

1 *Feland* *House* BILL NO. *343*  
 2 INTRODUCED BY *Holland* *Fuchs* *Menahan* *Lynn*  
 3 *Bob M. Hanson* *Jayla* *Tom Nelson* *Bob* *McE* *Sumr*  
 4 *Foster* *John Johnson*

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX  
 6 FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING  
 7 SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
 8 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

11 **Section 1.** Section 15-35-102, MCA, is amended to read:

12 **"15-35-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

18 or

19 (ii) the greater of:

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

22 (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
 23 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
 24 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
 25 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
 26 Montana coal mine operators under all other agreements.

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

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



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

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

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

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

7 (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water  
8 1 degree Fahrenheit.

9 (6) "Coal enhancement facility" means a process or facility that alters the characteristics of coal  
10 by:

11 (a) improving the Btu value of the coal by at least 25%; or

12 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

13 ~~(5)(7)~~ "Contract sales price" means either the price of coal extracted and prepared for shipment  
14 f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed  
15 by the department under 15-35-107. Contract sales price includes all royalties paid on production, no  
16 matter how ~~such~~ the royalties are calculated. However, with respect to royalties paid to the government  
17 of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price  
18 includes only:

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

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

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

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

29 ~~(6)(8)~~ "Department" means the department of revenue.

30 ~~(7)(9)~~ "Energy conversion process" includes any process by which coal in the solid state is

1 transformed into slurry, gas, electric energy, or any other form of energy.

2 ~~(8)~~(10) "Extended depth auger method" means a method of mining that penetrates a coal deposit  
3 and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet  
4 in depth.

5 ~~(9)~~(11) "Incremental production" means that quantity of coal produced annually by a coal mine  
6 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
7 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
8 level from all Montana producers.

9 ~~(10)~~(12) "Produced" means severed from the earth.

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

14 ~~(12)~~(14) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given  
15 year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal  
16 agreement with another purchaser or a broker that causes a reduction in the base consumption level of a  
17 purchaser is not a qualified purchaser.

18 ~~(13)~~(15) "Strip mining" is defined in 82-4-203 and includes "surface mining" but does not include  
19 the extended depth auger method of mining.

20 ~~(14)~~(16) "Taxes paid on production" includes any tax paid to the federal, state, or local  
21 governments upon the quantity of coal produced as a function of either the volume or the value of  
22 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
23 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
24 fee.

25 ~~(15)~~(17) "Ton" means 2,000 pounds.

26 ~~(16)~~(18) "Underground mining" means a coal mining method utilizing shafts and tunnels and as  
27 further defined in 82-4-203. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)

28 **15-35-102. (Effective July 1, 1997) Definitions.** As used in this chapter, the following definitions  
29 apply:

30 (1) "Agreement" means a signed contract that is valid under Montana law between a coal mine

1 operator and a purchaser or broker for the sale of coal that is produced in Montana.

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

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

6 (ii) the greater of:

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

9 (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
10 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
11 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
12 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
13 Montana coal mine operators under all other agreements.

14 (b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated  
15 in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(iii).

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

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

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

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

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

24 (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water  
25 1 degree Fahrenheit.

26 (6) "Coal enhancement facility" means a process or facility that alters the characteristics of coal  
27 by:

28 (a) improving the Btu value of the coal by at least 25%; or

29 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

30 ~~(6)~~(7) "Contract sales price" means either the price of coal extracted and prepared for shipment

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

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

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

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

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

16 ~~(6)~~(8) "Department" means the department of revenue.

17 ~~(7)~~(9) "Energy conversion process" includes any process by which coal in the solid state is  
18 transformed into slurry, gas, electric energy, or any other form of energy.

19 ~~(8)~~(10) "Incremental production" means that quantity of coal produced annually by a coal mine  
20 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
21 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
22 level from all Montana producers.

23 ~~(9)~~(11) "Produced" means severed from the earth.

24 ~~(10)~~(12) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly  
25 from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial,  
26 commercial, or energy conversion process. A coal broker or any other third party intermediary is not a  
27 purchaser under the provisions of this chapter.

28 ~~(11)~~(13) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given  
29 year exceed ~~his~~ the purchaser's base consumption level. A purchaser of Montana coal who enters into a  
30 coal agreement with another purchaser or a broker that causes a reduction in the base consumption level

1 of a purchaser is not a qualified purchaser.

2 ~~(12)(14)~~ "Strip mining" is defined in 82-4-203 and includes "surface mining".

3 ~~(13)(15)~~ "Taxes paid on production" includes any tax paid to the federal, state, or local  
4 governments upon the quantity of coal produced as a function of either the volume or the value of  
5 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
6 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
7 fee.

8 ~~(14)(16)~~ "Ton" means 2,000 pounds.

9 ~~(15)(17)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and as  
10 further defined in 82-4-203."

