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HISTORY OF THE COAL TAX

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When I first arrived in the Montana Legislature in 1971, the severance tax on coal was 5¢ a ton. In the 1969 session, Representative Miles Romney introduced HB 569 which would have raised the severance tax on coal to 50¢ a ton. That was considered way too high and quickly defeated. However, in 1975, the Legislature passed a bill that levied a severance tax on the severance of coal in Montana at 30 percent of the gross value of the coal plus another four-and-a-half percent by placing 45 percent of the gross value of severed coal in the local property tax base. At the time, coal was selling for $5 a ton so that amounted to $1.725 tax on each ton of coal. At $10 a ton, which was the value in 1993, it amounted to $3.45 per ton, substantially higher than Senator Romney's 50¢ which the Legislature had considered outrageously high in 1969.

This alone is spectacular, but in addition, upon the passage of a constitutional amendment in November 1976, 50 percent of the proceeds have been set aside into a constitutionally-protected trust fund from which the interest income will help fund Montana's government—forever. That fund is now in excess of $1 billion and it produces between $40 and $50 million income each year. It truly does preserve a bit of the treasure of the Treasure State for future generations so that, as I have said many times, "We can look our children and grandchildren in the eyes and say we did not squander your inheritance."

How was it possible to obtain passage of such a huge benefit for the future of Montana? It did not come easy. While similar bills were introduced in the North Dakota Legislature and in the Wyoming Legislature, only Montana's bill passed with a tax at this level. The success was made possible because of a lot of hard work, some careful planning, some great cooperation, a very receptive political climate, and a little luck. By luck, I do not mean things like a flip of the coin—although that too was involved—but a lucky coincidence of events.

Recognizing the importance of the legislation from the beginning, I dictated my recollection of events and thoughts of what was happening during the 1975 session of the Legislature while driving back and forth to my hometown of Billings. Most of this account is taken from those recollections and happenings, plus a generous reference to the official records.

A. EARLY HISTORY

In 1921, the Montana Legislature first levied a tax on coal mined in Montana at five cents a ton. It remained at five cents a ton for 50 years. In 1971, Representative Bill Christiansen got a bill passed, which based the tax on the BTU content of the coal. Thus, sub-bituminous coal at 8,700 BTUs per pound, the most common type of coal in Montana, was set at 12¢ per ton with lignite coal at 10¢. Then, the North Central Power Study came out showing that Montana had something like 25 percent of the nation's coal supply—and 10 percent of the world's coal supply. A number of coal tax bills were introduced in the 1973 session. One bill passed that raised the tax to 34¢ a ton for sub-bituminous coal and 12¢ for lignite coal.

B. HB 527 OF THE 1973 AND 1974 SESSIONS

In 1972, I campaigned on a promise of introducing a coal tax bill at $2 per ton. When I was elected, I introduced HB 527, which would have placed a 98¢ per ton tax on the BTU content coal most common in Montana plus a disturbed land tax based on the number of acres which were not yet reclaimed. The land disturbed tax amounted to an additional 89¢ per ton. Lobbyists who thought Miles Romney was way out of step at 50¢ per ton in 1969, almost fell out of their chairs when they heard me say the total in HB 527 amounted to $1.87 per ton.[1]

HB 527 did not go far in the 1973 session. However, I managed to keep it alive for the 1974 annual session, the only annual session the Montana Legislature has ever had. In the meantime, Kit Muller, of the Northern Plains Resource Council, suggested to me that the best way to apply the tax was to make the tax a percentage of the sale price of the coal. That way, as the price of coal increased, the tax would also increase. I thought that was a good idea, but I wanted to be sure it was figured on the gross value of the coal and not the net proceeds. Net proceeds was the term then used to determine the amount of coal to be put into the local tax base, and it always resulted in an argument of what could be deducted to get to the "net." I definitely did not believe a percentage of the home office, wherever it was located, should be deducted to determine a Montana Coal Tax. So, I concluded the percentage should be computed on the gross value, and not the net after expenses.

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1. Things were not as well organized in those days and several of the many bills regarding coal tax were not even printed at the time of the first hearing in which all the coal tax bills were heard at the same time. Thus, the lobbyists all came to the hearing only with the caption heading of each bill and did not know what was in the bill at the time of the hearing until the bill was explained by the sponsor.

But I had trouble with the language. I used something like "the delivered price of the coal less the cost of transportation." Bob Corette, attorney and lobbyist for the Montana Power Company and their coal mining subsidiary, Western Energy Company, came to me one day early in the 1974 session and suggested I use "f.o.b." [freight on board], which is the way all coal companies sell their coal.[2] So, that is what I used—a percentage of the f.o.b. mine price of the coal.

In the 1974 session, a special subcommittee was set up by the Taxation Committee of the House. Even though I was not on the committee, they liked the percentage of the f.o.b. mine price formula. Jack Ratchye, marketing director for Decker Coal Company, was telling us that he could not even find a buyer for Decker Coal at $1.81 per ton. At that price, the current tax of 34¢ per ton for 8,700 BTU coal would be about 18.75 percent so we set the percentage at 20 percent. The lobbyists said that is way too high because the coal was then selling for closer to $4 per ton and that would make it 80¢ per ton. While that would have been fine with me, by reducing it to 16 percent, I got strong support from Democrats and several key Republicans. So, HB 527 passed the House at 16 percent. Notwithstanding a huge effort to get the Bill through the democratically-controlled Senate, we were unsuccessful. It finally died on the last day of the session, but a resolution to conduct a study of the tax in an interim study was passed.

C. THE INTERIM COMMITTEE BILL

I was on the Interim Study Committee along with fellow democratic House member, Ora Halverson, and House Republicans Walter Ulmer, and Jack Tierney. Dave Manning, Gordon McComber, Bill Mathers, and George Bennett were on the committee from the Senate. Walter Ulmer was Chairman and I was Vice Chairman. Roger Tippy served as Legislative Council staff. It was a good committee. The committee quickly concluded that my approach, i.e., a gross percentage of the f.o.b. mine price of the coal was best for the Severance Tax. The same method of determining gross proceeds was also determined to be the best method of determining the number to be used to determine the value added to the local property tax base. The old net proceeds system to determine the amount to be placed in the property tax base for local property taxes needed to be changed. The committee decided to place 45 percent of the

2. This, of course, does not mean that Bob Corette supported an increase of the coal tax. However, it was appreciated, and it did indicate that he had enough concern about good legislation and good government that he was willing to help with a good suggestion in the drafting.

gross proceeds into the tax base. In Rosebud County, at about 100 mills, this would add an additional 4.5 percent tax to each ton of coal. In most of the other counties, it would be a little higher.

Since interim committees had only one year between sessions, we did not have many meetings or much time, but we did agree on virtually everything regarding the procedure for the State to collect a severance tax on coal as well as the procedure for the counties to collect a fair local property tax, now known as the gross proceeds tax, on the coal mined in their county. Although we agreed on an amount to be put into the tax base for the gross proceeds tax, namely 45 percent, the committee could not agree on the amount of the severance tax to be collected at the State level. My motion for 25 percent without a deduction for taxes (which opponents dubbed "pyramiding") failed. Senator Mathers' motion for 12 percent also failed. Someone else moved for 16 percent, and that failed too. The committee then decided to approve the Bill but leave the percentage of the severance tax blank. That motion passed.

Since Walter Ulmer, Chairman of the interim committee, chose not to run again, the introduction of the Bill was left to me as vice chairman. Of course, I asked the drafters to put in the number 25 percent. Thus, SB 13 of the 1975 session proposed a 25 percent tax with pyramiding.

