

HOUSE BILL NO. 237

INTRODUCED BY ELLISON, D. BROWN, KELLER, RANEY,
GILBERT, QUILICI, GRADY, M. HANSON, GROSFIELD

IN THE HOUSE

JANUARY 17, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

JANUARY 18, 1991 FIRST READING.

JANUARY 26, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 28, 1991 PRINTING REPORT.

JANUARY 30, 1991 SECOND READING, DO PASS.

JANUARY 31, 1991 ENGROSSING REPORT.

FEBRUARY 1, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FIRST READING.

MARCH 14, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1991 SECOND READING, CONCURRED IN.

MARCH 18, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *237*
 2 INTRODUCED BY *William Owen Brown Keller Roney*
 3 *Robert Earlson Bradley M. Hanson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE
 5 PERMISSIBLE PROJECTS FINANCED BY HARD-ROCK MINING IMPACT
 6 BONDS; TO CLARIFY THE PROCEDURE FOR THE ISSUANCE OF BONDS;
 7 TO PROVIDE FOR INTERLOCAL AGREEMENTS TO FACILITATE BOND
 8 ISSUES; AMENDING SECTIONS 15-16-201, 82-4-335, 82-4-339,
 9 90-6-302, 90-6-307, 90-6-310, AND 90-6-311, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 90-6-302, MCA, is amended to read:
 14 "90-6-302. Definitions. In this part the following
 15 definitions apply:

16 (1) "Board" means the hard-rock mining impact board
 17 established in 2-15-1822.

18 (2) "Bonds" include bonds, notes, warrants, debentures,
 19 certificates of indebtedness, temporary bonds, temporary
 20 notes, interim receipts, interim certificates, and all
 21 instruments or obligations evidencing or representing
 22 indebtedness or evidencing or representing the borrowing of
 23 money or evidencing or representing a charge, lien, or
 24 encumbrance on specific revenues, special assessments,
 25 income, or property of a political subdivision, including

1 all instruments or obligations payable from a special fund.

2 (3) "Facility" means a facility that is owned,
 3 operated, or maintained by a local government unit and that,
 4 under the impact plan submitted under the provisions of
 5 90-6-307, can be expected to have increased capital and
 6 operating costs as a result of the large-scale mineral
 7 development.

8 (4) "Local government unit" means a county, city,
 9 town, school district, or any of the following independent
 10 special districts:

- 11 (a) rural fire district;
- 12 (b) public hospital district;
- 13 (c) refuse disposal district;
- 14 (d) county water and sewer district;
- 15 (e) county water district; or
- 16 (f) county sewer district; or
- 17 (g) park district.

18 (5) "Large-scale mineral development" means the
 19 construction or operation of a hard-rock mine and the
 20 associated milling facility for which a permit is applied
 21 for under 82-4-335 on or after May 18, 1981, and for which
 22 the average number of persons on the payroll of the mineral
 23 developer and of contractors at the mineral development
 24 exceeds or is projected to exceed 75 for any consecutive
 25 6-month period. A mining operation that would qualify as a



1 large-scale mineral development under this subsection is not
2 a large-scale mineral development if the mine owner and
3 operator are small miners as defined in 82-4-303."

4 **Section 2.** Section 90-6-310, MCA, is amended to read:

5 **"90-6-310. Education Local government facility impact**
6 **bonds.** (1) When the need for ~~new--school~~ the construction,
7 renovation, improvement, or acquisition of local government
8 facilities as a result of the large-scale mineral
9 development is determined under 90-6-307, the owners of a
10 large-scale mineral development may enter into a written
11 agreement with the ~~trustees-of-a-school-district-that-has~~
12 local government unit having the burden for the ~~issuance--of~~
13 bonds--to--cover-the-cost-of-such-new-construction increased
14 capital and operating costs expected to be incurred by the
15 facilities. The ~~trustees--of--a--school--district~~ local
16 government unit may execute a written agreement with the
17 owner of a large-scale mineral development for the issuance
18 of any special industrial ~~educational~~ local government
19 facility impact bonds provided for in this section.

20 (2) The agreement with the owners of a large-scale
21 mineral development shall provide for a payment guarantee,
22 in addition to the taxes imposed by the ~~school--district~~
23 local government unit on property owners generally, of the
24 principal and interest on the bonds provided for in this
25 section. Payment will then be made by an annual special tax

1 levy on the property of the large-scale mineral development
2 sufficient to retire the principal and interest on these
3 special impact bonds. The bonds shall not be an obligation
4 of the ~~trustees--or--the--school-district~~ local government
5 unit, but shall be special obligations limited to the
6 revenue derived from the special tax levy. A local
7 government unit shall establish a levy and, to the extent
8 bonds are issued as provided in this section, shall pledge
9 the special fund and all revenues of the special tax levy to
10 the repayment of the bonds.

11 (3) The debt limits set forth in 7-7-2203, 7-7-4201,
12 and 20-9-406 and--the--provisions-of-20-9-410-and-20-9-421
13 through-20-9-432, inclusive, do not apply to bonds issued in
14 accordance with this section. The interest on such bonds
15 shall not be subject to state taxes.

16 (4) The impact bonds shall be authorized by the
17 governing body of the local government unit by a resolution
18 that states:

- 19 (a) the facility for which the bonds are issued;
20 (b) the amount of the bonds;
21 (c) the rate of interest the bonds bear;
22 (d) the date of the bonds and the maturity date or
23 dates of the bonds;
24 (e) the dates interest is payable on the bonds;
25 (f) the redemption options, if any, with respect to the

1 bonds; and

2 (g) the manner of execution of the bonds.

3 (5) The impact bonds shall be:

4 (a) in registered form as to principal and interest;

5 (b) payable in installments and at times not exceeding
6 30 years from their date of issuance; and

7 (c) payable at a place or places and be evidenced in a
8 manner the governing body determines is in the best interest
9 of the local government unit.

10 (6) Any impact bonds issued under the authority of this
11 section may be sold at public or private sale in a manner,
12 at a time or times, and at a price above or below par as may
13 be determined by the governing body of the local government
14 unit. All expenses, premiums, and commissions that the local
15 government unit considers necessary or advantageous in
16 connection with the authorization, sale, and issuance of the
17 bonds may be paid by the governing body of the local
18 government unit from the proceeds of the sale of the bonds.

19 (7) If more than one local government unit adopts a
20 resolution to issue impact bonds, the local government units
21 may enter into an interlocal agreement under 7-11-101
22 through 7-11-108, providing for the issue of impact bonds of
23 the local government units to be combined in a single
24 offering, if the governing body of each local government
25 unit authorizing the bonds determines that the pooling of

1 bonds:

2 (a) is in the best interest of the local government
3 units;

4 (b) will facilitate the sale of the bonds under more
5 advantageous terms;

6 (c) will lower the interest rates; or

7 (d) will lower the cost of issuance.

8 (8) In addition to the specific requirements of
9 7-11-105, the interlocal agreement shall provide:

10 (a) that the bond titles shall denote that impact bonds
11 of different local government units have been pooled and
12 shall refer to each local government unit executing the
13 interlocal agreement;

14 (b) for a single debt service fund, to be held by a
15 qualified trust company, to which each local government unit
16 shall pledge and pay the annual special tax levies levied
17 against the large-scale mineral development; and

18 (c) that the bonds are payable solely from and against
19 the debt service funds under the interlocal agreement."

20 **Section 3.** Section 15-16-201, MCA, is amended to read:

21 "15-16-201. Tax prepayment -- new industrial
22 facilities. (1) A person intending to construct or locate a
23 major new industrial facility, as defined in subsection (2)
24 of this section, shall upon request of the board of county
25 commissioners of the county in which the facility is to be

1 located, prepay, when permission is granted to construct or
 2 locate by the appropriate governmental agency, an amount
 3 equal to three times the estimated property tax due the year
 4 the facility is completed. The person who is to prepay under
 5 this section shall not be obligated to prepay the entire
 6 amount at one time but, upon request of the board of county
 7 commissioners of the county, shall prepay only that amount
 8 shown to be needed from time to time. To assure this payment
 9 or payments, the person who is to prepay shall guarantee to
 10 the board of county commissioners and also have a bank or
 11 banks guarantee that these amounts will be paid as needed
 12 for expenditures created by the impact. When the facility is
 13 completed and assessed by the department of revenue, it
 14 shall be subject during the first 3 years and thereafter to
 15 taxation as all other property similarly situated, except
 16 that one-fifth of the amount prepaid shall be allowed as a
 17 credit against property taxes in each of the first 5 years
 18 after the start of productive operation of the facility.

