation. The term does not mean the
19 conversion of coal to another energy form or to a gaseous or
20 liquid hydrocarbon, except for incidental amounts that do
21 not leave the plant, nor does the term mean processing for
22 other than commercial purposes.

23 (9) "Coal preparation plant" means a commercial
24 facility where coal is subject to coal preparation. The term
25 includes commercial facilities associated with coal

1 preparation activities but is not limited to loading
2 buildings, water treatment facilities, water storage
3 facilities, settling basins and impoundments, and coal
4 processing and other waste disposal areas.

5 (10) "Commissioner" means the commissioner of state
6 lands provided for in 2-15-3202.

7 (11) "Contour strip mining" means that strip-mining
8 method commonly carried out in areas of rough and hilly
9 topography in which the coal or mineral seam outcrops along
10 the side of the slope and entrance is made to the seam by
11 excavating a bench or table cut at and along the site of the
12 seam outcropping with the excavated overburden commonly
13 being cast down the slope below the mineral seam and the
14 operating bench.

15 (12) "Degree" means from the horizontal and in each case
16 is subject to a tolerance of 5% error.

17 (13) "Department" means the department of state lands
18 provided for in Title 2, chapter 15, part 32.

19 (14) "Failure to conserve coal" means the nonremoval or
20 nonutilization of minable and marketable coal by an
21 operation, provided that the nonremoval or nonutilization of
22 minable and marketable coal in accordance with reclamation
23 standards established by the department shall not be
24 considered failure to conserve coal.

25 (15) "Fill bench" means that portion of a bench or table

1 which is formed by depositing overburden beyond or downslope
2 from the cut section as formed in the contour method of
3 strip mining.

4 (16) "Imminent danger to the health and safety of the
5 public" means the existence of any condition or practice or
6 any violation of a permit or other requirement of this part
7 in a strip- or underground-coal-mining and reclamation
8 operation that could reasonably be expected to cause
9 substantial physical harm to persons outside the permit area
10 before such condition, practice, or violation can be abated.
11 A reasonable expectation of death or serious injury before
12 abatement exists if a rational person, subjected to the same
13 conditions or practices giving rise to the peril, would not
14 expose himself or herself to the danger during the time
15 necessary for abatement.

16 (17) "Marketable coal" means a minable coal that is
17 economically feasible to mine and is fit for sale in the
18 usual course of trade.

19 (18) "Method of operation" means the method or manner by
20 which the cut, open pit, shaft, or excavation is made, the
21 overburden is placed or handled, water is controlled, and
22 other acts are performed by the operator in the process of
23 uncovering and removing the minerals that affect the
24 reclamation of the area of land affected.

25 (19) "Minaable coal" means that coal which can be removed

1 through strip- or underground-mining methods adaptable to
2 the location that coal is being mined or is planned to be
3 mined.

4 (20) "Mineral" means coal and uranium.

5 (21) "Operation" means all of the premises, facilities,
6 railroad loops, roads, and equipment used in the process of
7 producing and removing mineral from and reclaiming a
8 designated strip-mine or underground-mine area, including
9 coal preparation plants, and all activities, including
10 excavation incident thereto, or prospecting for the purpose
11 of determining the location, quality, or quantity of a
12 natural mineral deposit.

13 (22) "Operator" means a person engaged in strip mining
14 or underground mining who removes or intends to remove more
15 than 10,000 cubic yards of mineral or overburden or a person
16 engaged in coal mining who removes or intends to remove more
17 than 250 tons of coal from the earth by mining within 12
18 consecutive calendar months in any one location or a person
19 engaged in operating a coal preparation plant.

20 (23) "Overburden" means all of the earth and other
21 materials which lie above a natural mineral deposit and also
22 means such earth and other material after removal from their
23 natural state in the process of mining.

24 (24) "Person" means a person, partnership, corporation,
25 association, or other legal entity or any political

1 subdivision or agency of the state or federal government.

2 (25) "Prime farmland" means that land previously
3 prescribed by the United States secretary of agriculture on
4 the basis of such factors as moisture availability,
5 temperature regime, chemical balance, permeability,
6 surface-layer composition, susceptibility to flooding, and
7 erosion characteristics and which historically has been used
8 for intensive agricultural purposes and as defined in the
9 Federal Register.