D. PYRAMIDING

Pyramiding is the word used to describe a tax on a tax. Lobbyists hate it, or at least said they did, although maybe they were just using a popular argument to oppose the Bill. If the f.o.b. mine price of the coal is $4 a ton, a 25 percent tax would be $1. After this extra dollar is added to the f.o.b. mine price, the sale price is $5 per ton, and we have to collect another 25 percent tax on that extra dollar, which makes the price $5.25. But then, we have to collect 25 percent on that extra 25¢ which is 6.25¢ more—and on and on. That is pyramiding.

Dennis Burr, Director of the Department of Revenue, said if they don't like it the coal companies should change their contracts so their customers would agree to pay the f.o.b. mine price *less* the Montana severance tax. He said the coal companies should not be allowed to dictate the language of a Montana law. Furthermore, Burr claimed it was a simple matter of developing a formula to arrive at the exact number if they didn't change their contracts. Much later in the session, at a hearing in the Senate Taxation Committee on Ora Halverson's Bill, HB 115, I asked the coal company lobbyists, if the dollar amount were exactly the same, did they

want it with pyramiding or without pyramiding? They said without pyramiding, so we went to 30 percent instead of 25 percent.[3] As passed by the 1975 Legislature, SB 13 contains a 30 percent tax on coal with no pyramiding (so, no tax on a tax).

E. WHY 30 PERCENT?

During the summer of 1974, the North Dakota Farmers Union called for a 33.33 percent coal severance tax. I was aware of this position. When we added 25 percent to the other taxes, namely, the gross proceeds tax at the county level of about 4.5 percent, depending on the mill levy, and the Resource Indemnity Tax of .5 percent, there was a total of 30 percent. That is why I wanted 25 percent without a deduction for the tax on a tax, i.e., with pyramiding.

Also, during this time, Dorothy Eck, who was working in the Governor's Office at this time, told me that our state's federal coordinator in Washington, D.C., Dean Hart, had informed the coal companies that they could live with 25 percent. After all, he told them, the coal companies could pass it all on to their customers.

F. SOME VERY SIGNIFICANT FACTORS AFFECTING PASSAGE OF THE TAX

There were three very important factors affecting the ability to get the 30 percent coal severance tax through the 1975 Legislature.

1. The 1975 Election and 1975 Senate Democratic Caucus

The first factor was the successful election in the fall of 1974 of a large number of progressive-minded legislators to the Montana Legislature in both the House and the Senate. Of particular note is the election of a large number of House Democrats who ran for the Senate, mostly because so many good bills were killed in the democratically-controlled Senate in previous sessions. Related to this was my election as Chairman of the Committee on committees in the Senate. It resulted in a brand-new Senate with the organizational ability to get things done, and with enough votes in the Senate Taxation Committee to get a good coal tax bill out of the Senate Taxation Committee.

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3. If added up properly, the tax at 25 percent with pyramiding is 33.325 percent of the price without pyramiding; the coal companies and their customers gained a little on that move.

2. The Release of the Bureau of Reclamation's North Central Power Study

The second important factor was the issuance of the North Central Power Study released by the Bureau of Reclamation in October 1971. For the first time, the citizens of Montana became aware of the huge resource Montana had in coal, a new treasure of the Treasure State. Montana had approximately 25 percent of the minable coal in the United States. It had about 10 percent of the world's coal supply and 52 percent of the low sulfur coal in the United States. The North Central Power Study proposed 42 mine mouth power plants, 21 of which would be located in Montana. At that time, coal was essential for the generation of electricity throughout the world.

Montanans soon recognized that our low sulfur, low BTU coal was a really valuable resource. Most people, however, did not want this new valuable resource to be exploited, leaving Montana with nothing but huge economic and environmental problems once the coal was gone. That happened with gold and silver at the turn of the twentieth century. It happened more recently with copper. Montanans were determined not to let it happen again.

Montanans felt the State should receive something for the economic impact and environmental costs that would certainly result, and they were determined not to let this valuable treasure disappear without something to show future generations to prove we had not squandered their inheritance. I made this point many times in guiding the Bill through the Legislature. I generally added that while the Copper Kings became fabulously wealthy, they left almost no part of that wealth in Montana. William Clark endowed the Los Angles Symphony Orchestra, funded a new library for Stanford University, built a new law school for the University of Virginia and left a great art collection to the Corcoran Art Gallery in Washington, D.C., but I could not find a single thing he did for Montana other than giving $25,000 to build a theater inside the walls of the Montana State Prison in Deer Lodge.[4]

3. The Principle Coal Lobbyist Became Ineffective

Third, something happened to the person I believe was the most effective lobbyist that the coal companies had, at least for the Democrats—John Lahr of the Montana Power Company and its coal mine subsidiary,

4. I have since learned that William Clark did leave some money to the University of Montana.

Western Energy Coal Company. John Lahr got himself embroiled in the primary election in Butte between Jerry Lombardi and Bob Harper. Because of reapportionment, these two successful legislators ended up running against each other for the same House seat in the Democratic primary in 1974. Without significant opposition, if any, in the general election, the primary election was the only one that counted in Butte. But Bob Harper was not popular with the "Company" or among the other Democratic Legislators in Butte—he was not afraid to speak out against the Montana Power Company, or the Anaconda Company, and he supported most of my bills.

Bob's opponents ran an advertisement in the Montana Standard the Sunday before the election, prepared by a group of people that included many of the other Butte democratic legislators, which claimed Bob Harper voted against or for certain bills. One of my bills, HB 202, a family planning bill that encouraged greater availability of contraceptives, was included. Bob was well aware that his district was largely Catholic, so he voted against it, but the Sunday ad got it wrong and claimed he had voted for it.

Bob lost the primary election by two votes. It was not hard to find two voters who were willing to testify that if they had known the truth they would have voted for Bob Harper. Bob contacted me and asked me to represent him in a challenge to the election and I agreed to take his case. At the subsequent trial, Jerry Lombardi acknowledged responsibility for the ad and admitted he did not check it out in the Journal (House Journal, 43rd Legislative Session) before publishing it. The judge ruled the election invalid and declared the ballot position for the general election vacant. Bob persuaded the Democratic Central Committee to support him to fill the vacancy and he went on to win in the fall.

However, during the Monday talk show on the radio in Butte the day before the primary election, John Lahr got on the phone and read the entire ad, including the erroneous vote, on the air. This opened up a possibility of a lawsuit for libel—publishing a false statement in his phone message on the radio—against John Lahr and his employer, the Montana Power Company. Prior to the convening of the 1975 Legislative Session, I filed suit against John Lahr and the Montana Power Company on behalf of Bob Harper, who had suffered real damages because of it. John Lahr was devastated. He was simply not his usual self, was amazingly quiet during the entire session, and was unable to perform as usual. He even came to me before the session and begged me not to file the lawsuit. But I did file, and the coal companies suddenly found themselves without the

usual effectiveness of their most effective lobbyist that session.[5] The Montana Coal Council had just been organized and was not yet very effective. In my opinion, this was an enormous factor in getting the coal tax bill at 30 percent through the Legislature.

G. CONTACT WITH LEGISLATORS FROM OTHER STATES

In 1974, the Montana Committee for the Humanities held a conference in Billings on the impact of coal development in the north-central part of the United States. Legislators from North Dakota and Wyoming were present. Representative Dick Colberg (D.Billings) agreed to organize a meeting of Montana legislators with those from North Dakota and Wyoming after the main conference was over. Gordon McComber, Larry Fasbender, Herb Huennekens, Dorothy Bradley, plus Dick and myself and several others, took part. I suggested that we have one person from each state appointed as a contact person so we could extend communication with each other regarding the progress on bills affecting coal in each state. Buckshot Hoffner from North Dakota and Malcolm Wallop from Wyoming were designated, along with myself and Dick Colberg. This resulted in another meeting in January 1975 before the deadline for the introduction of bills in the legislature. This meeting was organized and paid for by the Old West Regional Commission. Gordon McOmber and Governor Tom Judge helped to bring this meeting about. Bill Mathers and I were to represent the Montana Senate and Harrison Fagg and Dan Yardley were appointed to represent the Montana House. When Bill Mathers was unable to go, Dick Colberg filled in for him.