19 (2) A major new industrial facility is a manufacturing
 20 or mining facility other than a large-scale mineral
 21 development as defined in 90-6-302(4)(5) which will employ
 22 on an average annual basis at least 100 people in
 23 construction or operation of the facility and which will
 24 create a substantial adverse impact on existing state,
 25 county, or municipal services."

1 **Section 4.** Section 82-4-335, MCA, is amended to read:

2 "82-4-335. Operating permit -- limitation. (1) A person
 3 may not engage in mining, ore processing, or reprocessing of
 4 tailings or waste material, construct or operate a hard-rock
 5 mill, use cyanide ore-processing reagents, or disturb land
 6 in anticipation of those activities in the state without
 7 first obtaining an operating permit from the board. A
 8 separate operating permit is required for each complex.

9 (2) A small miner who intends to use a cyanide
 10 ore-processing reagent shall obtain an operating permit for
 11 that part of his operation where the cyanide ore-processing
 12 reagent will be used or disposed of.

13 (3) Prior to receiving an operating permit from the
 14 board, a person shall pay the basic permit fee of \$25 and
 15 shall submit an application on a form provided by the board,
 16 which must contain the following information and any other
 17 pertinent data required by rule:

18 (a) name and address of the operator and, if a
 19 corporation or other business entity, the name and address
 20 of its principal officers, partners, and the like and its
 21 resident agent for service of process, if required by law;

22 (b) minerals expected to be mined;

23 (c) a proposed reclamation plan;

24 (d) expected starting date of operations;

25 (e) a map showing the specific area to be mined and the

1 boundaries of the land which will be disturbed, topographic
 2 detail, the location and names of all streams, roads,
 3 railroads, and utility lines on or immediately adjacent to
 4 the area, location of proposed access roads to be built, and
 5 the names and addresses of the surface and mineral owners of
 6 all lands within the mining area, to the extent known to the
 7 applicant;

8 (f) types of access roads to be built and manner of
 9 reclamation of road sites on abandonment;

10 (g) a plan which will provide, within limits of normal
 11 operating procedures of the industry, for completion of the
 12 operation;

13 (h) ground water and surface water hydrologic data
 14 gathered from a sufficient number of sources and length of
 15 time to characterize the hydrologic regime;

16 (i) a plan detailing the design, operation, and
 17 monitoring of impounding structures, including but not
 18 limited to tailings impoundments and water reservoirs,
 19 sufficient to ensure that the structures are safe and
 20 stable;

21 (j) a plan identifying methods to be used to monitor
 22 for the accidental discharge of objectionable materials and
 23 remedial action plans to be used to control and mitigate
 24 discharges to surface or ground water; and

25 (k) an evaluation of the expected life of any tailings

1 impoundment or waste area and the potential for expansion of
 2 the tailings impoundment or waste site.

3 (4) Except as provided in subsection (6), the permit
 4 provided for in subsection (1) for a large-scale mineral
 5 development as defined in 90-6-302 must be conditioned to
 6 provide that activities under the permit may not commence
 7 until the impact plan is approved under 90-6-307 and until
 8 the permittee has provided a written guarantee to the
 9 department and to the hard-rock mining impact board of
 10 compliance within the time schedule with the commitment made
 11 in the approved impact plan, as provided in 90-6-307. If the
 12 permittee does not comply with that commitment within the
 13 time scheduled, the board, upon receipt of written notice
 14 from the hard-rock mining impact board, shall suspend the
 15 permit until it receives written notice from the hard-rock
 16 mining impact board that the permittee is in compliance.

17 (5) When the department determines that a permittee has
 18 become or will become a large-scale mineral developer
 19 pursuant to 82-4-339 and 90-6-302~~(4)~~(5) and provides notice
 20 as required under 82-4-339, within 6 months of receiving the
 21 notice, the permittee shall provide the board with proof
 22 that he has obtained a waiver of the impact plan requirement
 23 from the hard-rock mining impact board or that he has filed
 24 an impact plan with the hard-rock mining impact board and
 25 the appropriate county or counties. If the permittee does

1 not file the required proof or if the hard-rock mining
 2 impact board certifies to the board that the permittee has
 3 failed to comply with the hard-rock mining impact review and
 4 implementation requirements in Title 90, chapter 6, parts 3
 5 and 4, the board shall suspend the permit until the
 6 permittee files the required proof or until the hard-rock
 7 mining impact board certifies that the permittee has
 8 complied with the hard-rock mining impact review and
 9 implementation requirements.

10 (6) Compliance with 90-6-307 is not required for
 11 exploration and bulk sampling for metallurgical testing when
 12 the aggregate samples are less than 10,000 tons.

13 (7) A person may not be issued an operating permit if
 14 that person's failure to comply with the provisions of this
 15 part, the rules adopted under this part, or a permit or
 16 license issued under this part has resulted in the
 17 forfeiture of a bond unless that person meets the conditions
 18 described in 82-4-360."

19 **Section 5.** Section 82-4-339, MCA, is amended to read:

20 **"82-4-339. Annual report of activities by permittee --**
 21 **fee -- notice of large-scale mineral developer status. (1)**
 22 **Within 30 days after completion or abandonment of operations**
 23 **on an area under permit or within 30 days after each**
 24 **anniversary date of the permit, whichever is earlier, or at**
 25 **such later date as may be provided by rules of the board and**

1 each year thereafter until reclamation is completed and
 2 approved, the permittee shall pay the annual fee of \$25 and
 3 shall file a report of activities completed during the
 4 preceding year on a form prescribed by the board which
 5 report shall:

- 6 (a) identify the permittee and the permit number;
- 7 (b) locate the operation by subdivision, section,
 8 township, and range and with relation to the nearest town or
 9 other well-known geographic feature;
- 10 (c) estimate acreage to be newly disturbed by operation
 11 in the next 12-month period;
- 12 (d) include the number of persons on the payroll for
 13 the previous permit year and for the next permit year at
 14 intervals that the department considers sufficient to enable
 15 a determination of the permittee's status under
 16 90-6-302~~(4)~~(5); and
- 17 (e) update any maps previously submitted or
 18 specifically requested by the board. Such maps shall show:
 - 19 (i) the permit area;
 - 20 (ii) the unit of disturbed land;
 - 21 (iii) the area to be disturbed during the next 12-month
 22 period;
 - 23 (iv) if completed, the date of completion of operations;
 - 24 (v) if not completed, the additional area estimated to
 25 be further disturbed by the operation within the following

1 permit year; and
 2 (vi) the date of beginning, amount, and current status
 3 of reclamation performed during the previous 12 months.

4 (2) Whenever the department determines that the
 5 permittee has become or will, during the next permit year,
 6 become a large-scale mineral developer, it shall immediately
 7 serve written notice of that fact on the permittee, the
 8 hard-rock mining impact board, and the county or counties in
 9 which the operation is located."

10 **Section 6.** Section 90-6-311, MCA, is amended to read:

11 **"90-6-311. Impact plan amendments.** (1) The impact plan
 12 may provide for amendment under definite conditions
 13 specified in the plan. Also, the governing body of an
 14 affected county or the mineral developer may petition the
 15 board for an amendment to an approved impact plan if:

16 (a) employment at the large-scale mineral development
 17 is forecast to increase or decrease by at least 75 persons,
 18 as determined under 90-6-302~~(4)~~(5), over or under the
 19 employment levels contemplated by the approved impact plan;
 20 or

21 (b) it becomes apparent that an approved impact plan is
 22 materially inaccurate because of errors in assessment and 2
 23 years have not elapsed since the date the facility begins
 24 commercial production; or

25 (c) the governing body of an affected county and the

1 mineral developer join in a petition to amend the impact
 2 plan.

