SENATE BILL 144

Introduced by Gage

1/14	Introduced
1/14	Referred to Taxation
1/14	First Reading
1/16	Fiscal Note Requested
1/21	Hearing
1/22	Fiscal Note Received
1/22	Fiscal Note Printed
1/28	Committee Report--Bill Not Passed
1/28	Adverse Committee Report Adopted

Senate BILL NO. 144

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING OIL AND GAS PRODUCTION FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; IMPOSING A TAX NOT TO EXCEED 1/2 OF 1 PERCENT ON THE MARKET VALUE OF OIL AND NATURAL GAS PRODUCTION; DEPOSITING THE PROCEEDS OF THE TAX INTO THE OIL AND GAS PRODUCTION DAMAGE MITIGATION ACCOUNT; AMENDING SECTIONS 15-38-103, 15-38-105, 15-38-113, 15-38-121, 15-38-202, 82-11-132, 82-11-133, 82-11-135, AND 82-11-161, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-127, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, ~~petroleum, natural gas, oil,~~ uranium, or other nonrenewable merchantable products

extracted from the surface or subsurface of the state of Montana. Mineral does not include petroleum, oil, or natural gas.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 2. Section 15-38-105, MCA, is amended to read:

"**15-38-105. Report of gross yield from mines.** A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall file an annual statement of gross yield of the mineral from each mine owned or worked by that person during the calendar year. This statement must be in the form prescribed by the department and ~~shall~~ must be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any. Metal producers shall deliver the statement to the department on or before March 31 following the end of the calendar year. Mineral producers, ~~including~~ excluding oil and gas producers, shall deliver the statement to the department on or before the 60th day following the end of the calendar year. The statement shall show the following:

(1) the name and address of the owner or lessee or

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operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; ~~that--is--to--say,~~ the number of ounces of gold or silver, pounds of copper or lead, tons of coal, ~~barrels--of--petroleum--or-other-crude-or-mineral-oil,-cubic feet--of--natural--gas,~~ or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents."

Section 3. Section 15-38-113, MCA, is amended to read:

"**15-38-113. (Temporary) Exemption from resource indemnity trust tax.** A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity trust tax.

15-38-113. (Effective July 1, 1993) Exemption from resource indemnity and ground water assessment tax. (1) A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity and ground water assessment tax.

(2) A person who has paid the tax under the provisions of [section 6] is exempt from the resource indemnity and ground water assessment tax."

Section 4. Section 15-38-121, MCA, is amended to read:

"**15-38-121. Certain royalties exempt.** ~~Exempt~~ Royalties are exempt from taxation if they are ~~royalties~~ received by:

~~(1)--an--Indian-tribe-with-respect-to-on-reservation-oil and-gas-production-pursuant-to-a-lease--entered--into--under the--Indian-Mineral-Leasing-Act-of-1938-(25-U.S.C.-396a-396g (1983)),~~

~~(2)~~(1) the United States as trustee for individual Indians; and

~~(3)~~(2) the United States, the state of Montana, or a county or municipal government."

Section 5. Section 15-38-202, MCA, is amended to read:

"**15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, ~~shall~~ must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund ~~shall~~ must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ~~shall~~ may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund~~:~~

~~(i)~~ an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101~~; and~~

~~(ii) beginning in fiscal year 1992, an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161~~.

(b) The remainder of the interest income is allocated as follows:

(i) ~~Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million,~~ An amount equal to 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(ii) ~~Beginning in fiscal year 1988,~~ An amount equal to 12% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) ~~Beginning in fiscal year 1990,~~ An amount equal to

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8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.

(iv) ~~Beginning in fiscal year 1990,~~ An amount equal to 46% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(v) ~~Beginning in fiscal year 1990,~~ An amount equal to 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

NEW SECTION. **Section 6.** **Oil and gas production damage mitigation tax.** (1) For the purpose of providing funds for defraying the costs incurred under 82-11-161, an operator or producer of oil and gas shall pay, in addition to the privilege and license tax, an assessment not to exceed 1/2 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported from the state.

(2) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the assessment and may from time to time reduce or increase the amount of the assessment as the expenses chargeable against the oil and gas production damage mitigation account may require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment must be a percentage factor of the rate in subsection (1), and the same percentage factor must be applied by the board in fixing the amount of the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas. A producer of crude petroleum or natural gas shall pay the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for the producer or another, including a royalty holder. The producer must be reimbursed for the payments made on crude petroleum or

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natural gas produced for another in the same manner as the producer is reimbursed for net proceeds taxes paid under 15-23-607 on crude petroleum or natural gas produced for another.