11

12 **Section 2.** Section 15-35-103, MCA, is amended to read:

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

16 ~~(a) After June 30, 1988, and before July 1, 1990:~~

17	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
18	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
19	<del>—of coal):</del>		

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:~~

23	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
24	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
25	<del>—of coal):</del>		

26 ~~Under 7,000~~ ~~13% of value~~ ~~3% of value~~

27 ~~7,000 and over~~ ~~20% of value~~ ~~4% of value~~

28 ~~(c) After June 30, 1991:~~

29	Heating quality	Surface	Underground	Extended Depth
30	(Btu per pound	Mining	Mining	Auger Mining

1 of coal):

2	Under 7,000	10% of value	3% of value	7.5% of value
3	7,000 and over	15% of value	4% of value	7.5% of value

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

5 (3) The formula ~~which~~ that yields the greater amount of tax in a particular case ~~shall~~ must be used  
6 at each point on ~~these schedules~~ the schedule.

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

11 (5) A person is not liable for any severance tax upon up to 2 million tons of coal that the person  
12 produces for a coal enhancement facility in a calendar year, except if more than 2 million tons of coal are  
13 produced for a coal enhancement facility in a calendar year, the producer is liable for severance tax on all  
14 coal produced for the facility in excess of the first 2 million tons.

15 ~~(5)(6)~~ A new coal production incentive tax credit may be claimed on certain coal as provided in  
16 15-35-202. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)

17 **15-35-103. (Effective July 1, 1997) Severance tax -- rates imposed.** (1) Subject to the provisions  
18 of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton  
19 of coal produced in the state in accordance with the following schedule:

20 ~~(a) After June 30, 1988, and before July 1, 1990:~~

21	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
22	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
23	<del>—of coal):</del>		

24	<del>Under 7,000</del>	<del>17% of value</del>	<del>3% of value</del>
25	<del>7,000 and over</del>	<del>25% of value</del>	<del>4% of value</del>

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

27	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
28	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
29	<del>—of coal):</del>		

30	<del>Under 7,000</del>	<del>13% of value</del>	<del>3% of value</del>
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1	<del>7,000 and over</del>	<del>20% of value</del>	<del>4% of value</del>
2	<del>(c) After June 30, 1991:</del>		
3	Heating quality	Surface	Underground
4	(Btu per pound	Mining	Mining
5	of coal):		
6	Under 7,000	10% of value	3% of value
7	7,000 and over	15% of value	4% of value

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

9 (3) The formula ~~which~~ that yields the greater amount of tax in a particular case ~~shall~~ must be used  
 10 at each point on ~~these schedules~~ the schedule.

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

15 (5) A person is not liable for any severance tax upon up to 2 million tons of coal that the person  
 16 produces for a coal enhancement facility in a calendar year, except if more than 2 million tons of coal are  
 17 produced for a coal enhancement facility in a calendar year, the producer is liable for severance tax on all  
 18 coal produced for the facility in excess of the first 2 million tons.

19 ~~(6)~~ (6) A new coal production incentive tax credit may be claimed on certain coal as provided in  
 20 15-35-202."

21

22 **Section 3.** Section 15-23-703, MCA, is amended to read:

23 **"15-23-703. Taxation of gross proceeds -- taxable value for bonding and guaranteed tax base aid**  
 24 **to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that  
 25 must be transmitted to the county treasurer on or before September 15 each year. The department may  
 26 not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against  
 27 the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall  
 28 proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in  
 29 15-16-101.

30 (2) For bonding, county classification, and all nontax purposes, the taxable value of the gross



1 proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

2 (3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the  
3 state, county, and eligible school districts in the county the amount of the coal gross proceeds tax,  
4 determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated,  
5 and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

6 (4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount  
7 determined under subsection (3) and the amounts received under 15-23-706:

8 (a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production  
9 in the relative proportions required by the levies for state and county purposes in the same manner as  
10 property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

11 (b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988  
12 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against  
13 production, in the same manner that property taxes collected or property taxes that would have been  
14 collected would have been distributed in the 1990 school fiscal year in the school district.

15 (5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection  
16 (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each  
17 year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department  
18 for redistribution as provided in 15-23-706.

19 (b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection  
20 (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

21 (6) The board of county commissioners of a county may direct the county treasurer to reallocate  
22 the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in  
23 subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school,  
24 within the county under the following conditions:

25 (a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within  
26 the county in the same proportion that all other property tax proceeds were distributed in the county in  
27 fiscal year 1990.

28 (b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the  
29 commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

30 (7) The board of trustees of an elementary or high school district may reallocate the coal gross

1 proceeds taxes distributed to the district by the county treasurer under the following conditions:

2 (a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the  
3 district in the same proportion that all other property tax proceeds were distributed in the district in fiscal  
4 year 1990.

5 (b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may  
6 allocate the excess to any budgeted fund of the school district.

7 (8) The county treasurer shall credit all taxes collected under this part from coal mines that began  
8 production after December 31, 1988, in the relative proportions required by the levies for state, county,  
9 and school district purposes in the same manner as property taxes were distributed in the previous fiscal  
10 year."

11

12 NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective on passage and  
13 approval and applies to coal produced during calendar year 1995 and in subsequent years.

14

15 NEW SECTION. **Section 5. Termination.** [This act] terminates on December 31, 2005.

16

-END-

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0343, as introduced

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DESCRIPTION OF PROPOSED LEGISLATION: An act providing an exemption from the coal severance tax for a certain amount of coal produced for a coal enhancement facility; and providing an immediate effective date, an applicability date, and a termination date.

