HB 827 INTRODUCED BY WINSLOW
ESTABLISHES A MORATORIUM ON COAL SEVERANCE AND GROSS PROCEEDS TAXES

2/18	INTRODUCED
2/18	REFERRED TO TAXATION
2/19	FISCAL NOTE REQUESTED
3/02	FISCAL NOTE RECEIVED
3/19	TABLED IN COMMITTEE

House BILL NO. 827

INTRODUCED BY Winslow

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A MORATORIUM ON PAYMENT OF THE COAL SEVERANCE TAX AND COUNTY COAL GROSS PROCEEDS TAX AND REDUCING THE ROYALTY FROM STATE COAL LEASES FOR LOW-SULFUR COAL SOLD UNDER LONG-TERM CONTRACTS, WITH EXCEPTIONS FOR CONTRACTS TERMINATED PREMATURELY; AMENDING SECTION 77-3-316, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, Montana's coal industry is experiencing a rapid decline in coal production, resulting in job losses and severe reductions in state severance tax and county coal gross proceeds tax revenues; and

WHEREAS, the prospects for new and increased coal production remain bleak without incentives; and

WHEREAS, numerous states and Congress are considering or have enacted limitations of sulfur dioxide emissions for acid rain control; and

WHEREAS, Montana has billions of tons of coal capable of being burned in compliance with sulfur dioxide limitations that have recently been enacted or are likely to be enacted; and

WHEREAS, Montana would take a leadership role in addressing the national acid rain issue by encouraging new production of its low-sulfur coal, thereby expanding Montana's market for coal and creating new jobs and capital investment in Montana for new mine facilities or expansion of existing facilities.

LC 1177/01

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

NEW SECTION. Section 1. [This act] may be cited as the "Low Sulfur Coal Opportunities Act of 1987".

NEW SECTION. Section 2. Definition. As used in [sections 1 through 3], low-sulfur coal means coal that is capable of producing 1.2 pounds per million Btu's or less of sulfur dioxide when burned.

NEW SECTION. Section 3. Moratorium on imposition of coal severance tax for certain long-term coal contracts. (1) A coal mine operator is entitled to a moratorium on payment of the coal severance tax for a period not to exceed 5 years from first production of low-sulfur coal that is sold under new long-term contracts of 20 years or more. At the end of the moratorium period, the severance tax will be imposed at the rate established under 15-35-103.

(2) A coal mine operator is entitled to a moratorium on payment of the coal severance tax for a period not to exceed 3 years from first production of low-sulfur coal that is sold under new long-term contracts of 10 to 19 years. At

INTRODUCED BILL
HB 827

the end of the moratorium period, the severance tax will be imposed at the rate established under 15-35-103.

(3) A coal mine operator is entitled to a moratorium on payment of the coal severance tax for a period not to exceed 2 years from first production of low-sulfur coal that is sold under new long-term contracts of 5 to 9 years. At the end of the moratorium period, the severance tax will be imposed at the rate established under 15-35-103.

(4) If a long-term contract at an existing mine executed prior to January 1, 1987, or a long-term contract as provided in subsection (1), (2), or (3) is canceled, abrogated, and ultimately replaced with a new contract prior to the termination date originally established by the parties, the coal sold under the long-term contract prior to the date of premature termination is retroactively subject to the tax established under 15-35-103 or 15-35-203, as applicable.

<u>NEW SECTION.</u> Section 4. Moratorium on county imposition of tax on coal gross proceeds for certain long-term coal contracts. (1) A coal mine operator is entitled to a moratorium on payment of the coal gross proceeds tax for a period not to exceed 5 years from first production of low-sulfur coal that is sold under new long-term contracts of 20 years or more. At the end of the moratorium period, the coal gross proceeds tax will be

LC 1177/01

imposed at the rate established under 15-23-701 and 15-35-103.

(2) A coal mine operator is entitled to a moratorium on payment of the coal gross proceeds tax for a period not to exceed 3 years from first production of low-sulfur coal that is sold under new long-term contracts of 10 to 19 years. At the end of the moratorium period, the coal gross proceeds tax will be imposed at the rate established under 15-23-701 and 15-35-103.

(3) A coal mine operator is entitled to a moratorium on payments of the coal gross proceeds tax for a period not to exceed 2 years from first production of low-sulfur coal that is sold under new long-term contracts of 5 to 9 years. At the end of the moratorium period, the coal gross proceeds tax will be imposed at the rate established under 15-23-701 and 15-35-103.

(4) If a long-term contract at an existing mine executed prior to January 1, 1987, or a long-term contract as provided in subsection (1), (2), or (3) is modified, canceled, abrogated, or replaced with a new contract prior to the termination date originally established by the parties, the coal sold under the long-term contract prior to the date of premature termination is retroactively subject to the coal gross proceeds tax at the rate established under 15-23-701 and 15-35-103.

(5) As used in this section, low-sulfur coal is defined as coal that is capable of producing 1.2 pounds per million Btu's or less of sulfur dioxide when burned.

Section 5. Section 77-3-316, MCA, is amended to read:

"77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than $2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment, except as provided in subsection (5).

(5) The royalty for low-sulfur coal mined from state leases that is sold under long-term contracts of 10 years or more is 6 1/4% of the f.o.b. mine price of a ton prepared for shipment. As used in this subsection, low-sulfur coal is defined as coal that is capable of producing 1.2 pounds per million Btu's or less of sulfur dioxide when burned."

NEW SECTION. Section 6. Extension of authority. Any existing authority of the department of revenue and the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 7. Codification instructions. (1) Sections 1 through 3 are intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to sections 1 through 3.

(2) Section 4 is intended to be codified as an integral part of Title 15, chapter 23, part 7, and the provisions of Title 15, chapter 23, part 7, apply to section 4.

NEW SECTION. Section 8. Effective date. This act is effective July 1, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB827 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act establishing a moratorium on the payment of the coal severance tax and county gross proceeds tax and reducing the royalty from state coal leases for low-sulfur coal sold under long-term contracts, with the exceptions for contracts terminated prematurely; and providing an effective date.

ASSUMPTIONS:

1. It is assumed that the phrase "new long term contracts" includes renewals of existing contracts.
2. No existing contracts expire in the biennium.
3. Low sulfur coal, as defined in the proposal, is only produced at the Decker and Spring Creek coal mines. No other producers mine low sulfur coal.

FISCAL IMPACT:

Coal severance and gross proceeds taxes for new contracts (as opposed to renegotiated) at the Decker and Spring Creek mines during the biennium will be forgone for a period from 2 to 5 years.

In FY89 royalty income from this production would be reduced by about $378,000.

LONG-RANGE IMPACT OF THE PROPOSED LEGISLATION:

The proposal will result in a significant reduction in coal severance and gross proceeds tax revenues as existing contracts are renewed in the latter 80's and early 90's. The production under these contracts would be exempt from severance and proceeds taxes for up to 5 years.

In FY86, the Decker and Spring Creek mines accounted for approximately 60% of the coal production tax payments. At REAC's estimated FY89 levels, this would amount to $56.6 million in coal severance and gross proceeds taxes per year.

The decrease in royalty income would continue each year.

TECHNICAL NOTE:

This fiscal note presents the impact under one interpretation of the phrase "new long term production contracts". If the term was defined to exclude renewed contracts from the moritorium, then the proposal would result in forgone revenues rather than a erosion of the existing tax base. A definition of the phrase would clarify the intent of the proposal.

David L Hunter DATE 2/25/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Cal Winslow DATE 3/3/87
CAL WINSLOW, PRIMARY SPONSOR

Fiscal Note for HB827, as introduced.

HB 827