(3) The department of revenue shall collect the oil and gas production damage mitigation tax assessment in the same manner as the oil and gas severance tax is collected under Title 15, chapter 36.

(4) All money collected under this section must be deposited into the oil and gas production damage mitigation account by the state treasurer and must be used pursuant to the provisions of 82-11-161.

Section 7. Section 82-11-132, MCA, is amended to read:

"**82-11-132. Statements to treasurer and payment of tax.** (1) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August, and November of each calendar year, render a true statement to the state treasurer and the department of revenue, duly signed and sworn to, of all crude petroleum produced and marketed by ~~him~~ the producer in this state during the preceding quarter and containing ~~such~~ any other information ~~as~~ that the department of revenue may require and shall accompany the statement with the payment to the state treasurer of the ~~assessment~~ assessments provided for in 82-11-131(1) and [section 6(1)] for the period covered by the statement.

(2) Each producer of natural gas in the state shall render ~~like~~ statements to the state treasurer and the department of revenue of all natural gas produced and marketed by ~~him~~ the producer in this state and shall make payment of the ~~assessment~~ assessments provided for in 82-11-131(1) and [section 6(1)] at ~~such~~ times and for ~~such~~ periods as may be prescribed by rule of the department of revenue.

(3) Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement.

(4) The ~~assessment~~ assessments imposed ~~herein~~ under 82-11-131(1) and [section 6(1)] ~~shall-be~~ are due at the time the oil or natural gas is marketed. Oil or natural gas ~~shall be-deemed~~ is considered marketed when it is removed from the property from which it was produced.

(5) The department of revenue may adopt rules to implement this section."

Section 8. Section 82-11-133, MCA, is amended to read:

"**82-11-133. Penalty for late payment.** (1) ~~An~~ If the assessment imposed under 82-11-131(1) or the assessment imposed under [section 6(1)] is not paid ~~within--the--time specified-is-delinquent~~ on or before the due date, ~~and~~ there must be assessed a penalty of 25% ~~thereof-shall-be-added~~

~~thereto,-and-the-whole-thereof-shall-bear--interest--at--the rate-of-1%-per-month-from-the-date-of-delinquency-until-paid~~ of the amount of the assessment not paid. If the assessment imposed under 82-11-131(1) or the assessment imposed under [section 6(1)] is not paid when due, interest must be added to the assessment at the rate of 1% a month or fraction of a month, computed on the total amount of the assessment imposed under 82-11-131(1) or the assessment imposed under [section 6(1)] and the penalty from the due date until paid.

(2) Upon request of the department of revenue or the board, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same."

Section 9. Section 82-11-135, MCA, is amended to read:

"**82-11-135. (Temporary) Money earmarked for board expenses.** Except as provided in 82-11-171, all money collected under this chapter shall be deposited in the state special revenue fund by the state treasurer and shall be used for the purpose of paying all expenses of the board and for no other purpose. All these moneys shall be used by the board subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund shall be credited to the board.

82-11-135. (Effective January 1, 1994) **Money earmarked**

for board expenses. ~~All~~ Except as provided in [section 6(4)], money collected under this chapter ~~shall~~ must be deposited in the state special revenue fund by the state treasurer and ~~shall~~ must be used for the purpose of paying all expenses of the board and for no other purpose. ~~All these moneys shall~~ This money must be used by the board, subject to biennial appropriations by the legislature. Income and interest from investment of the board's ~~moneys~~ money in the state special revenue fund ~~shall~~ must be credited to the board."

Section 10. Section 82-11-161, MCA, is amended to read:

"**82-11-161. Oil and gas production damage mitigation account -- statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

~~(2) On July 1, 1991, and at the beginning of each succeeding biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:~~

~~(a) equals or exceeds $200,000, no allocation will be~~

~~made; or~~

~~(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.~~

~~(3)~~(2) ~~In addition to the allocation provided in subsection (2), there~~ There must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to [section 6];

~~(a)~~(b) all funds received by the board pursuant to 82-11-136; and

~~(b)~~(c) all fees received by the board from owners of producing wells pursuant to 82-11-162.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the

responsible person fails or refuses to properly plug, reclaim, or restore the well, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of ~~his~~ available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, drill site, or drilling or producing area and to mitigate any damage for which he <u>the person</u> is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

(6) The board shall, as provided in 5-11-210, submit to the legislature a complete financial report on the oil and gas production damage mitigation account, including a description of all expenditures made since the preceding report."

<u>NEW SECTION.</u> **Section 11.** Codification instruction. [Section 6] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 6].