3 (2) Within 10 days of receipt the board shall publish
 4 notice of the petition at least once in a newspaper of
 5 general circulation in the affected county. The petition
 6 must include:

7 (a) an explanation of the need for an amendment;

8 (b) a statement of the facts and circumstances
 9 underlying the need for an amendment; and

10 (c) a description of the corrective measures proposed
 11 by the petitioner.

12 (3) Within 60 days after notice that the petition has
 13 been received, an affected local government unit or the
 14 mineral developer must notify the board in writing if such
 15 person objects to the amendments proposed by the petitioner,
 16 specifying the reasons why the impact plan should not be
 17 amended as proposed. If no objection is received within the
 18 60-day period, the impact plan must be amended by the board
 19 as proposed by the petitioner.

20 (4) If an objection is received, within 10 days of its
 21 receipt, the board shall notify the petitioner and include a
 22 copy of all objections received by the board. If the
 23 objecting party and the petitioner cannot resolve the
 24 objections within 30 days after the expiration of the 60-day
 25 period, the board shall conduct a hearing on the validity of

1 the objections within 30 days after the failure of the
 2 parties to resolve the objections. The hearing must be held
 3 in the affected county or, if objections are received from
 4 local government units in more than one county, must be held
 5 in the county which in the board's judgment is more greatly
 6 affected. The provisions of the Montana Administrative
 7 Procedure Act apply to the conduct of the hearing.

8 (5) Following the hearing, the board shall make
 9 findings as to those portions of the amendments which were
 10 objected to and, if appropriate, amend the impact plan
 11 accordingly. The board shall cause the findings and impact
 12 plan, as amended, to be served on all parties. Any local
 13 government unit or the developer is entitled to judicial
 14 review, as provided by Title 2, chapter 4, part 7, in the
 15 district court for the judicial district in which the
 16 hearing was held."

17 **Section 7.** Section 90-6-307, MCA, is amended to read:

18 "90-6-307. Impact plan to be submitted. (1) After an
 19 application for a permit for a large-scale mineral
 20 development is made under 82-4-335, the person seeking the
 21 permit shall submit to the affected counties and the board
 22 an impact plan describing the economic impact the
 23 large-scale mineral development will have on local
 24 government units and shall file proof of such submission to
 25 the counties with the board. Whenever an environmental

1 impact statement on the permit application is prepared under
 2 75-1-201, the lead agency shall cooperate to the fullest
 3 extent practicable with the affected local government units
 4 to eliminate duplication of effort in data collection. The
 5 governing bodies of the affected counties shall publish
 6 notice of the submission of an impact plan at least once in
 7 a newspaper of general circulation in the county. The
 8 mineral developer and the affected local government units
 9 shall ensure that the impact plan includes:

10 (a) a timetable for development, including the opening
 11 date of the development and the estimated closing date;

12 (b) the estimated number of persons coming into the
 13 impacted area as a result of the development;

14 (c) the increased capital and operating cost to local
 15 government units for providing services which can be
 16 expected as a result of the development;

17 (d) the financial or other assistance the developer
 18 will give to local government units to meet the increased
 19 need for services.

20 (2) In the impact plan, the developer shall commit
 21 itself to pay all of the increased capital and net operating
 22 cost to local government units that will be a result of the
 23 development, as identified in the impact plan, either from
 24 tax prepayments, as provided in 90-6-309, special industrial
 25 educational local government facility impact bonds, as

1 provided in 90-6-310, or other funds obtained from the
 2 developer, and shall provide a time schedule within which it
 3 will do so. The plan may provide for funding from other
 4 revenue sources or funding mechanisms if the developer
 5 guarantees that the amount to be provided from these sources
 6 will be paid.

7 (3) Upon request of the governing body of an affected
 8 unit of local government, the mineral developer, prior to
 9 the end of the 90-day review period, shall provide financial
 10 or other assistance as necessary to prepare for and evaluate
 11 the impact plan. The governing body of the affected county
 12 must contract with the developer to obtain the requested
 13 financial assistance for each unit of local government
 14 within the county. Any disbursements to a unit of local
 15 government under this subsection shall be credited against
 16 future tax liabilities, if any.

17 (4) The governing body of the county where the fiscal
 18 impacts on local government units are forecasted in the
 19 impact plan to be most costly shall, within 90 days after
 20 receipt of the impact plan from the developer, conduct a
 21 public hearing on the impact plan.

22 (5) An affected local government unit that has not been
 23 identified in an impact plan submitted to the board as being
 24 likely to experience increased capital and operating costs
 25 for providing services which can be expected as a result of

1 the development may object to the impact plan under the
 2 provisions of this section if the local government unit
 3 clearly demonstrates that it is likely to experience
 4 increased capital and operating costs from the mineral
 5 development.

6 (6) An affected local government unit shall, within 90
 7 days after receipt of the impact plan from the developer,
 8 notify the board in writing if that local government unit
 9 objects to the impact plan, specifying the reasons why the
 10 impact plan is objected to. During the 90-day period, an
 11 affected local government unit may petition for one 30-day
 12 extension by submitting a written request to the board
 13 stating the need and justification for the extension. The
 14 board shall grant the extension unless it finds there is no
 15 reasonable basis for the request. If no objection is
 16 received within the 90-day period or any extension thereof,
 17 the impact plan is approved without any review by the board.
 18 An approved plan is binding and may only be altered under
 19 the amendment provisions of 90-6-311.

20 (7) If objections are received from a local government
 21 unit, the board shall, within 10 days, notify the developer
 22 and forward a copy of the local government unit's objections
 23 to the developer. The local government unit and the
 24 developer have 30 days, or a longer period if both the local
 25 government unit and the developer request an extension, to

1 resolve the objection. If the objections are not resolved,
 2 the board shall conduct a hearing on the validity of the
 3 objections, which shall be held in the affected county or,
 4 if objections are received from local government units in
 5 more than one county, shall be held in the county which, in
 6 the board's judgment, is more greatly affected. The
 7 provisions of the Montana Administrative Procedure Act shall
 8 apply to the conduct of the hearing. The impact plan filed
 9 by the developer shall carry no presumption of correctness
 10 at the hearing.

11 (8) Following the hearing, the board shall, within 60
 12 days, make findings as to those portions of the impact plan
 13 which were objected to and, if appropriate, amend the impact
 14 plan accordingly. The findings and impact plan, as amended,
 15 shall be served by the board upon all parties. Any local
 16 government unit or the developer, if aggrieved by the
 17 decision of the board, is entitled to judicial review, as
 18 provided by Title 2, chapter 4, part 7, in the district
 19 court in and for the judicial district in which the hearing
 20 was held.

21 (9) The developer shall, within 30 days of receipt of
 22 the approved impact plan, provide the board with a written
 23 guarantee that the developer will meet the increased costs
 24 of public services and facilities as specified in the
 25 approved impact plan and according to the time schedule

1 contained in the approved impact plan.

2 (10) The developer may make payments as specified in the
 3 approved impact plan directly to a local government unit or
 4 to the board. The governing body of a local government unit
 5 receiving payments shall deposit the payments into an impact
 6 fund. The developer and the affected governing body shall
 7 each issue to the board written verification of each payment
 8 and its intended use in compliance with the impact plan. The
 9 board shall deposit payments received from a developer into
 10 the hard-rock mining impact account established by 90-6-304.

11 (11) The board shall notify the department of state
 12 lands of its receipt of the written guarantee of payment and
 13 of any failure of the developer to comply with this section.

14 (12) Upon receipt of evidence that an affected local
 15 government unit identified in the approved impact plan is
 16 providing or is preparing to provide an additional service
 17 or facility provided for in the approved impact plan, the
 18 board shall, if the hard-rock mining impact account is used
 19 to deliver payments to the local government unit, pay to
 20 that local government unit, in one sum or in parts, the
 21 money from the hard-rock mining impact account identified in
 22 the plan as the increased cost to the local government unit
 23 of providing that public service or facility.

24 (13) If it is determined that an objection filed by an
 25 affected local government unit under subsections (5) and (6)

1 or 90-6-311(3) is valid and it results in some remedial
 2 order by the board or court of competent jurisdiction, the
 3 local government unit shall be awarded and the developer
 4 shall pay reasonable costs and attorney fees associated with
 5 any administrative or judicial appeals filed under this
 6 section. Any attorney fees and costs awarded shall be in
 7 addition to any amounts paid by the developer under this
 8 part.