As a result of the Old West Regional Commission meeting, I kept in touch with Representative Richard Backes, the Minority Leader of the North Dakota House of Representatives. He had introduced a bill for a severance tax on coal at 30 percent of the f.o.b. mine price. I believe it was actually proposed by Governor Link. This was helpful. Each time before a major hearing on our severance tax bill, I called Representative Backes and got a report on the progress of his bill in North Dakota. I related this information to the committees or on the floor of the Senate and

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5. Later, the case went to trial before a jury in Butte. Former State Senator Larry Stimatz joined me in trying the case. John Lahr denied he made the call even though several witnesses identified his voice. I brought in Jim Murry, AFL-CIO, and Professor K. Ross Toole to testify about the history of involvement of the Montana Power Company in Montana politics, but we still lost the case. I ignored the general rule in those days; namely, never try a case against "the Company" before a Butte jury.

this helped Montana legislators to know that similar action was taking place in North Dakota.

I tried to keep in touch with the Wyoming Legislators as well. They had a bill to double the tax in Wyoming. My contact was Malcolm Wallop from Sheridan and another legislator whose first name is Dean. Unfortunately, our contact with Wyoming legislators was not as good as North Dakota. However, I think it helped inform our legislators of what was happening in Wyoming as well as North Dakota.

Unfortunately, Richard Backes's bill in North Dakota was not passed. The coal companies persuaded the electric cooperatives to join forces with the Lignite Coal Council and together they managed to kill that bill. The Coop lobby is very strong in North Dakota.

H. SENATE TAXATION COMMITTEE HEARING

Twenty-nine people signed in to testify on the Bill at the hearing on my three coal tax bills on January 22, 1975. The coal tax package consisted of three bills all sponsored by me: (1) SB 13, which was the interim committee bill setting the tax at 25 percent and putting 45 percent of the gross value in the county tax base; (2) SB 87, which established the earmarked funds for local impacts, earmarked funds for affected counties, and established both an educational trust fund and a higher educational trust fund; and (3) HB 86, which established a grant program for alternative energy research. Time limits were placed on us, but Senator Healy, who was chairing the committee as vice chair, was lenient, and we ended up taking only the first bill, SB 13, that day and continued the hearing on the other two the next day.

1. My Arguments for a 25 Percent Tax

I started out by explaining that the percentage system would replace the old cents per ton system. The reason was obvious. The price of coal had doubled in the past two years, yet the tax collection under the old system was even less that it was two years ago. Net values would not work because the creative deductions the coal companies came up with grew larger each year. We must use gross value of the coal at the mine with a fixed percentage that would allow the dollar amount of the tax to increase as the value of the coal increased.

I then explained the need for revenue due to local impacts on schools, law enforcement, fire protection, social services. The town of Colstrip increased from about 200 people to over 2,000 people almost overnight, causing government costs to skyrocket. I argued that the coal

companies should be required to help build new schools, hospitals and infrastructure for the communities that were most affected by the mining of coal.

I had done my homework and was able to point out that the impact on the ultimate consumer of electricity was minimal. The increase caused by this tax to the customers in Plains, Illinois, was only 1.41 percent of the delivered price of their electricity, even if all of the extra cost was passed on to the consumer. In fact, because of a significant tax by the mid-western states on the sale of electricity, those states were actually receiving more tax revenue per ton of coal than Montana would under this 25 percent tax. The increase in freight rates for shipping the coal to Michigan alone from the previous year was more than the 25 percent coal tax. I mentioned that both North Dakota and Wyoming were currently considering bills to increase their tax and explained the current status of Representative Backes's bill in the North Dakota Legislature based on my recent contact with him.

Finally, I made my usual pitch that this newly discovered treasure of the Treasure State should not be squandered like the treasure we had in gold, silver and copper was squandered. Millions of dollars' worth of copper was taken out of the richest hill on Earth in Butte, and Montana has nothing to show for it except the Berkley Pit, which is the largest Superfund site in the whole United States. Not only do we need to be able to clean up the mess when the mining is over, but we need to be able to look our future generations in the eye and say we did right by them.

2. Public Testimony and Sid Groff from the Bureau of Mines

Eleven people testified in favor of the Bill, including labor, agriculture and environmental representatives, and many county officials and educators.[6] Pat Hooks, Gene Phillips and Bob Corette opposed the Bill on behalf of the coal companies. The last person to speak was Sid Groff, Director of the Bureau of Mines out of Butte. He claimed he was neither an opponent nor proponent, but then obviously opposed the Bill by stating the tax was so high it would drive the mining companies out of the state. I closed, and by then the allotted hours were used up and the meeting adjourned without taking time for questions.

6. It was actually 12 because Robert Mogan, a County Commissioner from Rosebud County, came to town to speak in favor, but we ran out of time for proponents and he did not get to speak. So, he rose to speak during the opponent's time and spoke in favor of the bill.

Following the hearing, Kit Muller, of the Northern Plains Resource Council, provided me with a copy of a letter Sid Groff had written to Bill Gowan in 1969 when a bill was introduced in the Legislature that proposed a very modest increase in the tax above the 5¢ a ton that then existed. He used the exact same language to oppose that bill, i.e., that the tax was so high it would drive the mining companies out of the state. I sent a copy to Sid Groff and he responded saying I certainly got the best of him. He never appeared in a coal tax hearing after that.

3. Companion Bills: The Coal Tax Pie and Alternative Energy Grants

In addition to SB 13, which was the Interim Committee Bill on the Coal Severance Tax, I had two other bills that were a part of the coal tax package. The first was SB 87, which was the bill that allocated the proceeds of the coal severance tax; it is what we called the coal tax pie because we always used pie charts to show the allocation to various funds. It allocated the severance tax into several earmarked accounts. Most important were local impacts. I wanted to make sure that the economic impacts of coal mining were taken care of. The Bill also set up a Coal Board with grant authority and allocated 40 percent of the severance tax proceeds to the Board.

I was concerned, however, that once a grant system was established it would be hard to end it, even though most of the impacts would have been taken care of. For that reason, I provided that all of the impact allocation, which would not be needed for impacts, would automatically flow into an educational trust fund. I then provided that three members of the 11-member Coal Board would have to be educators appointed by the Board of Public Education, the Board of Regents and the School Board Association. The theory was that these three educators would watch carefully to make sure money would not be granted when impacts from coal mining was no longer apparent; the money would go to the educational trust fund and grow the fund faster. I also proposed very stringent criteria for determining that the grant was needed for a coal mining impact.

The criteria were left in the Bill and have worked well to limit frivolous grants. However, the educational trust idea was not well received. The Senate Taxation Committee required that the funds available for impacts be limited each biennium by legislative appropriations. Then, in 1987, when I was gone, they eliminated the Educational Trust Fund and used the principle to balance the budget that year. Also, the House amendments to SB 87 reduced the Board to seven members, all appointed by the Governor, with two persons who had "expertise in education." Frankly, the checks and balances I had in mind have not worked very well.

Finally, I provided five percent for alternative energy research. This was implemented in SB 86, the third bill in the coal tax package. I was persuaded by Ann Charter of the Northern Plains Resource Council that we needed to look to the future and be prepared to bring in more renewable energy; not just carbon-generated energy. This bill provided a system for making grants to alternative energy projects and alternative energy research. It turns out that this was not only prescience but a more significant prediction of the future than even I realized, looking back 44 years later.

