

HOUSE BILL 131

IN THE HOUSE

January 12, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill, as amended, do not pass.
January 19, 1979	Report adopted.

1 HOUSE BILL NO. 131  
 2 INTRODUCED BY Hayes Sully  
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN OPENCUT  
 6 MINING AND RECLAMATION ACCOUNT AND PROVIDE FOR THE  
 7 ALLOCATION OF FINES, FEES, AND PENALTIES; TO DEFINE THE TERM  
 8 DEPARTMENT; TO DELETE THE UPPER DOLLAR LIMIT ON THE PER ACRE  
 9 BOND REQUIREMENT IN THE OPENCUT MINING LAWS; TO REVISE THE  
 10 TIME PERIOD FOR APPLICATION REVIEW; TO PROVIDE FOR  
 11 SUBMISSION OF AN OPENCUT MINING PLAN TO THE MONTANA  
 12 HISTORICAL SOCIETY; TO CLARIFY THE REVEGETATION  
 13 REQUIREMENTS; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT  
 14 OF THE OPENCUT MINING LAWS BY THE ATTORNEY GENERAL; AMENDING  
 15 SECTIONS 82-4-403 AND 82-4-433 THROUGH 82-4-435; AND  
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 19 NEW SECTION. Section 1. Opencut mining and  
 20 reclamation account. All fees, fines, penalties, and other  
 21 money paid to the department of state lands under the  
 22 provisions of [Title 82, chapter 4, part 4] shall be  
 23 deposited in the agency fund and credited to a special  
 24 account to be designated as the opencut mining and  
 25 reclamation account. The money in the account is available

1 to the department by appropriation and shall be expended for  
 2 the administration and enforcement of [Title 82, chapter 4,  
 3 part 4] and for the reclamation and revegetation of land and  
 4 the rehabilitation of water affected by any mining  
 5 operations. Any unencumbered and unexpended balance of this  
 6 account remaining at the end of a fiscal year does not lapse  
 7 but carries forward in the account until expended or until  
 8 appropriated by the legislature.

9 Section 2. Section 82-4-403, MCA, is amended to read:  
 10 "82-4-403. Definitions. When used in this part, unless  
 11 a different meaning clearly appears from the context, the  
 12 following definitions apply:

13 (1) "Affected land" means the area of land from which  
 14 overburden is to be or has been removed and upon which the  
 15 overburden is to be or has been deposited.

16 (2) "Board" means the state board of land  
 17 commissioners.

18 (3) "Contract" means a mined land reclamation contract  
 19 prepared by the board to meet the requirements of this part.

20 ~~(4) "Department" means the department of state lands.~~

21 ~~(4)(5) "Final cut" means the last pit created in an~~  
 22 ~~opencut-mined area.~~

23 ~~(5)(6) "Highwall" means that side of the pit adjacent~~  
 24 ~~to unmined land.~~

25 ~~(6)(7) "Landowner" means the owner of land directly or~~

1 indirectly affected by an opencut-mining operation.

2 ~~(77)~~(81) "Opencut mining" means the mining of bentonite,  
3 clay, scoria, phosphate rock, sand, or gravel by removing  
4 the overburden lying upon natural deposits thereof and  
5 mining directly from the natural deposits thereby exposed,  
6 including the removal of overburden for the purpose of  
7 determining the location, quality, or quantity of any  
8 natural deposit of bentonite, clay, scoria, phosphate rock,  
9 sand, or gravel.

10 ~~(87)~~(91) "Operator" means a person engaged in and  
11 controlling an opencut-mining operation.

12 ~~(97)~~(110) "Overburden" means all of the earth and other  
13 materials which lie above a natural deposit of bentonite,  
14 clay, scoria, phosphate rock, sand, or gravel. "Spoil" is  
15 the overburden disturbed from its natural state in the  
16 process of opencut mining.

17 ~~(107)~~(111) "Person" means a natural person or a firm,  
18 association, partnership, cooperative, or corporation or any  
19 department, agency, or instrumentality of the state or any  
20 governmental subdivision or any other entity whatever.