9 (14) Upon a determination by the department of state
 10 lands that a permittee under 82-4-335 has become or will
 11 become a large-scale mineral developer, the permittee may
 12 petition the board for a waiver of the impact plan
 13 requirement. The board may grant a waiver or conditional
 14 waiver of this requirement only if it has provided notice
 15 and opportunity for hearing to the permittee and to all
 16 affected local government units. The board shall adopt
 17 criteria under which a waiver may be granted. A waiver
 18 issued by the board may be revoked as provided in the
 19 conditional waiver or if the permittee and contractors at
 20 the mineral development increase their payrolls from the
 21 date of the waiver by 75 or more persons, provided the
 22 revocation is requested by an affected local government unit
 23 and notice and opportunity for hearing are given to the
 24 permittee and all affected local government units. The board
 25 shall notify the board of land commissioners of any waiver

1 that has been revoked.

2 (15) When a person who holds an operating permit under
 3 82-4-335 and who has filed an impact plan fails to comply
 4 with the review and implementation requirements in this part
 5 and part 4 of this chapter, the board shall certify to the
 6 board of land commissioners that the failure to comply has
 7 occurred and shall certify when a permittee who has
 8 previously failed to comply comes into compliance."

9 NEW SECTION. **Section 8.** Effective date. [This act] is
 10 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0237, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to expand the permissible projects financed by hard-rock mining impact bonds; to clarify the procedure for the issuance of bonds; to provide for interlocal agreements to facilitate bond issues.

FISCAL IMPACT:

The proposal has no fiscal impact on state or local governments or school districts. It does not limit the ability of local governments or school districts to issue or participate in the issuance of hard rock mining impact bonds.



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 1-22-91



ORVAL S. ELLISON, PRIMARY SPONSOR DATE
1-23-91

Fiscal Note for HB0237, as introduced

HB 237

APPROVED BY COMM. ON NATURAL RESOURCES

1 HOUSE BILL NO. 237
2 INTRODUCED BY Ellison, Dan Brown, Keller, Roney,
3 Gilbert, Zurlini, Brady, M. Hanson, W. Bell

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE
5 PERMISSIBLE PROJECTS FINANCED BY HARD-ROCK MINING IMPACT
6 BONDS; TO CLARIFY THE PROCEDURE FOR THE ISSUANCE OF BONDS;
7 TO PROVIDE FOR INTERLOCAL AGREEMENTS TO FACILITATE BOND
8 ISSUES; AMENDING SECTIONS 15-16-201, 82-4-335, 82-4-339,
9 90-6-302, 90-6-307, 90-6-310, AND 90-6-311, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12 Section 1. Section 90-6-302, MCA, is amended to read:

13 "90-6-302. Definitions. In this part the following
14 definitions apply:

15 (1) "Board" means the hard-rock mining impact board
16 established in 2-15-1822.

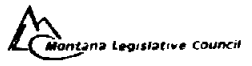
17 (2) "Bonds" include bonds, notes, warrants, debentures,
18 certificates of indebtedness, temporary bonds, temporary
19 notes, interim receipts, interim certificates, and all
20 instruments or obligations evidencing or representing
21 indebtedness or evidencing or representing the borrowing of
22 money or evidencing or representing a charge, lien, or
23 encumbrance on specific revenues, special assessments,
24 income, or property of a political subdivision, including

1 all instruments or obligations payable from a special fund.
2 (3) "Facility" means a facility that is owned,
3 operated, or maintained by a local government unit and that,
4 under the impact plan submitted under the provisions of
5 90-6-307, can be expected to have increased capital and
6 operating costs as a result of the large-scale mineral
7 development.

8 (3)(4) "Local government unit" means a county, city,
9 town, school district, or any of the following independent
10 special districts:

- 11 (a) rural fire district;
12 (b) public hospital district;
13 (c) refuse disposal district;
14 (d) county water and sewer district;
15 (e) county water district; or
16 (f) county sewer district; or
17 (g) park district.

18 (4)(5) "Large-scale mineral development" means the
19 construction or operation of a hard-rock mine and the
20 associated milling facility for which a permit is applied
21 for under 82-4-335 on or after May 18, 1981, and for which
22 the average number of persons on the payroll of the mineral
23 developer and of contractors at the mineral development
24 exceeds or is projected to exceed 75 for any consecutive
25 6-month period. A mining operation that would qualify as a



1 large-scale mineral development under this subsection is not
2 a large-scale mineral development if the mine owner and
3 operator are small miners as defined in 82-4-303."

4 **Section 2.** Section 90-6-310, MCA, is amended to read:

5 "90-6-310. Education Local government facility impact
6 bonds. (1) When the need for new--school the construction,
7 renovation, improvement, or acquisition of local government
8 facilities as a result of the large-scale mineral
9 development is determined under 90-6-307, the owners of a
10 large-scale mineral development may enter into a written
11 agreement with the trustees-of-a-school-district-that-has
12 local government unit having the burden for the issuance--of
13 bonds--to--cover-the-cost-of-such-new-construction increased
14 capital and operating costs expected to be incurred by the
15 facilities. The trustees--of--a--school--district local
16 government unit may execute a written agreement with the
17 owner of a large-scale mineral development for the issuance
18 of any special industrial educational local government
19 facility impact bonds provided for in this section.

20 (2) The agreement with the owners of a large-scale
21 mineral development shall provide for a payment guarantee,
22 in addition to the taxes imposed by the school--district
23 local government unit on property owners generally, of the
24 principal and interest on the bonds provided for in this
25 section. Payment will then be made by an annual special tax

1 levy on the property of the large-scale mineral development
2 sufficient to retire the principal and interest on these
3 special impact bonds. The bonds shall not be an obligation
4 of the trustees--or--the--school-district local government
5 unit, but shall be special obligations limited to the
6 revenue derived from the special tax levy. A local
7 government unit shall establish a levy and, to the extent
8 bonds are issued as provided in this section, shall pledge
9 the special fund and all revenues of the special tax levy to
10 the repayment of the bonds.

11 (3) The debt limits set forth in 7-7-2203, 7-7-4201,
12 and 20-9-406 and--the--provisions-of-20-9-410-and-20-9-421
13 through-20-9-432, inclusive, do not apply to bonds issued in
14 accordance with this section. The interest on such bonds
15 shall not be subject to state taxes.

16 (4) The impact bonds shall be authorized by the
17 governing body of the local government unit by a resolution
18 that states:

- 19 (a) the facility for which the bonds are issued;
20 (b) the amount of the bonds;
21 (c) the rate of interest the bonds bear;
22 (d) the date of the bonds and the maturity date or
23 dates of the bonds;
24 (e) the dates interest is payable on the bonds;
25 (f) the redemption options, if any, with respect to the

1 bonds; and
 2 (g) the manner of execution of the bonds.
 3 (5) The impact bonds shall be:
 4 (a) in registered form as to principal and interest;
 5 (b) payable in installments and at times not exceeding
 6 30 years from their date of issuance; and
 7 (c) payable at a place or places and be evidenced in a
 8 manner the governing body determines is in the best interest
 9 of the local government unit.
 10 (6) Any impact bonds issued under the authority of this
 11 section may be sold at public or private sale in a manner,
 12 at a time or times, and at a price above or below par as may
 13 be determined by the governing body of the local government
 14 unit. All expenses, premiums, and commissions that the local
 15 government unit considers necessary or advantageous in
 16 connection with the authorization, sale, and issuance of the
 17 bonds may be paid by the governing body of the local
 18 government unit from the proceeds of the sale of the bonds.
 19 (7) If more than one local government unit adopts a
 20 resolution to issue impact bonds, the local government units
 21 may enter into an interlocal agreement under 7-11-101
 22 through 7-11-108, providing for the issue of impact bonds of
 23 the local government units to be combined in a single
 24 offering, if the governing body of each local government
 25 unit authorizing the bonds determines that the pooling of