4. The Hearing on the Companion Bills

At the Senate Committee hearing on HB 87, seven people spoke in favor of the Bill and no one opposed it. County commissioners supported it because of the impact funds and the extra five percent for counties. The Montana School Board Association supported it because it provided money for impacts and provided a trust fund for higher education. Dorothy Eck from the Governor's office supported it and said that she was not even sure the amount of the tax would be enough to take care of all the needs of local governments. Mike Pichette testified in favor of the Bill on behalf of the Democratic Party because it looked to the future. (Of course, I had something to do with that as well, because I got a provision adopted in the democratic platform at the Democratic Platform Convention the previous summer supporting the tax and explaining why.)

Jean Turnage, on the committee, did express some opposition to earmarking such large amounts which, in effect, bypass the legislative appropriations process. He said it would limit the authority of the legislature which has to balance the budget every two years. His comments were primarily directed at the 40 percent allocated to the local impact fund. The committee obliged and amended the Bill to limit the amount of impact funds available to the Coal Board to the amount appropriated by the Legislature each biennium. While this certainly granted the Legislature more authority, it also became a permissible spending limit, and the Coal Board rarely leaves much of its authority on the table.

I. THE SENATE FLOOR ACTION

The Senate Taxation Committee rejected Senator Mather's motions to eliminate pyramiding and to reduce the rate to 22 percent in SB 13, and then voted to send the Bill to the Senate floor with a unanimous vote.

Senator Max Conover (D. Broadview) deserves much credit for the success on the Senate floor. He came to me early in the session and said he wanted to do something to support a really high coal severance tax in addition to being a co-sponsor of SB 13. I asked him if he would be willing to introduce a floor amendment increasing the amount of the tax from 25 percent to 35 percent and he said he would. So, I prepared the amendment for him and he proposed it. I also gave him plenty of material to support his position.

Senator Mathers had two amendments; one to eliminate pyramiding which we defeated easily, and one to reduce the tax to 20 percent. At my request, the Secretary of the Senate, John Hansen, accepted my request to bring Senator Conover's amendment to increase the tax before Senator Mathers' amendment to reduce the tax. This was critical. My strategy was to say nothing on Senator Conover's amendment. This meant that Senator Mathers had to give his main speech in support of a lower tax on Conover's amendment instead of his own amendment, or after my presentation on the Bill itself. He was obviously unhappy. He said this was undoubtedly prearranged to make my position for a 25 percent tax with pyramiding sound like a moderate middle-of-the-road approach. I can't entirely disagree with his analysis, but I said nothing. I think we were all surprised when Senator Conover's amendment received 15 votes (15-35)—more than anyone expected.

After Senator Mathers introduced his amendment to drop the tax to 20 percent, he spoke very little since he had just given his reasons in opposition to Senator Conover. I opposed it and gave my principle reasons for a high tax at this point. I largely repeated what I argued when the Bill was before the committee. I also mentioned that Appalachia is known for its coal and its poverty and that we wanted to avoid that for Montana. I referred to one county in Tennessee where coal mining dominates, and coal companies own 30 percent of the land but pay only six percent of the taxes. And I cited North Dakota Governor Link's coal tax package, and the determination of the Wyoming Legislature to increase the tax. Then Senator Manning spoke against Mather's amendment stating that he thought 25 percent was a reasonable and fair figure. A number of others also rose to speak against the amendment. I really was not too concerned because I had contacted most of the Senators who I considered to be swing votes to make sure they would stick with me on the amount. Senator Mather's amendment failed on a vote of 17-33—only two more votes than Senator Conover received. It now was well established that my 25 percent plus pyramiding was the comfortable middle ground.

The presentation of the Bill itself was anti-climactic. I simply reviewed the mechanics of the Bill, how it worked and what was included,

and sat down. There was very little discussion and the Bill passed second reading by a vote of 40-8. It passed third reading by a vote of 41–7.

J. THE HOUSE BILL AND REPRESENTATIVE ORA HALVERSON

1. HB 115 by Representative Ora Halverson

I made a notation in my dictation of events of 1975 contemporaneously with the passage of the Bill[7] that the single most difficult problem in getting the Bill passed was Ora Halverson. Representative Ora Halverson (D. Kalispell) was Vice Chairman of the House Taxation Committee. She was also on the Interim Coal Severance Committee. Although she did not say too much during the interim committee meetings, she supported me in every motion I made to get the bills drafted with the right language, as well as the pyramiding and the 25 percent number. Sometime after the session commenced, I heard that Ora Halverson had introduced a bill in the House that was exactly the same as SB 13 (my committee bill) except the number was placed at 20 percent instead of 25 percent. When I asked about it, I was told that Ora Halverson only introduced the Bill, HB 115, as a backup to my bill that could be used in the event my bill ran into trouble. This made sense and, therefore, I did not pay much attention to it.

But when the House Taxation Committee did not take action on SB 13 for over a month after it cleared the Senate, and with transmittal deadlines approaching, I asked Dan Yardley, Chairman of the House Taxation Committee, why no hearing had been scheduled in the House. He told me that the committee was going to pass the Halverson Bill before the transmittal deadline and then they would take up my bill. This was the first time I realized that I had trouble. When I asked why, I was told by a number of people that there was some resentment against me personally because I had introduced a bill calling for an audit of the Governor's expense account and had received a lot of publicity on it. I never did find out whether it was because I introduced a bill that was, in essence, a criticism of the Democratic Governor, Tom Judge, or whether they resented all the publicity and credit I received for introducing the bill regarding Governor Judge's expenses in the Senate when some House Democrats thought it should have been introduced in the House. I responded that I could not imagine that the audit bill for the Governor's expenses was that

7. I dictated my recollection of events regarding the passage of the coal tax on my drives back and forth to Helena during the 1975 Session. When transcribed, the dictation took up 54 legal-sized pages.

significant, and it should not be used as an excuse for playing games with something as significant as coal severance tax.

It was not long before I realized that I was right to be concerned. It became clear that my attention to the Governor's travel expenses was not the reason. The reason was that Ora Halverson wanted her own name on the Coal Severance Tax Bill as the chief sponsor. As Vice Chairman of the Taxation Committee, Dan Yardley did not want to get her upset, so he agreed to her request to take up her bill first and mine after the House transmittal deadline.

It became even more concerning when I discovered she was encouraged to push her bill by Lieutenant Governor Bill Christenson. This was a shock to me because the Lieutenant Governor had been very good to me my Freshman Session in 1971 by making me an assistant whip seated strategically on the floor where he served as Minority Leader. But because he was the person who had succeeded in getting significant coal severance tax measures through the Legislature in the past, his involvement could not be discounted. It became my understanding that he thought 25 percent with pyramiding was just too high, and I would not be able to get it passed into law.

I contacted my supporters in the House including Ernie Dassinger (D. Rosebud), Dan Kemmis (D. Missoula), and Dwaine Johnson (D. Missoula), and suggested we let Ora Halverson have her way and let HB 115 come out of the House with as little debate as possible. They agreed and that is what happened. It passed second reading with almost no comments except from Halverson and without any no votes on second reading.

But then I learned that Ora Halverson was urging Dan Yardley not to hold a hearing on my bill, SB 13. In response, I urged Bob Watt, Chairman of the Senate Taxation Committee, not to hold a hearing on Halverson's Bill until we saw what happened with SB 13 in the House. Finally, it was proposed, probably by Majority Leader John Driscoll, that a subcommittee be appointed in the House to deal with all three of my coal tax bills, SB 13 (the 30 percent tax), SB 87 (the allocations), and SB 86 (renewable resources), and that all the bills dealing with coal taxes, my three and Ora Halverson's HB 115, should be passed by both Houses and all put in the same conference committee for final resolution of outstanding issues. Bob Watt then scheduled a hearing on HB 115 and Dan Yardley scheduled a hearing on SB 13.

