LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 6, 2003

TO: Honorable Ron Wilson, Chair, House Committee on Ways & Means

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1486** by Burnam (Relating to the imposition of a tax on the purchase of coal in this state; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1486, As Introduced: a positive impact of $171,712,000 through the biennium ending August 31, 2005, if the effective date of the bill is June 1, 2003; or a positive impact of $152,638,000 through the biennium ending August 31, 2005, if the effective date of the bill is September 1, 2003.

This table assumes an effective date of June 1, 2003.

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1
2003	$12,563,000
2004	$78,138,000
2005	$81,011,000
2006	$83,906,000
2007	$86,805,000

This table assumes an effective date of September 1, 2003.

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1
2004	$71,627,000
2005	$81,011,000
2006	$83,906,000
2007	$86,805,000
2008	$89,806,000

Fiscal Analysis

The bill would amend Subtitle E, Title 2 of the Tax Code to create a tax on coal and lignite, either purchased or used in Texas. A person would be able to deduct any taxes reported and paid on coal or lignite purchased in this state from any tax due on coal or lignite used in this state.

The bill would impose the tax at a rate of 7.5 percent of the price paid for the coal, including transportation costs. Tax due, and a report of coal purchased and used in this state, would be filed with the Comptroller's Office on or before the 25th day of the month following the month in which the tax is incurred.

The bill would require persons to maintain a complete record of the amount of coal purchased for use in this state, the total price of the coal, plus any other information that the Comptroller would require.

A delinquent tax payment would be subject to interest as provided by Section 111.060. A person not filing a report as required, or paying the tax when due, would be subject to a penalty of 12 percent of the amount of the delinquent tax. If the report were not paid within 30 days after its due date, an additional 12 percent penalty would be imposed. The minimum penalty would be $1.00. A person who violated the provisions of this bill would commit a Class C misdemeanor. Revenue from the new coal tax would be credited to the General Revenue Fund 0001.

This bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature, otherwise, it would take effect September 1, 2003.

Methodology

This fiscal note is based upon analyses provided by the Comptroller's Office.

Since deregulation of the electric industry, neither the Texas Public Utility Commission (PUC) or the Department of Energy's, Energy Information Administration require fuel use reports from utility companies. The most recent 2001 PUC coal forecast of price and production was used to estimate revenue collections. Lignite production was excluded because of the use exemption and the lack of a sale or purchase between the mining and generation affiliates. For an immediate effect effective date, it was assumed that the first month of taxable production would be June 2003, and that the first month with tax receipts would be July 2003. For the September 1, 2003 effective date, it was assumed that the first month with tax receipts would be October 2003.

Note: The bill would exempt producers of coal who own the coal in place and who produce the coal for the producer's own use. The use exemption would apply to certain business enterprises, as well as to the Texas utilities that own lignite mines and use the lignite for their own electric generation use. It is likely, further, that such firms would argue that they would not be taxed under the purchase provision because they do not recognize the transfer of lignite as a purchase.

Note: In effect, the tax would have to be fairly apportioned and could not discriminate against interstate commerce. Texas cannot impose upon property of foreign origin a burden of taxation greater than that imposed upon property of a similar kind produced within its own borders. The imposition of a use or purchase tax on coal from Wyoming could be federally unconstitutional under the interstate commerce clause.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 455 Railroad Commission

LBB Staff: JK, JO, SD, WP, CT