



AN ACT CLARIFYING THE OBLIGATION TO PAY ROYALTIES TO THE STATE UNDER COAL LEASE CONTRACTS; REQUIRING THAT THE PAYMENT OF ROYALTIES ON A COAL LEASE BE OF THE ESSENCE IN A LEASE CONTRACT; REQUIRING THAT INTEREST BE PAID ON DELINQUENT COAL ROYALTY PAYMENTS; PROVIDING FOR AN AUDIT, AFTER NOTICE, OF COAL ROYALTIES PAID TO THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Obligation to pay royalties under coal lease contract -- interest.** (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than \$50 and annually if the aggregate amount is less than \$10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

**Section 2. Audit -- notice -- action to compel payment.** (1) Except as provided in subsection (2), the

department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 3, part 3, and the provisions of Title 77, chapter 3, part 3, apply to [sections 1 and 2].

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0107, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 107

INTRODUCED BY G. HOLLENBAUGH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT CLARIFYING THE OBLIGATION TO PAY ROYALTIES TO THE STATE UNDER COAL LEASE CONTRACTS; REQUIRING THAT THE PAYMENT OF ROYALTIES ON A COAL LEASE BE OF THE ESSENCE IN A LEASE CONTRACT; REQUIRING THAT INTEREST BE PAID ON DELINQUENT COAL ROYALTY PAYMENTS; PROVIDING FOR AN AUDIT, AFTER NOTICE, OF COAL ROYALTIES PAID TO THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.