ASSUMPTIONS:

1. Each coal producer who produces coal to be used in a *single* coal enhancement facility will produce 1,000,000 tons in FY95, 2,000,000 tons in FY96, and 2,000,000 tons in FY97 for use in that *single* coal enhancement facility (MDOR).
2. Contract sales price per ton will be \$7.83 in FY95, \$7.82 in FY96, and \$7.74 in FY97 (ROC).
3. All coal produced for use in an enhanced coal facility will have an initial per ton BTU of 7,000 or greater (MDOR).

FISCAL IMPACT:

Expenditures:

There is no impact to department expenditures under the proposed legislation.

Revenues:

The exact number of producers and associated production which would qualify for the exemption is unknown, however, it is possible that all coal production in Montana could be exempted from the state severance tax by the proposed legislation (see Technical Note below). The proposed legislation would impact Coal Severance Tax collections by (\$1,175,000) for each 1,000,000 tons of coal produced for a coal enhancement facility in FY95. Impacts during the biennium for exempting each 2,000,000 tons of coal produced for a coal enhancement facility are listed below.

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Coal Severance Tax	(\$2,347,000)	(\$2,321,000)

(See Technical Note on page 2)

 1-31-95

DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

DON HOLLAND, PRIMARY SPONSOR DATE  
Fiscal Note for HB0343, as introduced

**HB 343**

TECHNICAL NOTE:

The definition of "coal enhancement facility" in the proposed legislation is extremely broad. A coal enhancement facility is any process or facility which improves the Btu value at least 25% or reduces the sulfur content at least 25%. This definition could cover a large number of processes that produce these results including processes at power plants and subsequently exempt 2,000,000 tons of coal from each Montana producer. As currently defined, the enhancement process could be as simple as blending Montana-produced coal with other high-Btu or low-sulfur coal from any source. The definition appears to allow the 2,000,000 ton severance tax exemption to any Montana coal producer who produces coal to be used in a enhancement facility or process regardless of how, where or by whom the enhancement process is carried out. Under the proposed legislation, the enhancement process could occur anywhere in the world, by any person, and the producer would be eligible for the tax exemption. If the intent of the bill is to allow a severance tax exemption for coal which is physically or chemically altered in Montana to improve its Btu or sulfur content, then the definition of a "coal enhancement facility" needs to be more specifically defined in terms of geography and process.

Furthermore, the proposed legislation does not specifically prohibit a producer from producing coal for multiple enhancement facilities and thus exempting up to 2,000,000 tons per year of coal produced for *each* enhancement facility. Also, the proposed legislation does not specify how to treat the current law annual 20,000 ton exemption in relation to the proposed exemption for coal produced for use in an enhancement facility (ie., which exemption takes priority).

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0343, second reading

DESCRIPTION OF PROPOSED LEGISLATION: An act providing an exemption from the coal severance tax for a certain amount of coal produced for a coal enhancement facility; and providing an immediate effective date, an applicability date, and a termination date.

ASSUMPTIONS:

1. Contract sales price per ton will be \$7.83 in FY95, \$7.82 in FY96, and \$7.74 in FY97 (ROC).
2. All feedstock coal produced for a facility has an initial per ton BTU of 7,000 or greater (MDOR).
3. Only one mine currently has a coal enhancement facility with a maximum capacity of 450,000 tons per year. This fiscal note assumes the facility will be operated at its maximum capacity and no other mines will build qualifying facilities during the biennium.

FISCAL IMPACT:

Expenditures:

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

Revenues:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Coal Severance Tax	(528,000)	(522,000)

Allocation

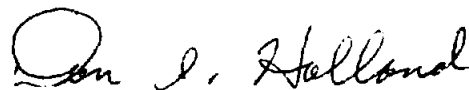
Trust Fund	(264,000)	(261,000)
General Fund/SEA	(141,451)	(139,844)
Other	(122,549)	(121,156)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If the 2 million ton maximum is reached, the foregone coal severance tax revenue would be approximately \$2.3 million a year for each mine with a qualifying facility.

 2-17-95

DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning



DON HOLLAND, PRIMARY SPONSOR DATE  
Fiscal Note for HB0343, second reading

HB 343-#2

## 1 HOUSE BILL NO. 343

2 INTRODUCED BY HOLLAND, FUCHS, MENAHAN, LARSON, FELAND, SOFT, M. HANSON, TAYLOR,  
3 T. NELSON, ZOOK, MCGEE, GRIMES, KASTEN, PAVLOVICH, J. JOHNSON  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX  
6 FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING  
7 SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."  
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11

12 **Section 1.** Section 15-35-102, MCA, is amended to read:

13 **"15-35-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

19 or

20 (ii) the greater of:

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

23 (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
24 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
25 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
26 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
27 Montana coal mine operators under all other agreements.

