

SENATE BILL NO. 466

INTRODUCED BY J. TREBAS, L. BREWSTER, B. USHER, D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT DECLARING DEPARTMENT AUTHORITY OVER COAL MINING AND COAL PRODUCTS WITHIN THE STATE; AND PROVIDING DEFINITIONS."

WHEREAS, the 10th Amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Montana certain powers as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed on and adopted by Montana and the United States in 1889; and

WHEREAS, the 9th Amendment to the United States Constitution guarantees to the people rights not granted in the constitution and reserves to the people of Montana certain rights as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed on and adopted by Montana and the United States in 1889; and

WHEREAS, the regulation of interstate commerce, including the natural environment as affected by intrastate business, is vested in the states under the 9th and 10th Amendments to the United States Constitution and is specifically retained by the state of Montana.

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

**NEW SECTION. Section 1. Policy and requirements for coal mining within borders of state. (1)**

Environmental regulation in the state for the purposes of regulating business activity performed in the state when the products of the business activity are held, maintained, or retained within the borders of the state is the principal responsibility of the department of environmental quality.

(2) The department of environmental quality shall issue a permit to operate any Montana coal mine

1 producing coal that is used commercially or privately in the state and that is consumed or otherwise remains  
 2 within the borders of the state and any Montana facility producing chemically altered coal products used  
 3 commercially or privately in the state that remain within the borders of the state if the department of  
 4 environmental quality has certified that the mine or facility is compliant with all applicable state and federal laws  
 5 or state and federal regulations, including:

- 6 (a) water quality permits pursuant to Title 75, chapter 1, part 1;
- 7 (b) air quality permits pursuant to Title 75, chapter 2, part 1;
- 8 (c) strip and underground mining reclamation pursuant to Title 82, chapter 4, part 1; and
- 9 (d) safety requirements of the Montana Coal Mining Code pursuant to Title 50, chapter 73, part 1.

10 (3) The legislature declares the state court system and the federal court system have not proven  
 11 state regulations are causing or have caused quantifiable harm to any person, business, or place beyond the  
 12 borders of the state for:

- 13 (a) the transportation and disposal of hazardous waste;
- 14 (b) the release of emissions, substances, and pollutants into the air;
- 15 (c) the release of pollutants into bodies of water;
- 16 (d) public water supplies;
- 17 (e) wastewater systems; and
- 18 (f) production, exploration, drilling, development, operation, transportation, and processing of coal,  
 19 coal products, and materials or substances used in the production, exploration, drilling, development, operation,  
 20 transportation, and processing of coal that originates and remains inside the state.

21 (4) The state's regulation of subsections (3)(a) through (3)(f) is intrastate commerce and may not  
 22 be subject to federal law or federal regulation under the authority of the United States congress to regulate  
 23 interstate commerce.

24 (5) A sample from each vein of coal in a mine and a sample of coal from each Montana source  
 25 used at a facility producing a chemically altered coal product must be placed on record with the department of  
 26 environmental quality to verify the state of origin of the coal produced and used.

27 (6) The legislature declares that the United States environmental protection agency, acting under  
 28 the authority of the United States congress to regulate interstate commerce, lacks the authority to deny permits

1 of operation to these coal mines and facilities as the products of these coal mines and facilities have not  
2 traveled in interstate commerce.

3 (7) This section applies to coal and any chemically altered coal product mined or produced in the  
4 state from basic materials that can be manufactured without the inclusion of any significant components  
5 imported from another state.

6 (8) As used in this section, the following definitions apply:

7 (a) "Borders of the state" means the boundaries of Montana described in the former Montana  
8 constitution adopted in 1889.

9 (b) "Chemically altered coal product" means any product derived principally from coal, including  
10 but not limited to coke or liquid fuels derived from coal by any process.

11 (c) "Coal mine" means operations removing coal from a coal seam or seams, whether  
12 aboveground or underground.

13

14 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
15 integral part of Title 2, chapter 1, part 4, and the provisions of Title 2, chapter 1, part 4, apply to [section 1].

16

- END -