1 bonds:
 2 (a) is in the best interest of the local government
 3 units;
 4 (b) will facilitate the sale of the bonds under more
 5 advantageous terms;
 6 (c) will lower the interest rates; or
 7 (d) will lower the cost of issuance.
 8 (8) In addition to the specific requirements of
 9 7-11-105, the interlocal agreement shall provide:
 10 (a) that the bond titles shall denote that impact bonds
 11 of different local government units have been pooled and
 12 shall refer to each local government unit executing the
 13 interlocal agreement;
 14 (b) for a single debt service fund, to be held by a
 15 qualified trust company, to which each local government unit
 16 shall pledge and pay the annual special tax levies levied
 17 against the large-scale mineral development; and
 18 (c) that the bonds are payable solely from and against
 19 the debt service funds under the interlocal agreement."
 20 **Section 3.** Section 15-16-201, MCA, is amended to read:
 21 "15-16-201. Tax prepayment -- new industrial
 22 facilities. (1) A person intending to construct or locate a
 23 major new industrial facility, as defined in subsection (2)
 24 of this section, shall upon request of the board of county
 25 commissioners of the county in which the facility is to be

1 located, prepay, when permission is granted to construct or
 2 locate by the appropriate governmental agency, an amount
 3 equal to three times the estimated property tax due the year
 4 the facility is completed. The person who is to prepay under
 5 this section shall not be obligated to prepay the entire
 6 amount at one time but, upon request of the board of county
 7 commissioners of the county, shall prepay only that amount
 8 shown to be needed from time to time. To assure this payment
 9 or payments, the person who is to prepay shall guarantee to
 10 the board of county commissioners and also have a bank or
 11 banks guarantee that these amounts will be paid as needed
 12 for expenditures created by the impact. When the facility is
 13 completed and assessed by the department of revenue, it
 14 shall be subject during the first 3 years and thereafter to
 15 taxation as all other property similarly situated, except
 16 that one-fifth of the amount prepaid shall be allowed as a
 17 credit against property taxes in each of the first 5 years
 18 after the start of productive operation of the facility.

19 (2) A major new industrial facility is a manufacturing
 20 or mining facility other than a large-scale mineral
 21 development as defined in 90-6-302(4)(5) which will employ
 22 on an average annual basis at least 100 people in
 23 construction or operation of the facility and which will
 24 create a substantial adverse impact on existing state,
 25 county, or municipal services."

1 **Section 4.** Section 82-4-335, MCA, is amended to read:
 2 **"82-4-335. Operating permit -- limitation.** (1) A person
 3 may not engage in mining, ore processing, or reprocessing of
 4 tailings or waste material, construct or operate a hard-rock
 5 mill, use cyanide ore-processing reagents, or disturb land
 6 in anticipation of those activities in the state without
 7 first obtaining an operating permit from the board. A
 8 separate operating permit is required for each complex.

9 (2) A small miner who intends to use a cyanide
 10 ore-processing reagent shall obtain an operating permit for
 11 that part of his operation where the cyanide ore-processing
 12 reagent will be used or disposed of.

13 (3) Prior to receiving an operating permit from the
 14 board, a person shall pay the basic permit fee of \$25 and
 15 shall submit an application on a form provided by the board,
 16 which must contain the following information and any other
 17 pertinent data required by rule:

- 18 (a) name and address of the operator and, if a
- 19 corporation or other business entity, the name and address
- 20 of its principal officers, partners, and the like and its
- 21 resident agent for service of process, if required by law;
- 22 (b) minerals expected to be mined;
- 23 (c) a proposed reclamation plan;
- 24 (d) expected starting date of operations;
- 25 (e) a map showing the specific area to be mined and the

1 boundaries of the land which will be disturbed, topographic
 2 detail, the location and names of all streams, roads,
 3 railroads, and utility lines on or immediately adjacent to
 4 the area, location of proposed access roads to be built, and
 5 the names and addresses of the surface and mineral owners of
 6 all lands within the mining area, to the extent known to the
 7 applicant;

8 (f) types of access roads to be built and manner of
 9 reclamation of road sites on abandonment;

10 (g) a plan which will provide, within limits of normal
 11 operating procedures of the industry, for completion of the
 12 operation;

13 (h) ground water and surface water hydrologic data
 14 gathered from a sufficient number of sources and length of
 15 time to characterize the hydrologic regime;

16 (i) a plan detailing the design, operation, and
 17 monitoring of impounding structures, including but not
 18 limited to tailings impoundments and water reservoirs,
 19 sufficient to ensure that the structures are safe and
 20 stable;

21 (j) a plan identifying methods to be used to monitor
 22 for the accidental discharge of objectionable materials and
 23 remedial action plans to be used to control and mitigate
 24 discharges to surface or ground water; and

25 (k) an evaluation of the expected life of any tailings

1 impoundment or waste area and the potential for expansion of
 2 the tailings impoundment or waste site.

3 (4) Except as provided in subsection (6), the permit
 4 provided for in subsection (1) for a large-scale mineral
 5 development as defined in 90-6-302 must be conditioned to
 6 provide that activities under the permit may not commence
 7 until the impact plan is approved under 90-6-307 and until
 8 the permittee has provided a written guarantee to the
 9 department and to the hard-rock mining impact board of
 10 compliance within the time schedule with the commitment made
 11 in the approved impact plan, as provided in 90-6-307. If the
 12 permittee does not comply with that commitment within the
 13 time scheduled, the board, upon receipt of written notice
 14 from the hard-rock mining impact board, shall suspend the
 15 permit until it receives written notice from the hard-rock
 16 mining impact board that the permittee is in compliance.

17 (5) When the department determines that a permittee has
 18 become or will become a large-scale mineral developer
 19 pursuant to 82-4-339 and 90-6-302~~4~~(5) and provides notice
 20 as required under 82-4-339, within 6 months of receiving the
 21 notice, the permittee shall provide the board with proof
 22 that he has obtained a waiver of the impact plan requirement
 23 from the hard-rock mining impact board or that he has filed
 24 an impact plan with the hard-rock mining impact board and
 25 the appropriate county or counties. If the permittee does

1 not file the required proof or if the hard-rock mining
 2 impact board certifies to the board that the permittee has
 3 failed to comply with the hard-rock mining impact review and
 4 implementation requirements in Title 90, chapter 6, parts 3
 5 and 4, the board shall suspend the permit until the
 6 permittee files the required proof or until the hard-rock
 7 mining impact board certifies that the permittee has
 8 complied with the hard-rock mining impact review and
 9 implementation requirements.

10 (6) Compliance with 90-6-307 is not required for
 11 exploration and bulk sampling for metallurgical testing when
 12 the aggregate samples are less than 10,000 tons.

13 (7) A person may not be issued an operating permit if
 14 that person's failure to comply with the provisions of this
 15 part, the rules adopted under this part, or a permit or
 16 license issued under this part has resulted in the
 17 forfeiture of a bond unless that person meets the conditions
 18 described in 82-4-360."

19 **Section 5.** Section 82-4-339, MCA, is amended to read:

20 **"82-4-339. Annual report of activities by permittee --**
 21 **fee -- notice of large-scale mineral developer status. (1)**
 22 **Within 30 days after completion or abandonment of operations**
 23 **on an area under permit or within 30 days after each**
 24 **anniversary date of the permit, whichever is earlier, or at**
 25 **such later date as may be provided by rules of the board and**

1 each year thereafter until reclamation is completed and
 2 approved, the permittee shall pay the annual fee of \$25 and
 3 shall file a report of activities completed during the
 4 preceding year on a form prescribed by the board which
 5 report shall:

6 (a) identify the permittee and the permit number;

7 (b) locate the operation by subdivision, section,
 8 township, and range and with relation to the nearest town or
 9 other well-known geographic feature;

10 (c) estimate acreage to be newly disturbed by operation
 11 in the next 12-month period;

12 (d) include the number of persons on the payroll for
 13 the previous permit year and for the next permit year at
 14 intervals that the department considers sufficient to enable
 15 a determination of the permittee's status under
 16 90-6-302(4)(5); and

17 (e) update any maps previously submitted or
 18 specifically requested by the board. Such maps shall show:

19 (i) the permit area;

20 (ii) the unit of disturbed land;

21 (iii) the area to be disturbed during the next 12-month
 22 period;

23 (iv) if completed, the date of completion of operations;

24 (v) if not completed, the additional area estimated to
 25 be further disturbed by the operation within the following

1 permit year; and

2 (vi) the date of beginning, amount, and current status
3 of reclamation performed during the previous 12 months.