21 ~~(117)~~(121) "Progress report" means a report showing the  
22 land which the operator has affected by opencut mining  
23 during the year. The report shall show the number of acres  
24 of affected land and all reclamation accomplished.

25 ~~(127)~~(131) "Public notice" means notice given by

1 publication in a newspaper in the general area where the  
2 affected land is located. The notice shall be given once a  
3 week for 3 successive weeks.

4 ~~(137)~~(141) "Reclamation" means the reconditioning of the  
5 area of land affected by opencut-mining operations to make  
6 the area suitable for productive use, including but not  
7 limited to forestry, agriculture, grazing, wildlife,  
8 recreation, or residential and industrial sites.

9 ~~(147)~~(151) "Reclamation plan" means the description of  
10 current land use, topographical data, water data, soils  
11 data, leased areas, intended mine areas, and an explanation  
12 of proposed reclamation of the land with appropriate maps.

13 ~~(157)~~(161) "Refuse" means all waste material directly  
14 connected with the opencut-mining operations.

15 ~~(167)~~(171) "Soils materials" are those horizons  
16 containing topsoil or other soils leached free of  
17 deleterious salts and capable of sustaining plant growth and  
18 recognized as such by standard authorities."

19 Section 3. Section 82-4-433, MCA, is amended to read:

20 "82-4-433. Bonds. (1) A bond required to be filed in  
21 this part by the operator shall be in such form as the board  
22 prescribes, payable to the state of Montana and conditioned  
23 upon the operator's full compliance with all requirements of  
24 this part and all rules of the board. The bond shall be  
25 signed by the landowner or operator, as appropriate, as

1 principal, and by a good and sufficient corporate surety  
 2 licensed to do business in the state of Montana, as surety.  
 3 The penalty of the bond shall be in an amount not to exceed  
 4 the costs of restoration required by this part as determined  
 5 by the board but may not be less than \$200 ~~or--more--than~~  
 6 ~~\$1,000~~ per acre.

7 (2) In lieu of the bond, the operator may deposit with  
 8 the board cash and government securities or a bond with  
 9 property sureties in an amount equal to that of the required  
 10 bond on conditions as above prescribed. In the discretion of  
 11 the board, surety bond requirements may be fulfilled by the  
 12 operator's posting a bond with land and improvements and  
 13 facilities thereon as security, in which event no surety may  
 14 be required. The penalty of the bond or amount of cash and  
 15 securities shall be increased or reduced from time to time  
 16 as provided in this part. The bond or security remains in  
 17 effect until the mined acreages have been reclaimed as  
 18 provided under the contract and the reclamation has been  
 19 approved and the bond or security has been released by the  
 20 board. The bond or security shall cover only actual mined  
 21 acreages and may be increased or reduced to cover only such  
 22 acreages as remain unreclaimed.

23 (3) If the license of a surety upon a bond filed with  
 24 the board pursuant to this part is suspended or revoked, the  
 25 operator, within 30 days after receiving notice thereof from

1 the board, shall substitute for that surety a good and  
 2 sufficient surety licensed to do business in the state. Upon  
 3 failure of the operator to make substitution of surety, the  
 4 board may suspend the contract of the operator to conduct  
 5 operations upon the land described in the contract until the  
 6 substitution has been made.

7 (4) The board shall cause the reclamation of any  
 8 affected land with respect to which a bond has been  
 9 forfeited.

10 (5) Whenever an operator has completed all of the  
 11 requirements under the provisions of this part as to any  
 12 affected land, he shall notify the board thereof. If the  
 13 board releases the operator from further obligation  
 14 regarding such affected land, the penalty of the bond shall  
 15 be reduced proportionately."