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

30 (3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator

- 1 applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:
- 2 (i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar
- 3 years 1983 and 1984; or
- 4 (ii) the volume of coal produced in Montana and sold to a purchaser in 1986.
- 5 (b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated
- 6 in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).
- 7 (4) "Broker" means any person who resells Montana coal.
- 8 (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water
- 9 1 degree Fahrenheit.
- 10 (6) "Coal enhancement facility" means a ~~process or~~ PROCESSING facility LOCATED AT THE SITE
- 11 OF THE MINE that PRODUCES A SOLID, LIQUID, OR GASEOUS FUEL FROM COAL AS ITS PRIMARY
- 12 PRODUCT AND THERMALLY OR CHEMICALLY alters the characteristics of coal by:
- 13 (a) improving the Btu value PER POUND of the coal by at least 25%; or
- 14 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.
- 15 ~~(6)~~(7) "Contract sales price" means either the price of coal extracted and prepared for shipment
- 16 f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed
- 17 by the department under 15-35-107. Contract sales price includes all royalties paid on production, no
- 18 matter how ~~such~~ the royalties are calculated. However, with respect to royalties paid to the government
- 19 of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price
- 20 includes only:
- 21 ~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of~~
- 22 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 23 ~~royalties actually paid;~~
- 24 ~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of~~
- 25 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 26 ~~royalties actually paid;~~
- 27 ~~(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of~~
- 28 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 29 ~~royalties actually paid; and~~
- 30 ~~(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.~~

1           ~~(6)~~(8) "Department" means the department of revenue.

2           ~~(7)~~(9) "Energy conversion process" includes any process by which coal in the solid state is  
3 transformed into slurry, gas, electric energy, or any other form of energy.

4           ~~(8)~~(10) "Extended depth auger method" means a method of mining that penetrates a coal deposit  
5 and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet  
6 in depth.

7           (11) "FEEDSTOCK" MEANS RAW COAL PROCESSED BY A COAL ENHANCEMENT FACILITY.

8           ~~(9)~~(11)~~(12)~~ "Incremental production" means that quantity of coal produced annually by a coal mine  
9 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
10 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
11 level from all Montana producers.

12           ~~(10)~~(12)~~(13)~~ "Produced" means severed from the earth.

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

17           ~~(12)~~(14)~~(15)~~ "Qualified purchaser" means a purchaser whose purchases of Montana coal in any  
18 given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into  
19 a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level  
20 of a purchaser is not a qualified purchaser.

21           ~~(13)~~(15)~~(16)~~ "Strip mining" is defined in 82-4-203 and includes "surface mining" but does not  
22 include the extended depth auger method of mining.

23           ~~(14)~~(16)~~(17)~~ "Taxes paid on production" includes any tax paid to the federal, state, or local  
24 governments upon the quantity of coal produced as a function of either the volume or the value of  
25 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
26 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
27 fee.

28           ~~(15)~~(17)~~(18)~~ "Ton" means 2,000 pounds.

29           ~~(16)~~(18)~~(19)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and  
30 as further defined in 82-4-203. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)



1           **15-35-102. (Effective July 1, 1997) Definitions.** As used in this chapter, the following definitions  
2 apply:

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

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

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

8 or

9           (ii) the greater of:

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

12           (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
13 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
14 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
15 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
16 Montana coal mine operators under all other agreements.

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

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

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

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

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

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

27           (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water  
28 1 degree Fahrenheit.

29           (6) "Coal enhancement facility" means a ~~process or~~ PROCESSING facility LOCATED AT THE SITE  
30 OF THE MINE that PRODUCES A SOLID, LIQUID, OR GASEOUS FUEL FROM COAL AS ITS PRIMARY

1 PRODUCT AND THERMALLY OR CHEMICALLY alters the characteristics of coal by:

2 (a) improving the Btu value PER POUND of the coal by at least 25%; or

3 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

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

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

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

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

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

20 ~~(6)(8)~~ "Department" means the department of revenue.

21 ~~(7)(9)~~ "Energy conversion process" includes any process by which coal in the solid state is  
22 transformed into slurry, gas, electric energy, or any other form of energy.

23 (10) "FEEDSTOCK" MEANS RAW COAL PROCESSED BY A COAL ENHANCEMENT FACILITY.

24 ~~(8)(10)(11)~~ "Incremental production" means that quantity of coal produced annually by a coal mine  
25 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
26 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
27 level from all Montana producers.

28 ~~(9)(11)(12)~~ "Produced" means severed from the earth.

29 ~~(10)(12)(13)~~ "Purchaser" means a person who purchases or contracts to purchase Montana coal  
30 directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial,

1 commercial, or energy conversion process. A coal broker or any other third party intermediary is not a  
2 purchaser under the provisions of this chapter.

3 ~~(11)(13)(14)~~ "Qualified purchaser" means a purchaser whose purchases of Montana coal in any  
4 given year exceed his the purchaser's base consumption level. A purchaser of Montana coal who enters  
5 into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption  
6 level of a purchaser is not a qualified purchaser.

7 ~~(12)(14)(15)~~ "Strip mining" is defined in 82-4-203 and includes "surface mining".

8 ~~(13)(15)(16)~~ "Taxes paid on production" includes any tax paid to the federal, state, or local  
9 governments upon the quantity of coal produced as a function of either the volume or the value of  
10 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
11 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
12 fee.