4 (2) Whenever the department determines that the
5 permittee has become or will, during the next permit year,
6 become a large-scale mineral developer, it shall immediately
7 serve written notice of that fact on the permittee, the
8 hard-rock mining impact board, and the county or counties in
9 which the operation is located."

10 **Section 6.** Section 90-6-311, MCA, is amended to read:

11 "90-6-311. Impact plan amendments. (1) The impact plan
12 may provide for amendment under definite conditions
13 specified in the plan. Also, the governing body of an
14 affected county or the mineral developer may petition the
15 board for an amendment to an approved impact plan if:

16 (a) employment at the large-scale mineral development
17 is forecast to increase or decrease by at least 75 persons,
18 as determined under 90-6-302(4)(5), over or under the
19 employment levels contemplated by the approved impact plan;
20 or

21 (b) it becomes apparent that an approved impact plan is
22 materially inaccurate because of errors in assessment and 2
23 years have not elapsed since the date the facility begins
24 commercial production; or

25 (c) the governing body of an affected county and the

1 mineral developer join in a petition to amend the impact
2 plan.

3 (2) Within 10 days of receipt the board shall publish
4 notice of the petition at least once in a newspaper of
5 general circulation in the affected county. The petition
6 must include:

7 (a) an explanation of the need for an amendment;

8 (b) a statement of the facts and circumstances
9 underlying the need for an amendment; and

10 (c) a description of the corrective measures proposed
11 by the petitioner.

12 (3) Within 60 days after notice that the petition has
13 been received, an affected local government unit or the
14 mineral developer must notify the board in writing if such
15 person objects to the amendments proposed by the petitioner,
16 specifying the reasons why the impact plan should not be
17 amended as proposed. If no objection is received within the
18 60-day period, the impact plan must be amended by the board
19 as proposed by the petitioner.

20 (4) If an objection is received, within 10 days of its
21 receipt, the board shall notify the petitioner and include a
22 copy of all objections received by the board. If the
23 objecting party and the petitioner cannot resolve the
24 objections within 30 days after the expiration of the 60-day
25 period, the board shall conduct a hearing on the validity of

1 the objections within 30 days after the failure of the
 2 parties to resolve the objections. The hearing must be held
 3 in the affected county or, if objections are received from
 4 local government units in more than one county, must be held
 5 in the county which in the board's judgment is more greatly
 6 affected. The provisions of the Montana Administrative
 7 Procedure Act apply to the conduct of the hearing.

8 (5) Following the hearing, the board shall make
 9 findings as to those portions of the amendments which were
 10 objected to and, if appropriate, amend the impact plan
 11 accordingly. The board shall cause the findings and impact
 12 plan, as amended, to be served on all parties. Any local
 13 government unit or the developer is entitled to judicial
 14 review, as provided by Title 2, chapter 4, part 7, in the
 15 district court for the judicial district in which the
 16 hearing was held."

17 **Section 7.** Section 90-6-307, MCA, is amended to read:

18 **"90-6-307. Impact plan to be submitted.** (1) After an
 19 application for a permit for a large-scale mineral
 20 development is made under 82-4-335, the person seeking the
 21 permit shall submit to the affected counties and the board
 22 an impact plan describing the economic impact the
 23 large-scale mineral development will have on local
 24 government units and shall file proof of such submission to
 25 the counties with the board. Whenever an environmental

1 impact statement on the permit application is prepared under
 2 75-1-201, the lead agency shall cooperate to the fullest
 3 extent practicable with the affected local government units
 4 to eliminate duplication of effort in data collection. The
 5 governing bodies of the affected counties shall publish
 6 notice of the submission of an impact plan at least once in
 7 a newspaper of general circulation in the county. The
 8 mineral developer and the affected local government units
 9 shall ensure that the impact plan includes:

10 (a) a timetable for development, including the opening
 11 date of the development and the estimated closing date;

12 (b) the estimated number of persons coming into the
 13 impacted area as a result of the development;

14 (c) the increased capital and operating cost to local
 15 government units for providing services which can be
 16 expected as a result of the development;

17 (d) the financial or other assistance the developer
 18 will give to local government units to meet the increased
 19 need for services.

20 (2) In the impact plan, the developer shall commit
 21 itself to pay all of the increased capital and net operating
 22 cost to local government units that will be a result of the
 23 development, as identified in the impact plan, either from
 24 tax prepayments, as provided in 90-6-309, special industrial
 25 ~~educational~~ local government facility impact bonds, as

1 provided in 90-6-310, or other funds obtained from the
 2 developer, and shall provide a time schedule within which it
 3 will do so. The plan may provide for funding from other
 4 revenue sources or funding mechanisms if the developer
 5 guarantees that the amount to be provided from these sources
 6 will be paid.

7 (3) Upon request of the governing body of an affected
 8 unit of local government, the mineral developer, prior to
 9 the end of the 90-day review period, shall provide financial
 10 or other assistance as necessary to prepare for and evaluate
 11 the impact plan. The governing body of the affected county
 12 must contract with the developer to obtain the requested
 13 financial assistance for each unit of local government
 14 within the county. Any disbursements to a unit of local
 15 government under this subsection shall be credited against
 16 future tax liabilities, if any.

17 (4) The governing body of the county where the fiscal
 18 impacts on local government units are forecasted in the
 19 impact plan to be most costly shall, within 90 days after
 20 receipt of the impact plan from the developer, conduct a
 21 public hearing on the impact plan.

22 (5) An affected local government unit that has not been
 23 identified in an impact plan submitted to the board as being
 24 likely to experience increased capital and operating costs
 25 for providing services which can be expected as a result of

1 the development may object to the impact plan under the
 2 provisions of this section if the local government unit
 3 clearly demonstrates that it is likely to experience
 4 increased capital and operating costs from the mineral
 5 development.

6 (6) An affected local government unit shall, within 90
 7 days after receipt of the impact plan from the developer,
 8 notify the board in writing if that local government unit
 9 objects to the impact plan, specifying the reasons why the
 10 impact plan is objected to. During the 90-day period, an
 11 affected local government unit may petition for one 30-day
 12 extension by submitting a written request to the board
 13 stating the need and justification for the extension. The
 14 board shall grant the extension unless it finds there is no
 15 reasonable basis for the request. If no objection is
 16 received within the 90-day period or any extension thereof,
 17 the impact plan is approved without any review by the board.
 18 An approved plan is binding and may only be altered under
 19 the amendment provisions of 90-6-311.

20 (7) If objections are received from a local government
 21 unit, the board shall, within 10 days, notify the developer
 22 and forward a copy of the local government unit's objections
 23 to the developer. The local government unit and the
 24 developer have 30 days, or a longer period if both the local
 25 government unit and the developer request an extension, to

1 resolve the objection. If the objections are not resolved,
 2 the board shall conduct a hearing on the validity of the
 3 objections, which shall be held in the affected county or,
 4 if objections are received from local government units in
 5 more than one county, shall be held in the county which, in
 6 the board's judgment, is more greatly affected. The
 7 provisions of the Montana Administrative Procedure Act shall
 8 apply to the conduct of the hearing. The impact plan filed
 9 by the developer shall carry no presumption of correctness
 10 at the hearing.

11 (8) Following the hearing, the board shall, within 60
 12 days, make findings as to those portions of the impact plan
 13 which were objected to and, if appropriate, amend the impact
 14 plan accordingly. The findings and impact plan, as amended,
 15 shall be served by the board upon all parties. Any local
 16 government unit or the developer, if aggrieved by the
 17 decision of the board, is entitled to judicial review, as
 18 provided by Title 2, chapter 4, part 7, in the district
 19 court in and for the judicial district in which the hearing
 20 was held.

21 (9) The developer shall, within 30 days of receipt of
 22 the approved impact plan, provide the board with a written
 23 guarantee that the developer will meet the increased costs
 24 of public services and facilities as specified in the
 25 approved impact plan and according to the time schedule

1 contained in the approved impact plan.