16 Section 4. Section 82-4-434, MCA, is amended to read:  
 17 "82-4-434. Reclamation plan part of contract --  
 18 requirements. The contract shall meet the following  
 19 requirements:

20 (1) ~~(a)~~ The operator shall submit a reclamation plan  
 21 to the board before commencing any open-cut mining and may  
 22 not commence mining before the plan receives approval from  
 23 the board. The operator may request and receive a meeting  
 24 with the board prior to submission of the plan. ~~If the board~~  
 25 ~~does not notify the operator that it has approved or~~

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1 ~~disapproved a plan within 30 days after the board has~~  
 2 ~~received the plan; the board is considered to have approved~~  
 3 ~~the plan. The board, however, for sufficient cause, may~~  
 4 ~~extend its period of consideration for an additional 30 days~~  
 5 ~~if it notifies the operator prior to the end of the original~~  
 6 ~~30-day period.~~ The board shall submit each reclamation plan  
 7 or amendments to the reclamation plan to the landowner for  
 8 his recommendations and shall consider those recommendations  
 9 in deciding whether to approve or disapprove any plan or  
 10 amendments. The board may seek technical help from any state  
 11 or federal agency. The board shall submit the plan  
 12 immediately to the ~~director of the university of Montana~~  
 13 ~~statewide archaeological survey~~ Montana historical society  
 14 for evaluation of possible archaeological or historical  
 15 values in the area to be mined. The board may approve a  
 16 reclamation plan only if the board has found that the plan  
 17 provides for the best possible reclamation procedures  
 18 available under the circumstances at the time, so that after  
 19 mining operations are completed the affected land will be  
 20 reclaimed to a productive use. Once the reclamation plan is  
 21 accepted in writing by the board, it shall become a part of  
 22 the contract but is subject to annual review and  
 23 modification by the board.

24 (b) The department shall inspect the site prior to  
 25 issuance of a contract. Unless the time period is extended

1 under the provisions of this subsection, the board shall  
 2 either issue an operating permit to the applicant or return  
 3 any deficient or inadequate application, along with a  
 4 description of the deficiencies, within 60 days of receipt  
 5 of the complete application and complete reclamation plan  
 6 and receipt of the application fee. If the site is not  
 7 accessible due to extended adverse weather conditions, the  
 8 department may extend the 60-day period by not more than 180  
 9 days to allow inspection of the site and reasonable review.  
 10 The department must serve written notice of extension upon  
 11 the applicant in person or by certified mail, and any such  
 12 extension is subject to appeal to the board in accordance  
 13 with the Montana Administrative Procedure Act. If the  
 14 department determines that additional time is needed to  
 15 review the application and reclamation plan for a major  
 16 operation, the department and applicant shall negotiate to  
 17 extend the 60-day period by not more than 365 days. Failure  
 18 of the board to act upon a complete application and complete  
 19 reclamation plan within the period prescribed or any  
 20 extension thereof constitutes approval of the application,  
 21 and the permit shall be issued promptly thereafter, upon  
 22 receipt of the required bond.

23 (2) The board may not approve any reclamation plan  
 24 unless the plan provides:

25 (a) that the land will be reclaimed for one or more

1 specified uses, including but not limited to forest,  
2 pasture, orchard, cropland, residence, recreation, industry,  
3 habitat for wildlife, including food, cover, or water, or  
4 other uses;

5 (b) that to the extent reasonable and practicable, the  
6 operator will establish vegetative cover commensurate with  
7 the proposed land use;

8 (c) whenever operations result in a need to prevent  
9 acid drainage or sedimentation on or in adjoining lands or  
10 streams, for the construction of earth dams or other  
11 reasonable devices to control water drainage, provided the  
12 formation of such impoundments or devices will not interfere  
13 with other landowners' rights or contribute to water  
14 pollution;

15 (d) that to accomplish practical utilization of soil  
16 materials, such material will be utilized for placement on  
17 affected areas, if required by the reclamation plan after  
18 completion or termination of that particular phase of the  
19 mining operations, at a depth sufficient for plant growth on  
20 slopes of 3:1 or less;

21 (e) that grading will be commensurate with the  
22 topography sought and land use designated;

23 (f) that metal and other waste will be removed or  
24 buried;

25 (g) that all access, haul, and other support roads

1 will be located, constructed, and maintained in such a  
2 manner as to control and minimize channeling and other  
3 erosion;

4 (h) that the operator will submit a progress report  
5 annually to the board;

6 (i) that all operations will be conducted so as to  
7 avoid range and forest fires and spontaneous combustion and  
8 that open burning of carbonaceous materials will be in  
9 accordance with suitable practices for fire prevention and  
10 control;

11 (j) that archaeological and historical values in areas  
12 to be mined will be given appropriate protection;

