

SENATE BILL NO. 292  
INTRODUCED BY K. GEBHARDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A REDUCED SEVERANCE TAX RATE ON COAL RECOVERED FROM A STRIP MINE BY AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

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

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

(2) "Auger mining" means the method of recovering coal by boring with a drill into a coal bed exposed by strip-mining excavations or in naturally sloping terrain. Auger mining is used when the surface overburden becomes too thick for further economical excavation by strip mining.

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

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

~~—— (ii) the greater of:~~

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

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

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

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

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

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

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

~~(4)~~(3) "Broker" means any person who resells Montana coal.

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

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

~~(7)~~(5) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

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

~~(9)~~(6) "Produced" means severed from the earth.

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

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

~~(12)~~(8) "Strip mining" is defined in 82-4-203 and includes "surface mining".

~~(13)~~(9) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net

income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~~~(10)~~ "Ton" means 2,000 pounds.

~~(15)~~~~(11)~~ "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

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

**"15-35-103. Severance tax -- rates imposed.** (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground <u>and Auger</u> Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

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

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

(4) The reduced tax rate on coal produced by auger mining applies only to coal recovered from a strip mine that would otherwise be unrecoverable by conventional strip-mining methods as specified in the coal conservation plan submitted to and approved by the department of environmental quality under the provisions of Title 82, chapter 4, part 2."

NEW SECTION. **Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2009.

NEW SECTION. **Section 5. Applicability.** [This act] applies to coal recovered from a strip mine by auger mining after June 30, 2009.

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