13 ~~(14)(16)(17)~~ "Ton" means 2,000 pounds.

14 ~~(15)(17)(18)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and  
15 as further defined in 82-4-203."  
16

17 **Section 2.** Section 15-35-103, MCA, is amended to read:

18 **"15-35-103. (Temporary) Severance tax -- rates imposed.** (1) Subject to the provisions of  
19 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of  
20 coal produced in the state in accordance with the following schedule:

21 ~~(a) After June 30, 1988, and before July 1, 1990:~~

22 Heating quality	Surface	Underground
23 <del>(Btu per pound</del>	Mining	Mining
24 <del>— of coal):</del>		

25 Under 7,000 17% of value 3% of value

26 7,000 and over 25% of value 4% of value

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

28 Heating quality	Surface	Underground
29 <del>(Btu per pound</del>	Mining	Mining
30 <del>— of coal):</del>		

1	<del>Under 7,000</del>	<del>13% of value</del>	<del>3% of value</del>
2	<del>7,000 and over</del>	<del>20% of value</del>	<del>4% of value</del>

3 ~~(c) After June 30, 1991:~~

4	Heating quality	Surface	Underground	Extended Depth
5	(Btu per pound	Mining	Mining	Auger Mining
6	of coal):			
7	Under 7,000	10% of value	3% of value	7.5% of value
8	7,000 and over	15% of value	4% of value	7.5% of value

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

10 (3) The formula ~~which that~~ yields the greater amount of tax in a particular case ~~shall~~ must be used  
11 at each point on ~~these schedules~~ the schedule.

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

16 (5) A IN ADDITION TO THE EXEMPTION DESCRIBED IN SUBSECTION (4), A person is not liable  
17 for any severance tax upon up to 2 million tons of coal that the person produces AS FEEDSTOCK for a coal  
18 enhancement facility FACILITIES in a calendar year, except if more than 2 million tons of coal are produced  
19 AS FEEDSTOCK for a coal enhancement facility FACILITIES in a calendar year, the producer is liable for  
20 severance tax on all coal produced AS FEEDSTOCK for the facility THESE FACILITIES in excess of the first  
21 2 million tons.

22 ~~(6)~~ (6) A new coal production incentive tax credit may be claimed on certain coal as provided in  
23 15-35-202. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)

24 **15-35-103. (Effective July 1, 1997) Severance tax -- rates imposed.** (1) Subject to the provisions  
25 of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton  
26 of coal produced in the state in accordance with the following schedule:

27 ~~(a) After June 30, 1988, and before July 1, 1990:~~

28	Heating quality	Surface	Underground
29	(Btu per pound	Mining	Mining
30	of coal):		

1	<del>Under 7,000</del>	<del>17% of value</del>	<del>3% of value</del>
2	<del>7,000 and over</del>	<del>25% of value</del>	<del>4% of value</del>
3	<del>(b) After June 30, 1990, and before July 1, 1991:</del>		
4	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
5	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
6	<del>of coal):</del>		
7	<del>Under 7,000</del>	<del>13% of value</del>	<del>3% of value</del>
8	<del>7,000 and over</del>	<del>20% of value</del>	<del>4% of value</del>
9	<del>(c) After June 30, 1991:</del>		
10	Heating quality	Surface	Underground
11	(Btu per pound	Mining	Mining
12	of coal):		
13	Under 7,000	10% of value	3% of value
14	7,000 and over	15% of value	4% of value

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

16 (3) The formula ~~which that~~ yields the greater amount of tax in a particular case ~~shall~~ must be used  
 17 at each point on ~~these schedules~~ the schedule.

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

22 (5) A IN ADDITION TO THE EXEMPTION DESCRIBED IN SUBSECTION (4), A person is not liable  
 23 for any severance tax upon up to 2 million tons of coal that the person produces AS FEEDSTOCK for a coal  
 24 enhancement facility FACILITIES in a calendar year, except if more than 2 million tons of coal are produced  
 25 AS FEEDSTOCK for a coal enhancement facility FACILITIES in a calendar year, the producer is liable for  
 26 severance tax on all coal produced AS FEEDSTOCK for the facility THESE FACILITIES in excess of the first  
 27 2 million tons.

28 ~~(5)(6)~~ (6) A new coal production incentive tax credit may be claimed on certain coal as provided in  
 29 15-35-202."  
 30

1           **Section 3.** Section 15-23-703, MCA, is amended to read:

2           **"15-23-703. Taxation of gross proceeds -- taxable value for bonding and guaranteed tax base aid**  
3 **to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that  
4 must be transmitted to the county treasurer on or before September 15 each year. The department may  
5 not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against  
6 the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall  
7 proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in  
8 15-16-101.

9           (2) For bonding, county classification, and all nontax purposes, the taxable value of the gross  
10 proceeds of coal is 45% of the contract sales price as defined in 15-35-102~~(5)~~.