13 (k) that except for rock faces, bench faces, and  
14 excavations used for water impoundments, each surface area  
15 of the mined premises which will be disturbed will be  
16 revegetated, if commensurate with the proposed land use,  
17 when its use for extractive purposes is no longer required;

18 (l) that when the proposed land use is pasturage or  
19 habitat for wildlife, seeding and planting will be done in a  
20 manner to achieve a permanent suitable vegetative cover for  
21 wildlife, livestock, and retardation of erosion and that all  
22 seed will be drilled unless otherwise provided in the plan;

23 (m) that reclamation will be as concurrent with mining  
24 operations as feasible and will be completed within a  
25 specified length of time.

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1 (3) If reclamation according to the plan has not been  
2 completed in the time specified, the board after 30 days'  
3 written notice shall order the operator to cease mining and,  
4 if the operator does not cease, shall institute an action to  
5 enjoin further operation and may sue for damages for breach  
6 of contract, for payment of the performance bond, or for  
7 both.

8 (4) (a) At any time during the period of reclamation  
9 the operator may for good reason submit to the board a new  
10 reclamation plan or amendment to the existing plan,  
11 including extensions of time.

12 (b) The board may approve the proposed new reclamation  
13 plan or amendments to the existing plan if:

14 (i) the operator has in good faith carried on  
15 reclamation according to the existing plan and the proposed  
16 new plan or amendments to the existing plan will result in  
17 reclamation as or more desirable than the reclamation  
18 proposed under the existing plan; or

19 (ii) it is highly improbable reclamation will be  
20 successful unless the existing plan is replaced or amended.

21 (c) When accepted, the proposed new reclamation plan  
22 or the proposed amendments to the existing plan become a  
23 part of the contract.

24 (5) The operator shall provide a performance bond or  
25 an alternative acceptable to the board in an amount

1 commensurate with the estimated cost of reclamation, but in  
2 no case may the bond be less than \$200 per acre. The  
3 estimated cost of reclamation shall be set forth in the  
4 reclamation plan.

5 (6) The contract, reclamation plan, and amendments  
6 accepted by the board shall be a public record and open to  
7 inspection.

8 (7) The contract shall become effective when signed by  
9 the board and the operator and shall remain in force until  
10 terminated by mutual consent or by the board upon 6 months'  
11 notice."

12 Section 5. Section 82-4-435, MCA, is amended to read:

13 "82-4-435. ~~Operation without contract penalty~~  
14 ~~Penalty -- enforcement. Anyone required by this part to have~~  
15 ~~a contract and who engages in open-cut mining without~~  
16 ~~previously securing a contract to do so as prescribed by~~  
17 ~~this part is guilty of a misdemeanor and upon conviction~~  
18 ~~thereof shall be fined not less than \$500 and not more than~~  
19 ~~\$1,000 each day of operation without a contract required by~~  
20 ~~this part is a separate violation (1) A person who violates~~  
21 ~~any of the provisions of this part or rules adopted~~  
22 ~~thereunder shall pay a civil penalty of not less than \$100~~  
23 ~~or more than \$1,000 for the violations and an additional~~  
24 ~~civil penalty of not less than \$100 or more than \$1,000 for~~  
25 ~~each day during which a violation continues and the person~~

1 may be enjoined from continuing such violations as provided  
2 in this section. These penalties are recoverable in an  
3 action brought in the name of the state of Montana by the  
4 attorney general in the district court of the first judicial  
5 district of this state, in and for the county of Lewis and  
6 Clark, or in the district court having jurisdiction of the  
7 defendant.

8 (2) The attorney general shall, upon the request of  
9 the department, sue for the recovery of the penalties  
10 provided for in this section and bring an action for a  
11 restraining order or a temporary or permanent injunction  
12 against an operator or other person violating or threatening  
13 to violate an order adopted under this part."

14 Section 6. Codification. It is intended that section 1  
15 be codified as an integral part of Title 82, chapter 4, part  
16 4, and the provisions of Title 82, chapter 4, part 4, apply  
17 to section 1.

18 Section 7. Effective date. This act is effective upon  
19 passage and approval.

-End-