10 (26) "Prospecting" means the removal of overburden, core
11 drilling, construction of roads, or any other disturbance of
12 the surface for the purpose of determining the location,
13 quantity, or quality of a natural mineral deposit and, on
14 areas designated unsuitable for coal mining pursuant to
15 82-4-227 and 82-4-228, the gathering of surface or
16 subsurface geologic, physical, or chemical data by mapping,
17 trenching, geophysical, or other techniques necessary to
18 determine the quality and quantity of overburden and coal in
19 an area and the gathering of environmental data to establish
20 the conditions of an area before beginning strip- or
21 underground-coal-mining and reclamation operations under
22 this part.

23 (27) "Reclamation" means backfilling, subsidence
24 stabilization, water control, grading, highwall reduction,
25 topsoiling, planting, revegetation, and other work to

1 restore an area of land affected by strip mining or
2 underground mining under a plan approved by the department.

3 (28) "Remining" means conducting surface coal mining and
4 reclamation operations that affect previously mined areas
5 (for example, the recovery of additional mineral from
6 existing gob or tailings piles).

7 (29) "Strip mining" means any part of the process
8 followed in the production of mineral by the opencut method,
9 including mining by the auger method or any similar method
10 which penetrates a mineral deposit and removes mineral
11 directly through a series of openings made by a machine
12 which enters the deposit from a surface excavation or any
13 other mining method or process in which the strata or
14 overburden is removed or displaced in order to recover the
15 mineral. For the purposes of this part only, strip mining
16 also includes remining and coal preparation. The terms
17 "remining" and "coal preparation" are not included in the
18 definition of "strip mining" for purposes of Title 15,
19 chapter 35, part 1.

20 (30) "Subsidence" means a vertically downward movement
21 of overburden materials resulting from the actual mining of
22 an underlying mineral deposit or associated underground
23 excavations.

24 (31) "Surface owner" means a person who holds legal or
25 equitable title to the land surface and whose principal

1 place of residence is on the land or who personally conducts
2 farming or ranching operations upon a farm or ranch unit to
3 be directly affected by strip-mining operations or who
4 receives directly a significant portion of his income, if
5 any, from such farming or ranching operations or the state
6 of Montana where the state owns the surface.

7 (32) "Topsoil" means the unconsolidated mineral matter
8 naturally present on the surface of the earth that has been
9 subjected to and influenced by genetic and environmental
10 factors of parent material, climate, macroorganisms and
11 microorganisms, and topography, all acting over a period of
12 time, and that is necessary for the growth and regeneration
13 of vegetation on the surface of the earth.

14 (33) "Underground mining" means any part of the process
15 followed in the production of a mineral such that vertical
16 or horizontal shafts, slopes, drifts, or incline planes
17 connected with excavations penetrating the mineral stratum
18 or strata are utilized and includes mining by in situ
19 methods and longwalling.

20 (34) "Unwarranted failure to comply" means the failure
21 of a permittee to prevent the occurrence of any violation of
22 his permit or any requirement of this part due to
23 indifference, lack of diligence, or lack of reasonable care,
24 or the failure to abate any violation of such permit or this
25 part due to indifference, lack of diligence, or lack of

1 reasonable care.

2 (35) "Waiver" means any document which demonstrates the
3 clear intention to release rights in the surface estate for
4 the purpose of permitting the extraction of subsurface
5 minerals by strip-mining methods.

6 (36) "Written consent" means such written statement as
7 is executed by the owner of the surface estate, upon a form
8 approved by the department, demonstrating that such owner
9 consents to entry of an operator for the purpose of
10 conducting strip-mining operations and that such consent is
11 given only to such strip-mining and reclamation operations
12 which fully comply with the terms and requirements of this
13 part."

14 NEW SECTION. **Section 5. Effective date.** [This act] is
15 effective on passage and approval.

16 NEW SECTION. **Section 6. Retroactive applicability.**
17 [This act] applies retroactively, within the meaning of
18 1-2-109, to all coal produced after June 30, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0033, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing the coal severance tax on coal mined underground to the same tax rate imposed on surface-mined coal; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

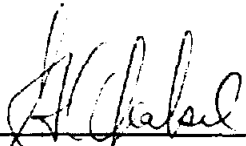
1. There will be no coal production from any underground mine in Montana which will result in coal severance tax collections during FY93 (MDOR).

FISCAL IMPACT:

The proposed legislation has no fiscal impact during FY93.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

The Meridian Minerals Inc. Bull Mountain Mine (underground) is currently classified as temporarily abandoned. Should the mine resume production in the future, severance taxes will be assessed at the same rate as surface-mined coal.



7/10/92

STEVE YEAKEL, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



JOHN F. SCOTT, PRIMARY SPONSOR DATE
Fiscal Note for HB0033, as introduced

HB 33