11           (3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the  
12 state, county, and eligible school districts in the county the amount of the coal gross proceeds tax,  
13 determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated,  
14 and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

15           (4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount  
16 determined under subsection (3) and the amounts received under 15-23-706:

17           (a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production  
18 in the relative proportions required by the levies for state and county purposes in the same manner as  
19 property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

20           (b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988  
21 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against  
22 production, in the same manner that property taxes collected or property taxes that would have been  
23 collected would have been distributed in the 1990 school fiscal year in the school district.

24           (5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection  
25 (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each  
26 year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department  
27 for redistribution as provided in 15-23-706.

28           (b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection  
29 (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

30           (6) The board of county commissioners of a county may direct the county treasurer to reallocate

1 the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in  
2 subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school,  
3 within the county under the following conditions:

4 (a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within  
5 the county in the same proportion that all other property tax proceeds were distributed in the county in  
6 fiscal year 1990.

7 (b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the  
8 commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

9 (7) The board of trustees of an elementary or high school district may reallocate the coal gross  
10 proceeds taxes distributed to the district by the county treasurer under the following conditions:

11 (a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the  
12 district in the same proportion that all other property tax proceeds were distributed in the district in fiscal  
13 year 1990.

14 (b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may  
15 allocate the excess to any budgeted fund of the school district.

16 (8) The county treasurer shall credit all taxes collected under this part from coal mines that began  
17 production after December 31, 1988, in the relative proportions required by the levies for state, county,  
18 and school district purposes in the same manner as property taxes were distributed in the previous fiscal  
19 year."  
20

21 NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective on passage and  
22 approval and applies to coal produced during calendar year 1995 and in subsequent years.  
23

24 NEW SECTION. **Section 5. Termination.** [This act] terminates on December 31, 2005.  
25

-END-

## 1 HOUSE BILL NO. 343

2 INTRODUCED BY HOLLAND, FUCHS, MENAHAN, LARSON, FELAND, SOFT, M. HANSON, TAYLOR,  
3 T. NELSON, ZOOK, MCGEE, GRIMES, KASTEN, PAVLOVICH, J. JOHNSON

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX  
6 FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING  
7 SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.



## 1 HOUSE BILL NO. 343

2 INTRODUCED BY HOLLAND, FUCHS, MENAHAN, LARSON, FELAND, SOFT, M. HANSON, TAYLOR,  
3 T. NELSON, ZOOK, MCGEE, GRIMES, KASTEN, PAVLOVICH, J. JOHNSON  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX  
6 FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING  
7 SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."  
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11

12 **Section 1.** Section 15-35-102, MCA, is amended to read:

13 **"15-35-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

19 or

20 (ii) the greater of:

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

23 (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
24 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
25 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
26 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
27 Montana coal mine operators under all other agreements.

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

30 (3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator

- 1 applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:
- 2 (i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar
- 3 years 1983 and 1984; or
- 4 (ii) the volume of coal produced in Montana and sold to a purchaser in 1986.
- 5 (b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated
- 6 in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).
- 7 (4) "Broker" means any person who resells Montana coal.
- 8 (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water
- 9 1 degree Fahrenheit.
- 10 (6) "Coal enhancement facility" means a ~~process or~~ PROCESSING facility LOCATED AT THE SITE
- 11 OF THE MINE that PRODUCES A SOLID, LIQUID, OR GASEOUS FUEL FROM COAL AS ITS PRIMARY
- 12 PRODUCT AND THERMALLY OR CHEMICALLY alters the characteristics of coal by:
- 13 (a) improving the Btu value PER POUND of the coal by at least 25%; or
- 14 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.
- 15 ~~(5)(7)~~ "Contract sales price" means either the price of coal extracted and prepared for shipment
- 16 f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed
- 17 by the department under 15-35-107. Contract sales price includes all royalties paid on production, no
- 18 matter how ~~such~~ the royalties are calculated. However, with respect to royalties paid to the government
- 19 of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price
- 20 includes only:
- 21 ~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of~~
- 22 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 23 ~~royalties actually paid;~~
- 24 ~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of~~
- 25 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 26 ~~royalties actually paid;~~
- 27 ~~(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of~~
- 28 ~~the difference between 15 cents per ton and the amount of such federal, state, and tribal government~~
- 29 ~~royalties actually paid; and~~
- 30 ~~(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.~~