2. Senate Hearing and Floor Action on HB 115

Now that the agreement was made to put all the coal tax bills into one conference committee to work out the details, I was not too worried

about the bills going through the committees or on the floor, especially since they had already passed one house. However, one thing very important happened in the hearing on HB 115 in the Senate Taxation Committee. All the coal companies were there to oppose the bill and once again they vigorously attacked the pyramiding. During the question period, I asked Pat Hooks, the lobbyist representing the newly formed Montana Coal Council, "If the amount of money raised is exactly the same whether pyramiding is left in or left out, which would you prefer?" He said they would prefer no pyramiding. So, I checked with the supporters on the committee separately and put in an amendment at 30 percent without pyramiding. I got the word to the House members and they prepared amendments to SB 13 accordingly. It passed the Senate committee and the floor of the Senate without difficulty. Ora Halverson, however, was not happy.

There was no attempt to change that decision on the floor of the Senate. However, another thing happened as a result of a mistake I made, and which I will always regret. I had been asked by the Montana Association of Computer Technicians to be their banquet speaker in Big Sky two days before Easter Sunday on Friday evening,. They also asked me to be on a panel the next morning to discuss privacy, another subject in which I had an interest and was carrying a major bill. I was familiar with the subject as it was the topic of my Doctoral thesis in Law (S.J.D.) at the University of Michigan Law School. Even though the event conflicted with a Saturday session, which I almost never miss for any reason, I checked the calendar several days before and there was nothing of significance, so, I decided to accept the invitation. It gave me an opportunity to take my family to Big Sky to ski on Easter Weekend.

The Senate Taxation Committee had just passed HB 115 and it normally takes several days to get it to second reading. However, something else happened that I did not anticipate. After I checked the calendar, HB 115 was reported out and placed on Saturday's calendar. When I got back to Helena after a weekend of skiing, I discovered that the bill was indeed acted upon on second reading in my absence. The bill passed alright; that was consistent with the plan to get both bills to a conference committee. However, Senator Bill Mathers had successfully proposed an amendment that I did not want.

Early on, Senator Cornie Thiessen, a Democrat from Lambert near Sidney, Montana, asked me to agree to an amendment that would give a break for lignite coal (6,700 BTUs). There was only one mine in the State that was mining lignite coal and that was the Montana Dakota Utilities plant in Sidney. He, of course, argued that it was harder to make a profit on lignite coal since it was not as valuable as the sub-bituminous coal that was being mined by all the other mines in the State. Furthermore, existing

law based on BTU content of the coal gave a break to lignite coal (12¢ rather than 16¢ to be consistent with the other taxes on coal). I told him no, I would not make an exception, especially since we have more lignite coal in Montana than any other coal. MDU was charging their customers $4.45 per ton, which was more than Decker and other sub-bituminous low sulfur coal, and they could simply pass it on to their customers anyway, most of whom lived in North Dakota.

When the bill came onto the floor in my absence, Senator Mathers took the opportunity to introduce the amendment to drop the tax to 20 percent for all coal under 7,000 BTUs per pound. I was never able to get that decision reversed. Bill Mathers came up to me after I returned and commented on getting his amendment passed. Even though we were vigorous opponents on the Coal Tax Bill, and other things as well, we both respected each other, and I considered him a friend. He said he suspected he would not have succeeded with that amendment if I had been there. This may have been the only time I agreed with him on a coal issue.

K. HOUSE ACTION ON SENATE BILLS AND THE CROW INDIAN EXCLUSION

1. Subcommittee Action

As previously mentioned, the House appointed a three-member committee to consider the coal tax package, my three bills. The committee was Ora Halverson, chair, Ernie Dassinger and Dave Aageson. I relied on Ernie Dassinger (D. Forsythe) who had worked closely with me on drafting the bills. However, he was not able to save SB 86, the renewable energy bill and although we did not expect it, the subcommittee recommended that it not pass. Fortunately, Representative Dan Kemmis, on the full Taxation Committee, was able to get that decision reversed. The subcommittee changed SB 13 to 20 percent without pyramiding, which is what we expected since that issue was going to conference committee for sure. They made some minor amendments to SB 87, changing the makeup of the Coal Board and providing that all Coal Board members would be appointed by the Governor.

2. Agreement with the Crow Tribe on Tribal Coal

The subcommittee also rejected the agreement I had worked out with the Crow Tribe. Prior to the hearing in the Senate on SB 13, Robert "Jiggs" Yellowtail Representing the Crow Tribe came to testify against the high number on the Coal Severance Tax. I made a point to talk to him

and I proposed that I would support an amendment to give any coal company a dollar for dollar credit on any coal mined within the territorial boundaries of an Indian Reservation. This was actually a recommendation of Dan Israel of the Native American Rights Fund of Boulder, Colorado. Furthermore, it was realistic because I was pretty sure that we did not have jurisdiction to tax Crow coal, and this is the way two countries handle a situation when both have the right to levy the same tax—give the taxpayer of the opposing country a 100 percent credit on the tax paid to that country.

I told Jiggs Yellowtail I would support the amendment if it went on to say that any funds resulting from such a credit would have to be spent for the general needs of the Tribe and special attention would be given to local impacts and education. Also, I intentionally excluded its application to any land owned or minerals owned outside the Reservation which meant that it would not apply to the Ceded Strip north of the Crow Reservation. Eventually, Chairman Pat Stands and Tribal Counsel, Tom Lynaugh, agreed. I thought it was a good agreement and would be a real benefit to both the State of Montana and the Crow Tribe.

Although this agreement was not completed and approved in time for the amendment to be attached during the passage through the Senate, it did happen before the House Hearing on SB 13. The Crow Tribe had agreed not to oppose the bill but to testify in favor of the amendment. I proposed the amendment and explained that I had agreed with the Crow Tribe to support it. I introduced them to the committee, and they signed in as proponents, but they only testified in support of the amendment. Chairman of the Tribe, Pat Stands, and Tribal Counsel, Tom Lynaugh, both testified in favor of the amendment as did several other Tribal Members. Vice Chairman Jiggs Yellowtail, however, testified against the bill. The first action of the subcommittee was to reject this amendment. It never was adopted as part of the coal severance tax.

3. The Floor Amendments and Debates in the House

There was a great deal of debate on the House Floor regarding SB 86, the Renewable Energy Bill, but it passed. There also was some debate on the allocations in SB 87. The main debate, however, was on the level of the tax in SB 13. Dan Kemmis moved to increase the tax to 30 percent and after a vigorous debate from both sides, it lost by one vote. Mike Meloy told me afterwards that he thought Joe Quilici (D. Butte) would not have changed his vote if I had not stuck my head in the room to listen to the debates, and with his vote it would have won. In any case, Dan Kemmis then moved for 28 percent, which he said would make it 25 percent

without pyramiding. That carried easily. When the bill was returned to the Senate, by re-arrangement, we sent it to a free conference committee.

L. THE CONFERENCE COMMITTEE

1. Appointment to the Conference Committee

Because of the importance of the conference committee, I spent quite a bit of time making sure the right people would be appointed. There actually were four separate conference committees, one for each of the four bills (SB 13, HB 115, SB 87, and SB 86). In the Senate I managed to get the same three people appointed to all three. However, in the House the first two (SB 13 and HB 115) were considered together, but we did not get the same people on the other two.