<u>NEW SECTION.</u> **Section 12.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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<u>NEW SECTION.</u> **Section 13.** Effective date. [This act] is effective January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0144, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting oil and gas production from the Resource Indemnity and Ground Water Assessment Tax (RIGWAT); imposing a tax not to exceed 1/2 of 1 percent on the market value of oil and natural gas production; depositing the proceeds of the tax into the oil and gas production damage mitigation account; and providing a delayed effective date.

ASSUMPTIONS:

1. Current law Resource Indemnity Trust Fund balance is $90,604,000 at FYE94 and $94,602,000 at FYE95 (OBPP).
2. Current law interest income from the Resource Indemnity Trust Fund is $8,725,000 in FY94 and $9,103,000 in FY95 (LFA).
3. The current law RIGWAT tax rate on oil and gas production is 1/2 of one percent.
4. The proposed tax rate on oil and gas production set by the Board of Oil and Gas Conservation will remain at 1/2 of one percent (MDOR).
5. Current law RIGWAT total collections are $4,563,000 in FY94 and 4,655,000 in FY95 (LFA), 50% of which come from oil and gas production (MDOR).
6. Within a fiscal year, RIGWAT liabilities accrue evenly over calendar quarters (MDOR).
7. Tribal royalties are exempt from the oil and gas damage mitigation tax (MDOR).
8. The proposed legislation applies to all production after December 31, 1993 (MDOR).
9. Tax on calendar year 1993 production will be paid after January 1, 1994, but will be distributed according to current law (MDOR).
10. The oil and gas damage mitigation tax will be collected in the same manner (quarterly) as state severance taxes (MDOR).
11. Revenue attributable to a particular fiscal year that is received within 60 days of the close of that fiscal year is accrued as a receipt of that fiscal year (MDOR).
12. Revenue deposited to the oil and gas damage mitigation account is rapidly disbursed and does not accrue interest (MDOR).
13. RIGWAT collections in FY95 will be deposited in the trust at the end of March 1995 and generate interest for only one quarter of FY95. Incremental deposits to the trust are assumed to earn an 8.56% annual yield. ($50,000 loss estimated)

(Continued)

Dave Lewis 1-21-93

DAVID LEWIS, BUDGET DIRECTOR DATE

Office of Budget and Program Planning

Delwyn Gage 1-22-93

DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0144, as introduced.

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Fiscal Note Request, SB0144, as introduced.
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(continued)

FISCAL IMPACT:

Expenditures:

There is no impact to Department of Revenue expenditures under the proposed legislation.

Revenues:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
RIGWAT Collections (09)	4,564,000	4,564,000	0	4,655,000	2,327,500	(2,327,500)
Oil & Gas Mitigation Tax (02)	0	1,164,000	1,164,000	0	2,327,500	2,327,500
Total	4,564,000	5,728,000	1,164,000	4,655,000	4,655,000	0

Revenues:

	FY '94			FY '95		
Interest Earnings - R.I.T. (02)	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Oil & Gas Mitigation Account	50,000	50,000	0	50,000	0	(50,000)
Water Development	2,602,000	2,602,000	0	2,716,000	2,716,000	0
Renewable Resources	694,000	694,000	0	724,000	724,000	0
Reclamation\Development	3,990,000	3,990,000	0	4,164,000	4,164,000	0
Hazardous Waste	1,041,000	1,041,000	0	1,087,000	1,087,000	0
Environmental Quality Prot.	347,000	347,000	0	362,000	362,000	0
Total R.I.T. Interest Earnings	8,724,000	8,724,000	0	9,103,000	9,053,000	(50,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The revenue loss to the RIT trust will compound through time with the cumulative diversion of RIGWAT to the oil and gas mitigation account. Further, the lost interest earnings in FY95 ($50,000) represent only 3 months of investment income, which is offset by the elimination of the $50,000 appropriation to the oil and gas mitigation account. The full year loss from the FY95 diversion would be $200,000. The interest loss will increase by $200,000 per year beginning in FY 96, all other things equal.

Under current law, after the Resource Indemnity Trust Fund reaches a balance of $100 million, all net earnings and receipts (RIGWAT collections) may be appropriated and expended, provided that the trust fund balance may never be less than $100 million. Exempting oil and gas production from RIGWAT will delay the time necessary for the fund to achieve the $100 million balance from the 1997 biennium until the 1999 biennium.

COMMENTS:

The $1,164,000 of Oil and Gas Damage Mitigation revenue collected during FY94 is a one-time increase due to the acceleration of payments from an annual to a quarterly basis.

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