2 (10) The developer may make payments as specified in the
 3 approved impact plan directly to a local government unit or
 4 to the board. The governing body of a local government unit
 5 receiving payments shall deposit the payments into an impact
 6 fund. The developer and the affected governing body shall
 7 each issue to the board written verification of each payment
 8 and its intended use in compliance with the impact plan. The
 9 board shall deposit payments received from a developer into
 10 the hard-rock mining impact account established by 90-6-304.

11 (11) The board shall notify the department of state
 12 lands of its receipt of the written guarantee of payment and
 13 of any failure of the developer to comply with this section.

14 (12) Upon receipt of evidence that an affected local
 15 government unit identified in the approved impact plan is
 16 providing or is preparing to provide an additional service
 17 or facility provided for in the approved impact plan, the
 18 board shall, if the hard-rock mining impact account is used
 19 to deliver payments to the local government unit, pay to
 20 that local government unit, in one sum or in parts, the
 21 money from the hard-rock mining impact account identified in
 22 the plan as the increased cost to the local government unit
 23 of providing that public service or facility.

24 (13) If it is determined that an objection filed by an
 25 affected local government unit under subsections (5) and (6)

1 or 90-6-311(3) is valid and it results in some remedial
 2 order by the board or court of competent jurisdiction, the
 3 local government unit shall be awarded and the developer
 4 shall pay reasonable costs and attorney fees associated with
 5 any administrative or judicial appeals filed under this
 6 section. Any attorney fees and costs awarded shall be in
 7 addition to any amounts paid by the developer under this
 8 part.

9 (14) Upon a determination by the department of state
 10 lands that a permittee under 82-4-335 has become or will
 11 become a large-scale mineral developer, the permittee may
 12 petition the board for a waiver of the impact plan
 13 requirement. The board may grant a waiver or conditional
 14 waiver of this requirement only if it has provided notice
 15 and opportunity for hearing to the permittee and to all
 16 affected local government units. The board shall adopt
 17 criteria under which a waiver may be granted. A waiver
 18 issued by the board may be revoked as provided in the
 19 conditional waiver or if the permittee and contractors at
 20 the mineral development increase their payrolls from the
 21 date of the waiver by 75 or more persons, provided the
 22 revocation is requested by an affected local government unit
 23 and notice and opportunity for hearing are given to the
 24 permittee and all affected local government units. The board
 25 shall notify the board of land commissioners of any waiver

1 that has been revoked.

2 (15) When a person who holds an operating permit under
 3 82-4-335 and who has filed an impact plan fails to comply
 4 with the review and implementation requirements in this part
 5 and part 4 of this chapter, the board shall certify to the
 6 board of land commissioners that the failure to comply has
 7 occurred and shall certify when a permittee who has
 8 previously failed to comply comes into compliance."

9 NEW SECTION. Section 8. Effective date. [This act] is
 10 effective on passage and approval.

-End-

1 *House* BILL NO. *237*
 2 INTRODUCED BY *William Owen Brown Keller Rove*
 3 *Robert Paulsen Brady M. Hansen*

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 20 associated milling facility for which a permit is applied
 21 for under 82-4-335 on or after May 18, 1981, and for which
 22 the average number of persons on the payroll of the mineral
 23 developer and of contractors at the mineral development
 24 exceeds or is projected to exceed 75 for any consecutive
 25 6-month period. A mining operation that would qualify as a



1 large-scale mineral development under this subsection is not
 2 a large-scale mineral development if the mine owner and
 3 operator are small miners as defined in 82-4-303."

4 **Section 2.** Section 90-6-310, MCA, is amended to read:

5 "90-6-310. Education Local government facility impact
 6 bonds. (1) When the need for ~~new--school~~ the construction,
 7 renovation, improvement, or acquisition of local government
 8 facilities as a result of the large-scale mineral
 9 development is determined under 90-6-307, the owners of a
 10 large-scale mineral development may enter into a written
 11 agreement with the ~~trustees-of-a-school-district-that-has~~
 12 local government unit having the burden for the issuance--of
 13 bonds--to--cover-the-cost-of-such-new-construction increased
 14 capital and operating costs expected to be incurred by the
 15 facilities. The ~~trustees--of--a--school--district~~ local
 16 government unit may execute a written agreement with the
 17 owner of a large-scale mineral development for the issuance
 18 of any special industrial educational local government
 19 facility impact bonds provided for in this section.

20 (2) The agreement with the owners of a large-scale
 21 mineral development shall provide for a payment guarantee,
 22 in addition to the taxes imposed by the ~~school--district~~
 23 local government unit on property owners generally, of the
 24 principal and interest on the bonds provided for in this
 25 section. Payment will then be made by an annual special tax

1 levy on the property of the large-scale mineral development
 2 sufficient to retire the principal and interest on these
 3 special impact bonds. The bonds shall not be an obligation
 4 of the ~~trustees--or--the--school-district~~ local government
 5 unit, but shall be special obligations limited to the
 6 revenue derived from the special tax levy. A local
 7 government unit shall establish a levy and, to the extent
 8 bonds are issued as provided in this section, shall pledge
 9 the special fund and all revenues of the special tax levy to
 10 the repayment of the bonds.

11 (3) The debt limits set forth in 7-7-2203, 7-7-4201,
 12 and 20-9-406 and ~~the--provisions-of-20-9-410-and-20-9-421~~
 13 through-20-9-432, inclusive, do not apply to bonds issued in
 14 accordance with this section. The interest on such bonds
 15 shall not be subject to state taxes.

16 (4) The impact bonds shall be authorized by the
 17 governing body of the local government unit by a resolution
 18 that states:

- 19 (a) the facility for which the bonds are issued;
 20 (b) the amount of the bonds;
 21 (c) the rate of interest the bonds bear;
 22 (d) the date of the bonds and the maturity date or
 23 dates of the bonds;
 24 (e) the dates interest is payable on the bonds;
 25 (f) the redemption options, if any, with respect to the

1 bonds; and

2 (g) the manner of execution of the bonds.

3 (5) The impact bonds shall be:

4 (a) in registered form as to principal and interest;

5 (b) payable in installments and at times not exceeding

6 30 years from their date of issuance; and

7 (c) payable at a place or places and be evidenced in a

8 manner the governing body determines is in the best interest

9 of the local government unit.

10 (6) Any impact bonds issued under the authority of this

11 section may be sold at public or private sale in a manner,

12 at a time or times, and at a price above or below par as may

13 be determined by the governing body of the local government

14 unit. All expenses, premiums, and commissions that the local

15 government unit considers necessary or advantageous in

16 connection with the authorization, sale, and issuance of the

17 bonds may be paid by the governing body of the local

18 government unit from the proceeds of the sale of the bonds.

19 (7) If more than one local government unit adopts a

20 resolution to issue impact bonds, the local government units

21 may enter into an interlocal agreement under 7-11-101

22 through 7-11-108, providing for the issue of impact bonds of

23 the local government units to be combined in a single

24 offering, if the governing body of each local government

25 unit authorizing the bonds determines that the pooling of

1 bonds:

2 (a) is in the best interest of the local government

3 units;

4 (b) will facilitate the sale of the bonds under more

5 advantageous terms;

6 (c) will lower the interest rates; or

7 (d) will lower the cost of issuance.

8 (8) In addition to the specific requirements of

9 7-11-105, the interlocal agreement shall provide:

10 (a) that the bond titles shall denote that impact bonds

11 of different local government units have been pooled and

12 shall refer to each local government unit executing the

13 interlocal agreement;

14 (b) for a single debt service fund, to be held by a

15 qualified trust company, to which each local government unit

16 shall pledge and pay the annual special tax levies levied

17 against the large-scale mineral development; and

18 (c) that the bonds are payable solely from and against

19 the debt service funds under the interlocal agreement."