With Democrats in the majority, there would be two Democrats from the House and two Democrats from the Senate on each Conference committee. The Speaker of the House makes the appointments from the House and the President of the Senate makes the appointments from the Senate. However, they both listen to recommendations from the Chairman of the committee or the Majority Leaders of their own body. Fortunately, John Driscoll, House Majority Leader, and Pat McKittrick, Speaker, were willing to discuss the appointment of conference committee members from the House with me. Deference is usually given to the Chief Sponsor of the bills, which meant that I should have been on all the committees and Ora Halverson would likely have been given the same deference in the House. John Driscoll and Pat McKittrick asked me for my recommendations, and I insisted on Dan Kemmis as the second Democrat and Harrison Fagg as the Republican.

Dan Kemmis was clearly the best supporter in the House. Harrison Fagg was my choice for two reasons. First, I had helped him with a county planning bill that was very important to him. HB 672 came to the Senate in terrible shape. It proposed to reduce property taxes on people who used their land well, consistent with good planning and increase taxes on those who did not. I spent a lot of time going through the bill and making it workable and then I carried it on the Floor of the Senate. I genuinely supported good county planning and I wanted Harrison Fagg to succeed. However, it also gave me a nice opportunity to ask him a favor.

Further, Harrison Fagg needed some money for all the planning offices in each county to implement HB 672. We carved out one percent of the coal tax pie for this purpose. It was a worthy cause. Counties had never had any state funds for county planning purposes. I was then in a good position to ask him if we could count on him to support the coal

severance tax at 30 percent. He said he would, and he did. He did not, however, support my efforts to reverse the special rate for lignite coal that Bill Mathers amended into HB 115 when I was absent. I had not asked him for a commitment prior to his appointment to the conference committee on that issue.

For whatever reason, Dan Kemmis was not appointed as the second Democrat on SB 87 and SB 86. Ora Halverson was the first Democrat on all three bills. Either I did not make my request clear to Speaker McKittrick or he did not choose to follow my recommendations. Ernie Dassinger was appointed on SB 87, the allocation and Coal Board bill. That was good because Ernie was a close friend and strong supporter. Tom Conroy was appointed on the SB 86, the renewable energy bill. They both sat at the table on all four bills even though they did not have a vote on any but the bill they were appointed for.

In the Senate, President McOmber was willing to rely on the recommendation of the Chairman of the Taxation Committee, Bob Watt. But he looked to the Republicans to recommend a Republican. I worked with Bob and we came up with myself and Dave Manning. I again checked with Dave to make sure he was still with us on the 30 percent number and he said, "Well, I guess I can support that." And he did. Gordon McOmber made these appointments and made Dave Manning Chairman of all three committees. The chairman is always a member of the majority party from the Senate. Bill Mathers was selected as the Republican on all three committees.

2. The Work of the Conference Committee

The conference committee met every morning for about a week. Fortunately, the work of the regular committees was completed by this time, so we had the freedom to spend every morning on the coal tax bills. Roger Tippy from the Legislative Council staffed the committee. He was good and provided us with information, pie charts, and even a cake chart—a layer cake with different layers for each year. When we were finally done and ready to sign off on the committee report, the Secretary of the conference committee baked a pie so we could all celebrate with a real pie.

Mostly the committee work was a matter of fine tuning and coordinating the language. There were three contested issues. First, my motion to set the rate at 30 percent was easily passed; there were only two negative votes—Senator Bill Mathers and Representative Ora Halverson. Second, my effort to reverse the special tax break for lignite coal was not successful. Harrison Fagg wanted to give a break to lignite coal because he had heard that the proposed Burlington Northern plant at Circle, which

had only lignite coal, might be cancelled because of economics. As it turned out, it was cancelled anyway.

Third, my motion to adopt the amendment to give a dollar for dollar credit to the Indian Tribes for coal mined on the Reservation also failed. I argued that it would be beneficial because the Tribes would get the money, but we would establish that the State had jurisdiction. Only Dan Kemmis supported me on that one. The others were concerned about giving any tax to Indian tribes. (As it turned out, the Crow Tribe did take it to Federal District Court and the Ninth Circuit Court of Appeals ruled that not only did the State have no right to collect a tax on the Reservation, but the State did not have a right to tax coal owned by the Tribe in the Ceded Strip between the Reservation and the Yellowstone River.[8])

M. THE FLIP OF THE COIN

When we finished the work on all four bills, Roger Tippy pointed out that SB 13 and HB 115 were identical, so the next question would be which bill would be used in the conference committee report. In other words, who would be the chief sponsor of the final bill, myself or Ora Halverson.

This put me in a real bind. I really thought that I should be the chief sponsor because of all the work I had done to get it passed. Furthermore, SB 13 was the interim committee bill and it made no sense not to use the committee bill as the final vehicle. However, I knew Ora Halverson's ego was huge and I did not know what kind of trouble she would cause. This might be a way to temper that. The bill was too important to let it be hung up by a decision that had no effect on the substance of the coal severance tax for Montana. I said, "I object, and I want to make a statement." I was allowed to do so, and I then pointed out that SB 13 was the interim committee bill and is the one that should be used. Then I said, "But if you want to flip a coin to determine which bill to use, I will not oppose it." Harrison Fagg flipped a coin and the Secretary called tails for the House and heads for the Senate. It was heads.

Harrison Fagg said he would not flip a coin if the press were present. None were present so he went ahead and flipped the coin. However, the press did find out about it and there was a major article the next day about how the conference committee of the Legislature decided on a bill

8. Crow Tribe of Indians v. State of Montana, 819 F.2d 895, 903 (9th Cir. 1987). (By the time the case was over in 1987, Westmoreland Resources had paid taxes in excess of $81,900,000 for coal mined on the ceded strip, all of which the State of Montana had to give back to the Crow Tribe.)

sponsorship by flipping a coin. We are pretty sure it was Ora Halverson that leaked it. She was very unhappy.

N. EARMARKED FUNDS—THE COAL TAX PIE

1. The Local Impact and Educational Trust

Covering impacts was critical to the passage of the coal tax. The huge costs incurred by local governments could not be covered until some tax revenue came in. Schools, for example, had large numbers of students to educate, and typically the increase of property tax revenues resulting from new economic activity would not come until years later; new buildings, once completed, would not be put on the property tax rolls until January 1 of the year following completion, and would not generate any new taxes until November 30 of that year. The same is true for law enforcement, fire protection, and a host of health and human services. The services were needed immediately and could not wait for the tax system to produce more revenue to take care of them. In the long term, schools, hospitals, roads, sewer systems, water plants, bridges and other infrastructure require a lot of money to deal with a big influx of people to work the coal mines and coal plants. I also made sure the impact portion of the bill included tail end impacts. I was well aware that mining generally means booms and busts, and the busts are just as hard on the financial well-being of a community as the booms.

I proposed that 40 percent of the entire tax collection be earmarked for the Local Impact and Educational Trust Fund, and available to the Coal Board for immediate grants to take care of these issues. As previously indicated, I combined the local impact fund with an educational trust to benefit education. I hoped that after the local impacts were covered, the remainder of this 40 percent would go to the Educational Trust Fund for the benefit of all education in Montana forever. I even tried to protect this new Educational Trust Fund from inflation; only the income could be used for outstanding educational needs and the first ten percent of the income was to be reinvested in the Trust Fund each year. The remaining 90 percent of the income would be divided with 3/4th going to the School Foundation program and 1/4th going to the Board of Regents for higher education. Montana had never had a Trust Fund that benefited higher education.

By the time SB 87 passed through both Houses of the Legislature and the all-important conference committee, the number was reduced to

27.5 percent from my initial 40 percent.[9] This focus on education drew a lot of support from school boards, educators and others interested in Montana's educational future. By 1987 the Educational Trust had an accumulated balance of over $386 million. Such a large sum of money was too great a temptation, and after I was defeated in the election of 1986, the entire fund was depleted to balance the budget.[10] It has never been restored.