- 1           ~~(6)~~(8) "Department" means the department of revenue.
- 2           ~~(7)~~(9) "Energy conversion process" includes any process by which coal in the solid state is  
3 transformed into slurry, gas, electric energy, or any other form of energy.
- 4           ~~(8)~~(10) "Extended depth auger method" means a method of mining that penetrates a coal deposit  
5 and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet  
6 in depth.
- 7           (11) "FEEDSTOCK" MEANS RAW COAL PROCESSED BY A COAL ENHANCEMENT FACILITY.
- 8           ~~(9)~~(11)~~(12)~~ "Incremental production" means that quantity of coal produced annually by a coal mine  
9 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
10 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
11 level from all Montana producers.
- 12           ~~(10)~~(12)~~(13)~~ "Produced" means severed from the earth.
- 13           ~~(11)~~(13)~~(14)~~ "Purchaser" means a person who purchases or contracts to purchase Montana coal  
14 directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial,  
15 commercial, or energy conversion process. A coal broker or any other third party intermediary is not a  
16 purchaser under the provisions of this chapter.
- 17           ~~(12)~~(14)~~(15)~~ "Qualified purchaser" means a purchaser whose purchases of Montana coal in any  
18 given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into  
19 a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level  
20 of a purchaser is not a qualified purchaser.
- 21           ~~(13)~~(15)~~(16)~~ "Strip mining" is defined in 82-4-203 and includes "surface mining" but does not  
22 include the extended depth auger method of mining.
- 23           ~~(14)~~(16)~~(17)~~ "Taxes paid on production" includes any tax paid to the federal, state, or local  
24 governments upon the quantity of coal produced as a function of either the volume or the value of  
25 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
26 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
27 fee.
- 28           ~~(15)~~(17)~~(18)~~ "Ton" means 2,000 pounds.
- 29           ~~(16)~~(18)~~(19)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and  
30 as further defined in 82-4-203. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)

1           15-35-102. (Effective July 1, 1997) Definitions. As used in this chapter, the following definitions  
2 apply:

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

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

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

8 or

9           (ii) the greater of:

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

12           (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1,  
13 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement  
14 as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement,  
15 plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all  
16 Montana coal mine operators under all other agreements.

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

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

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

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

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

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

27           (5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water  
28 1 degree Fahrenheit.

29           (6) "Coal enhancement facility" means a ~~process or~~ PROCESSING facility LOCATED AT THE SITE  
30 OF THE MINE that PRODUCES A SOLID, LIQUID, OR GASEOUS FUEL FROM COAL AS ITS PRIMARY

1 PRODUCT AND THERMALLY OR CHEMICALLY alters the characteristics of coal by:

2 (a) improving the Btu value PER POUND of the coal by at least 25%; or

3 (b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

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

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

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

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

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

20 ~~(6)(8)~~ "Department" means the department of revenue.

21 ~~(7)(9)~~ "Energy conversion process" includes any process by which coal in the solid state is  
22 transformed into slurry, gas, electric energy, or any other form of energy.

23 (10) "FEEDSTOCK" MEANS RAW COAL PROCESSED BY A COAL ENHANCEMENT FACILITY.

24 ~~(8)(10)(11)~~ "Incremental production" means that quantity of coal produced annually by a coal mine  
25 operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator  
26 for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption  
27 level from all Montana producers.

28 ~~(9)(11)(12)~~ "Produced" means severed from the earth.

29 ~~(10)(12)(13)~~ "Purchaser" means a person who purchases or contracts to purchase Montana coal  
30 directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial,

1 commercial, or energy conversion process. A coal broker or any other third party intermediary is not a  
2 purchaser under the provisions of this chapter.

3 ~~(11)(13)(14)~~ "Qualified purchaser" means a purchaser whose purchases of Montana coal in any  
4 given year exceed ~~his~~ the purchaser's base consumption level. A purchaser of Montana coal who enters  
5 into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption  
6 level of a purchaser is not a qualified purchaser.

7 ~~(12)(14)(15)~~ "Strip mining" is defined in 82-4-203 and includes "surface mining".

8 ~~(13)(15)(16)~~ "Taxes paid on production" includes any tax paid to the federal, state, or local  
9 governments upon the quantity of coal produced as a function of either the volume or the value of  
10 production and does not include any tax upon the value of mining equipment, machinery, or buildings and  
11 lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license  
12 fee.

13 ~~(14)(16)(17)~~ "Ton" means 2,000 pounds.

14 ~~(15)(17)(18)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and  
15 as further defined in 82-4-203.  
16

17 **Section 2.** Section 15-35-103, MCA, is amended to read:

18 **"15-35-103. (Temporary) Severance tax -- rates imposed.** (1) Subject to the provisions of  
19 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of  
20 coal produced in the state in accordance with the following schedule:

21 ~~(a) After June 30, 1988, and before July 1, 1990:~~

22 Heating quality	Surface	Underground
23 (Btu per pound	Mining	Mining
24 — of coal):		
25 Under 7,000	17% of value	3% of value
26 7,000 and over	25% of value	4% of value

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

28 Heating quality	Surface	Underground
29 (Btu per pound	Mining	Mining
30 — of coal):		

1 Under 7,000 13% of value 3% of value

2 7,000 and over 20% of value 4% of value

3 ~~(e) After June 30, 1991:~~

4 Heating quality	Surface	Underground	Extended Depth
5 (Btu per pound	Mining	Mining	Auger Mining
6 of coal):			

7 Under 7,000 10% of value 3% of value 7.5% of value

8 7,000 and over 15% of value 4% of value 7.5% of value

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

10 (3) The formula ~~which that~~ yields the greater amount of tax in a particular case ~~shall~~ must be used  
11 at each point on ~~these schedules~~ the schedule.