2. Other Earmarked Funds

I provided for the earmarking of an additional five percent for counties which had coal mining so they would have some funds to deal with problems immediately without having to wait for the Coal Board. This was requested by Representative Ernie Dassinger from Forsythe. He then became a strong proponent of the higher coal tax. I did provide for sun-setting this provision in four years because the counties would be able rely on the Coal Board for any additional impact needs.

When the bills seemed to be floundering in the House, I was invited to come to the Democratic House Caucus. Several House Members asked about doing something for state parks. As a result, we put in a provision that would initially allow two-and-half percent for acquisition of park lands and facilities. Initially the allocation was supposed to be half for immediate acquisition, and half for a Trust Fund where only the interest income would be available for parks each year.

Finally, I agreed to a request from Representative Harrison Fagg (R. Billings) to set aside one percent for County Planning. He needed funding for a special county planning bill. I agreed that it was consistent

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9. At Senator Manning's request I agreed to move ten percent to road impacts for four years and after attending the House caucus, I agreed to set aside two-and-a-haf percent for State Park acquisition.

10. It is not certain that I would have been able to stop this raid on the Educational Trust Fund. Unlike the main Constitutional Coal Trust Fund which requires a 3/4th vote of each House of the Legislature to invade the corpus, it only took a majority vote to take the funds. There was a bill in the 1985 session that would have taken the funds to build a library in Butte. Late at night on the very last day of the Session, after the bill passed the House, the President called for a vote on third reading and the vote board showed it winning by one vote. Someone said a legislator from Butte was not in his seat even though the board showed him voting yes. I jumped up and called for a Point of Order. I said it has been called to my attention someone's vote was registered even though they are absent. The President then called for a revote and the bill failed on a tie vote.

In 1987, the Republicans had control of both Houses of the Legislature and they were desperate for money to balance the budget. Most of these Republicans had pledged not to raise taxes. So I doubt if I could have stopped that raid on the Educational Trust Fund even if I had been there.

with our efforts to look out for the future. It funded county planning for the first time.

3. Senator Manning and Roads

Senator Dave Manning, Dean of the Senate and a strong supporter of highways, and who voted against the coal tax in 1974 and did not support my 25 percent motion in the interim committee, was still not satisfied when the bill first came out. He was not quite ready to accept the higher percent. He believed we needed an allocation for the impact on roads. Huge increases of people for the mines and plants means heavy use of the roads. The impact fund administered by the coal board did not seem to be enough. He was working with the Federal Highway Department to get some money for these roads and said he only needed $52 million and could come up with the rest.

I agreed to support a change in the bill to allow ten percent to be transferred from the Coal Board to highways, leaving the Coal Board with 30 percent instead of 40 percent. But I suggested that it last only for four years and then the money would return to the Coal Board for all impacts of coal development. He agreed with that and Dave Manning then became one of my strongest supporters and continued to support the 30 percent tax long after the tax was passed and implemented.

Later, Senator Manning often said that when the coal tax was being debated, the coal companies told him it was too high and would drive them out of the State. Dave continued, "I told them I did not think it would, but if it did, at least they would leave on good roads."

Finally, I made sure a substantial part of the coal tax collection proceeds would go to the general fund without earmarking. I started out with one half of the entire amount going to the general fund.

4. The Final Allocations in the Coal Tax Pie by the 1975 Legislature

As it made its way through the legislature, the allocations were changed. The following allocation was finally agreed to:

Directly to the Coal Producing Counties.	4% (3.5% after 1979)
Local Impact and Educational Trust Fund	27.5%
Coal Area Highway Improvement Account	10% (sunset after 4 years)
State School Foundation Program	10%
County Land Planning Account	1%

Alternative Energy Research & Development	2.5%
Renewable Resource Development Bond Account	2.5%
Parks and the Trust & Legacy Fund	2.5% (5% after 6/30/1979)
State General Fund	40%

5. Current allocation of the Coal Severance Tax Proceeds

At the present time, after the passage of a Constitutional Amendment that required 50 percent of the coal tax proceeds to be deposited into a Constitutionally-protected Trust, and after 44 years of Legislative maneuvering, the allocations are as follows:

Coal Severance Tax Permanent Fund	50%
Long Range Building Programs	12%
Local Impacts (Coal Natural Resource Account)	5.8%
Combined: Grants for Growth Through Agriculture, Conservation Districts & Public Libraries	5.46%
State Parks Trust Fund (Income used for State Parks)	1.27%
Renewable Resource Debt Service Fund (Help Secure Renewable Resource Bond Projects)	.95%
Cultural Trust (Income for Cultural and Aesthetic Projects)	.63%
Coal and Uranium Mine Reclamation $250,000 a year which is approximately	.82%
General Fund- Whatever is left	22.87%

Also, every session in which I served (1975–1986,1991–1994) the main appropriation bill (HB 2) always contained a statement that the General Fund allocation from the Coal Severance Tax was put into the State School Foundation Program.

O. THE CONSTITUTIONAL TRUST FUND

When the final conference committee report was submitted to the floor of the Senate for approval, Senator Miles Romney (D. Hamilton) suggested we needed to set aside some of this money into a permanent

trust fund from which only the income could be used each year. That way we would save something that would allow future generations to benefit as well. Chet Blaylock (D. Billings) agreed. After the conference committee Report was approved, a number of us then gathered around Chet Blaylock's desk as soon as the Senate adjourned and decided to draft a Constitutional Amendment which would put 45 percent of the coal severance tax collections in a special Trust Fund which could not be busted—the principle could not be spent—without a 3/4ths vote of each House of the Legislature and the income could not be used without 60 percent of the legislators agreeing to that usage. I proposed the 3/4ths vote because I did not want the principle to ever be used unless it was fully supported by both political parties. All of us agreed.

I volunteered to write the language and Miles Romney became the chief sponsor. The bill was introduced on April 16, 1975—the 83rd day of the Session—as SB 407. It was rushed through both bodies. The Senate Taxation Committee changed the 45 percent to 25 percent for the first two years, and then to 50 percent thereafter. The House dropped the 60 percent requirement to use the income. SB 407 passed the Senate on third reading by a vote of 43–3. It passed the House by a vote of 84–10. The Senate approved the House Amendments on April 18, two days after the bill was introduced. It then was placed on the ballot for the 1976 general election. I wrote the Voter Information Pamphlet in support of its approval. It passed with nearly 70 percent of the people voting for it.

The Constitutional Trust Fund has been extremely successful. As of the end of fiscal year 2018, the Coal Tax Constitutional Trust Fund, including all sub-funds, had a balance of over $1 billion ($1,081,460, 000.00). Since then it has been divided into several sub-funds, all constitutionally protected. They are the Treasure State Endowment Fund, the Regional Water System Fund, the Treasure State Endowment Regional Water System Fund, the Big Sky Economic Development Fund, and the School Facilities Fund. The Treasure State Endowment, adopted by the people in a referendum a few years later, and which supports badly needed local government infrastructure—local water and sewer systems, bridges, etc.—has over $271 million. The current focus of the Trust Fund income is to support school building construction through the School Facilities Fund.

The interest income from the Trust has produced over $1.5 billion in benefits for the people of Montana. On at least 13 years between 1993 and 2008, while coal prices were low and interest rates were higher, the interest from the Constitutional Trust Fund was greater than the entire coal tax collections. We can be assured that it will continue to benefit Montanans long after the coal mining ceases almost as if the mining never stopped.

We have truly protected a part of Montana's Treasure for the future generations of Treasure State citizens. I hope the many people who helped make it happen are as proud as I am of what we have accomplished.

P. THE FIGHT TO PROTECT THE COAL TAX AFTER IT WAS PASSED

While the battles to protect the 30 percent coal tax after it was passed in the Legislature are not within the scope of this report, I would be remiss if I did not say something about the huge efforts to overturn, block, repeal, and finally, reduce the 30 percent tax on coal.

There was no trouble in getting Governor Judge to sign all three of the coal tax bills that I sponsored. With the vote of 41–7 in the Senate on SB 13, and unanimous in support of HB 115 in the House, no governor would likely have hesitated to sign the severance tax bill. Governor Judge later told me, with perhaps a small bit of envy, that the Coal Tax bill was the best legislation in the last 100 years, and "you have your name on it."

1. The Legal Challenge Went All the Way to the United States Supreme Court

The Coal Companies, however, were not so happy. John F Ratche, who was the chief bargaining representative for Peter Kiewit Sons & Co. that owned half of the Decker mine in Montana and several mines in Wyoming, told me much later that he had just finished negotiating a very long-term contract with Detroit Edison at a price Detroit Edison insisted was way too high and then "you came along and increased the price they had to pay by 30 percent."

Detroit Edison and others immediately took us to Court, claiming the tax was so high it was unconstitutional, and no state should have the authority to enact such a high tax on any commodity in interstate commerce. I had very little to do with the legal defense of the tax. It was handled very capably by Attorney General Mike Greely. The Plaintiffs first tried to file the case in Federal Court, and Mike Greely and his attorneys convinced the Federal District Court Judge that it was in the exclusive jurisdiction of the State District Courts. The Plaintiffs then filed in State District Court, and when they lost, they appealed to the Montana Supreme Court. The Montana Supreme Court had no problem sustaining the 30 percent tax. On appeal to the United States Supreme Court, Mike Greely prevailed. The Court said:

> [T]here can be no question that Montana may constitutionally raise general revenue by imposing a severance tax

> on coal mined in the State. The entire value of the coal, before transportation, originates in the State, and mining of the coal depletes the resource base and wealth of the State, thereby diminishing a future source of taxes and economic activity . . . When, as here, a general revenue tax does not discriminate against interstate commerce and is apportioned to activities occurring within the State, the State "is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly civilized society." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 624–25, 101 S.Ct.2946, 453 L.Ed.2d 884 (1981).

2. An Attempt to Get Congress to Limit the Amount of Tax a State Could Levy on Coal

But the battle was not over. The coal companies and their customers then went to Congress. SB 2695 was introduced which would prevent any State from enacting a tax in excess of 12.5 percent. We took it seriously. Governor Ted Schwinden enlisted help from the Montana Liaison Representative in Washington, D.C. The Governor then printed some helpful brochures regarding the tax and its purpose, and how it compared with other taxes. I went to the Hearing on SB 2695 and testified before the U.S. Senate Committee on Energy and Natural Resources as the Chief Sponsor of the Montana Coal Tax. I explained why we needed the Revenue to compensate for the issues this coal development brought to Montana. In addition, I traveled to Washington, D.C., twice more to lobby against the bill. On one occasion I was joined by Dorothy Bradley (D. Bozeman). Dorothy and I ran from one House and Senate Office to another talking to Congressmen, Senators and their staffs about the importance of the Tax to Montana. We also made contact with influential lobby groups to solicit their support. Eventually, Montana hired Leon Billings, a well-known Montana personality who had been a chief assistant to Senator Edmond Muskie, to lobby against any legislation that would restrict a tax on coal.

We succeeded. All coal tax legislation to restrict a State's right to levy whatever tax they wanted, failed.

3. Reduction of the Tax to 15 Percent in 1987

At that point, I think the coal companies and their utility customers ceased their efforts in the Courts and in Congress. However, they convinced Governor Ted Schwinden to support a bill in the 1985 Montana Legislature to give a very limited tax credit on new coal mines to encourage more mining of coal. He called it a window of opportunity. We all told him it would be a foot in the door to reducing the tax.

Sure enough, as soon as I was defeated in 1986, the coal companies succeeded in getting the 1987 Legislature to reduce the tax to 15 percent. The coal companies said it was necessary to attract more coal mining in the State. In fact, it did not increase the mining of coal. The CEO of the largest coal mine in the State later told me that the tax had nothing to do with the decision of whether to start a new coal mine in Montana. But the decision to reduce the tax has never been reversed.

Q. PROTECTING THE TRUST

This article would not be complete without a few words about the need to protect the Trust. A large pot of money in a Trust Fund is too great a temptation for many politicians, particularly Republicans who need money to balance the State's budget but have pledged to their constituents that they would not raise taxes. As described previously, the Education Trust Fund was not Constitutionally protected, and by 1987 it was gone.

1. All Republican Governors Have Attempted to Bust the Trust

Every single Republican Governor since the Constitutional Trust Fund was established in 1976 has attempted to "bust the trust" in order to fund some special project. Fortunately, with the requirement that the principle of the Trust cannot be spent without a 3/4ths vote of each House of the Legislature, it has been impossible to get the votes.

2. The Little Black Book

Shortly after the Trust was created, Representative Francis Bardanouve, the Dean of the House, asked his seatmate, Bob Raney (D. Livingston) to get a little black book and go around to all the Democrats, and some Republicans too, and add their name to the little black book if they would pledge not to Bust the Trust. Representative Raney did so. He got enough names to stop any attack on the Trust. And that little black

book was handed down to other House members after he left the Legislature. So far it has held firm.

3. Supreme Court: You Can't Get Trust Principle by Changing the Name of the Tax

The challenges to the Coal Tax Trust fund were serious during the 1980's and 1990's. In 1999, at the urging of Governor Mark Racicot, the Republican Legislature tried an end run around the Constitutional Trust. They did not have the votes to invade the principle, so they passed a new tax on coal, called a "coal producers license tax." The level of the tax was 9.17 percent and then they gave every coal producer who paid this tax a credit of 101.5 percent of the money they paid as a credit against the coal severance tax. This left 5.83 percent of the severance tax still in place. Although, one half of the 5.83 percent would still go in the Trust and the Trust itself was still intact, they were then free to use all the funds raised by the new producers' license tax. In effect, it was a partial cap on the Trust Fund without a three-fourths vote of both Houses of the Legislature.

At that point, Verner Bertelson, Bob Raney, Diana Wyatt, Ray Peck, Sue Bartlett, and I formed an organization called Montanans for the Coal Tax Trust. We hired Jim Goetz to challenge the scheme in Court. He took the case and filed a direct appeal with the Montana Supreme Court and won. The Supreme Court said the Legislature simply gave a different name to the same tax and thereby diverted the will of the citizens of Montana who had adopted a constitutional amendment to preserve 50 percent of the coal severance tax. The 50 percent could not be reduced to a lesser amount because the people intended "to preserve the benefit from [the State's natural resources] for the State's and its citizens' posterity ."[11]

Jim Goetz then asked the Court to reimburse his attorneys fees and he was successful. He donated the entire sum to Montanans for the Coal Trust.

4. Montanans for the Coal Tax Trust

Montanans for the Coal Trust is still active and remains an effective check on any attempts to Bust the Trust. Most of the members of the Board of Directors at the present time are Legislators or former Legislators. It sends out a letter to all the Legislators towards the beginning of every Session urging them not to Bust the Trust. We visit the Legislature

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11. Montanans for the Coal Trust v. State, 996 P.2d 856, 864–65 (Mont. 2000).

at least once every Session. On several occasions Hal Harper and I have visited with the House Democratic Caucus about bills that will affect the Trust. Most importantly we have support from a large number of members throughout the State who regularly pay dues to keep our organization alive. This support is truly indicative of the broad support that exists for protection of the Coal Tax Trust.