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

16 (5) A IN ADDITION TO THE EXEMPTION DESCRIBED IN SUBSECTION (4), A person is not liable  
17 for any severance tax upon up to 2 million tons of coal that the person produces AS FEEDSTOCK for a coal  
18 enhancement facility FACILITIES in a calendar year, except if more than 2 million tons of coal are produced  
19 AS FEEDSTOCK for a coal enhancement facility FACILITIES in a calendar year, the producer is liable for  
20 severance tax on all coal produced AS FEEDSTOCK for the facility THESE FACILITIES in excess of the first  
21 2 million tons.

22 ~~(5)(6)~~ (6) A new coal production incentive tax credit may be claimed on certain coal as provided in  
23 15-35-202. (Terminates June 30, 1997--sec. 4, Ch. 580, L. 1993.)

24 **15-35-103. (Effective July 1, 1997) Severance tax -- rates imposed.** (1) Subject to the provisions  
25 of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton  
26 of coal produced in the state in accordance with the following schedule:

27 ~~(a) After June 30, 1988, and before July 1, 1990:~~

28 Heating quality	Surface	Underground
29 (Btu per pound	Mining	Mining
30 of coal):		

1	<del>Under 7,000</del>	<del>17% of value</del>	<del>3% of value</del>
2	<del>7,000 and over</del>	<del>25% of value</del>	<del>4% of value</del>
3	<del>(b) After June 30, 1990, and before July 1, 1991:</del>		
4	<del>Heating quality</del>	<del>Surface</del>	<del>Underground</del>
5	<del>(Btu per pound</del>	<del>Mining</del>	<del>Mining</del>
6	<del>of coal):</del>		
7	<del>Under 7,000</del>	<del>13% of value</del>	<del>3% of value</del>
8	<del>7,000 and over</del>	<del>20% of value</del>	<del>4% of value</del>
9	<del>(c) After June 30, 1991:</del>		
10	Heating quality	Surface	Underground
11	(Btu per pound	Mining	Mining
12	of coal):		
13	Under 7,000	10% of value	3% of value
14	7,000 and over	15% of value	4% of value

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

16 (3) The formula ~~which that~~ yields the greater amount of tax in a particular case ~~shall~~ must be used  
17 at each point on ~~these schedules~~ the schedule.

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

22 (5) A IN ADDITION TO THE EXEMPTION DESCRIBED IN SUBSECTION (4), A person is not liable  
23 for any severance tax upon up to 2 million tons of coal that the person produces AS FEEDSTOCK for a coal  
24 enhancement facility FACILITIES in a calendar year, except if more than 2 million tons of coal are produced  
25 AS FEEDSTOCK for a coal enhancement facility FACILITIES in a calendar year, the producer is liable for  
26 severance tax on all coal produced AS FEEDSTOCK for the facility THESE FACILITIES in excess of the first  
27 2 million tons.

28 (5)(6) A new coal production incentive tax credit may be claimed on certain coal as provided in  
29 15-35-202."

30



1           **Section 3.** Section 15-23-703, MCA, is amended to read:

2           **"15-23-703. Taxation of gross proceeds -- taxable value for bonding and guaranteed tax base aid**  
3 **to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that  
4 must be transmitted to the county treasurer on or before September 15 each year. The department may  
5 not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against  
6 the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall  
7 proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in  
8 15-16-101.

9           (2) For bonding, county classification, and all nontax purposes, the taxable value of the gross  
10 proceeds of coal is 45% of the contract sales price as defined in 15-35-102~~(5)~~.

11           (3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the  
12 state, county, and eligible school districts in the county the amount of the coal gross proceeds tax,  
13 determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated,  
14 and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

15           (4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount  
16 determined under subsection (3) and the amounts received under 15-23-706:

17           (a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production  
18 in the relative proportions required by the levies for state and county purposes in the same manner as  
19 property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

20           (b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988  
21 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against  
22 production, in the same manner that property taxes collected or property taxes that would have been  
23 collected would have been distributed in the 1990 school fiscal year in the school district.

24           (5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection  
25 (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each  
26 year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department  
27 for redistribution as provided in 15-23-706.

28           (b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection  
29 (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

30           (6) The board of county commissioners of a county may direct the county treasurer to reallocate

1 the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in  
2 subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school,  
3 within the county under the following conditions:

4 (a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within  
5 the county in the same proportion that all other property tax proceeds were distributed in the county in  
6 fiscal year 1990.

7 (b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the  
8 commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

9 (7) The board of trustees of an elementary or high school district may reallocate the coal gross  
10 proceeds taxes distributed to the district by the county treasurer under the following conditions:

11 (a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the  
12 district in the same proportion that all other property tax proceeds were distributed in the district in fiscal  
13 year 1990.

14 (b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may  
15 allocate the excess to any budgeted fund of the school district.

16 (8) The county treasurer shall credit all taxes collected under this part from coal mines that began  
17 production after December 31, 1988, in the relative proportions required by the levies for state, county,  
18 and school district purposes in the same manner as property taxes were distributed in the previous fiscal  
19 year."  
20

21 **NEW SECTION. Section 4. Effective date -- applicability.** [This act] is effective on passage and  
22 approval and applies to coal produced during calendar year 1995 and in subsequent years.

23  
24 **NEW SECTION. Section 5. Termination.** [This act] terminates on December 31, 2005.

25 -END-