20 **Section 3.** Section 15-16-201, MCA, is amended to read:

21 "15-16-201. Tax prepayment -- new industrial

22 facilities. (1) A person intending to construct or locate a

23 major new industrial facility, as defined in subsection (2)

24 of this section, shall upon request of the board of county

25 commissioners of the county in which the facility is to be

1 located, prepay, when permission is granted to construct or
 2 locate by the appropriate governmental agency, an amount
 3 equal to three times the estimated property tax due the year
 4 the facility is completed. The person who is to prepay under
 5 this section shall not be obligated to prepay the entire
 6 amount at one time but, upon request of the board of county
 7 commissioners of the county, shall prepay only that amount
 8 shown to be needed from time to time. To assure this payment
 9 or payments, the person who is to prepay shall guarantee to
 10 the board of county commissioners and also have a bank or
 11 banks guarantee that these amounts will be paid as needed
 12 for expenditures created by the impact. When the facility is
 13 completed and assessed by the department of revenue, it
 14 shall be subject during the first 3 years and thereafter to
 15 taxation as all other property similarly situated, except
 16 that one-fifth of the amount prepaid shall be allowed as a
 17 credit against property taxes in each of the first 5 years
 18 after the start of productive operation of the facility.

19 (2) A major new industrial facility is a manufacturing
 20 or mining facility other than a large-scale mineral
 21 development as defined in 90-6-302(4)(5) which will employ
 22 on an average annual basis at least 100 people in
 23 construction or operation of the facility and which will
 24 create a substantial adverse impact on existing state,
 25 county, or municipal services."

1 **Section 4.** Section 82-4-335, MCA, is amended to read:

2 **"82-4-335. Operating permit -- limitation.** (1) A person
 3 may not engage in mining, ore processing, or reprocessing of
 4 tailings or waste material, construct or operate a hard-rock
 5 mill, use cyanide ore-processing reagents, or disturb land
 6 in anticipation of those activities in the state without
 7 first obtaining an operating permit from the board. A
 8 separate operating permit is required for each complex.

9 (2) A small miner who intends to use a cyanide
 10 ore-processing reagent shall obtain an operating permit for
 11 that part of his operation where the cyanide ore-processing
 12 reagent will be used or disposed of.

13 (3) Prior to receiving an operating permit from the
 14 board, a person shall pay the basic permit fee of \$25 and
 15 shall submit an application on a form provided by the board,
 16 which must contain the following information and any other
 17 pertinent data required by rule:

18 (a) name and address of the operator and, if a
 19 corporation or other business entity, the name and address
 20 of its principal officers, partners, and the like and its
 21 resident agent for service of process, if required by law;

22 (b) minerals expected to be mined;

23 (c) a proposed reclamation plan;

24 (d) expected starting date of operations;

25 (e) a map showing the specific area to be mined and the

1 boundaries of the land which will be disturbed, topographic
 2 detail, the location and names of all streams, roads,
 3 railroads, and utility lines on or immediately adjacent to
 4 the area, location of proposed access roads to be built, and
 5 the names and addresses of the surface and mineral owners of
 6 all lands within the mining area, to the extent known to the
 7 applicant;

8 (f) types of access roads to be built and manner of
 9 reclamation of road sites on abandonment;

10 (g) a plan which will provide, within limits of normal
 11 operating procedures of the industry, for completion of the
 12 operation;

13 (h) ground water and surface water hydrologic data
 14 gathered from a sufficient number of sources and length of
 15 time to characterize the hydrologic regime;

16 (i) a plan detailing the design, operation, and
 17 monitoring of impounding structures, including but not
 18 limited to tailings impoundments and water reservoirs,
 19 sufficient to ensure that the structures are safe and
 20 stable;

21 (j) a plan identifying methods to be used to monitor
 22 for the accidental discharge of objectionable materials and
 23 remedial action plans to be used to control and mitigate
 24 discharges to surface or ground water; and

25 (k) an evaluation of the expected life of any tailings

1 impoundment or waste area and the potential for expansion of
 2 the tailings impoundment or waste site.

3 (4) Except as provided in subsection (6), the permit
 4 provided for in subsection (1) for a large-scale mineral
 5 development as defined in 90-6-302 must be conditioned to
 6 provide that activities under the permit may not commence
 7 until the impact plan is approved under 90-6-307 and until
 8 the permittee has provided a written guarantee to the
 9 department and to the hard-rock mining impact board of
 10 compliance within the time schedule with the commitment made
 11 in the approved impact plan, as provided in 90-6-307. If the
 12 permittee does not comply with that commitment within the
 13 time scheduled, the board, upon receipt of written notice
 14 from the hard-rock mining impact board, shall suspend the
 15 permit until it receives written notice from the hard-rock
 16 mining impact board that the permittee is in compliance.

17 (5) When the department determines that a permittee has
 18 become or will become a large-scale mineral developer
 19 pursuant to 82-4-339 and 90-6-302(4)(5) and provides notice
 20 as required under 82-4-339, within 6 months of receiving the
 21 notice, the permittee shall provide the board with proof
 22 that he has obtained a waiver of the impact plan requirement
 23 from the hard-rock mining impact board or that he has filed
 24 an impact plan with the hard-rock mining impact board and
 25 the appropriate county or counties. If the permittee does

1 not file the required proof or if the hard-rock mining
 2 impact board certifies to the board that the permittee has
 3 failed to comply with the hard-rock mining impact review and
 4 implementation requirements in Title 90, chapter 6, parts 3
 5 and 4, the board shall suspend the permit until the
 6 permittee files the required proof or until the hard-rock
 7 mining impact board certifies that the permittee has
 8 complied with the hard-rock mining impact review and
 9 implementation requirements.

10 (6) Compliance with 90-6-307 is not required for
 11 exploration and bulk sampling for metallurgical testing when
 12 the aggregate samples are less than 10,000 tons.

13 (7) A person may not be issued an operating permit if
 14 that person's failure to comply with the provisions of this
 15 part, the rules adopted under this part, or a permit or
 16 license issued under this part has resulted in the
 17 forfeiture of a bond unless that person meets the conditions
 18 described in 82-4-360."

19 **Section 5.** Section 82-4-339, MCA, is amended to read:

20 "82-4-339. Annual report of activities by permittee --
 21 fee -- notice of large-scale mineral developer status. (1)
 22 Within 30 days after completion or abandonment of operations
 23 on an area under permit or within 30 days after each
 24 anniversary date of the permit, whichever is earlier, or at
 25 such later date as may be provided by rules of the board and

1 each year thereafter until reclamation is completed and
 2 approved, the permittee shall pay the annual fee of \$25 and
 3 shall file a report of activities completed during the
 4 preceding year on a form prescribed by the board which
 5 report shall:

6 (a) identify the permittee and the permit number;

7 (b) locate the operation by subdivision, section,
 8 township, and range and with relation to the nearest town or
 9 other well-known geographic feature;

10 (c) estimate acreage to be newly disturbed by operation
 11 in the next 12-month period;

12 (d) include the number of persons on the payroll for
 13 the previous permit year and for the next permit year at
 14 intervals that the department considers sufficient to enable
 15 a determination of the permittee's status under
 16 90-6-302{4}{5}; and

17 (e) update any maps previously submitted or
 18 specifically requested by the board. Such maps shall show:

19 (i) the permit area;

20 (ii) the unit of disturbed land;

21 (iii) the area to be disturbed during the next 12-month
 22 period;

23 (iv) if completed, the date of completion of operations;

24 (v) if not completed, the additional area estimated to
 25 be further disturbed by the operation within the following

1 permit year; and

2 (vi) the date of beginning, amount, and current status
3 of reclamation performed during the previous 12 months.

4 (2) Whenever the department determines that the
5 permittee has become or will, during the next permit year,
6 become a large-scale mineral developer, it shall immediately
7 serve written notice of that fact on the permittee, the
8 hard-rock mining impact board, and the county or counties in
9 which the operation is located."

10 **Section 6.** Section 90-6-311, MCA, is amended to read:

11 "90-6-311. **Impact plan amendments.** (1) The impact plan
12 may provide for amendment under definite conditions
13 specified in the plan. Also, the governing body of an
14 affected county or the mineral developer may petition the
15 board for an amendment to an approved impact plan if:

16 (a) employment at the large-scale mineral development
17 is forecast to increase or decrease by at least 75 persons,
18 as determined under 90-6-302~~(4)~~(5), over or under the
19 employment levels contemplated by the approved impact plan;
20 or

21 (b) it becomes apparent that an approved impact plan is
22 materially inaccurate because of errors in assessment and 2
23 years have not elapsed since the date the facility begins
24 commercial production; or

25 (c) the governing body of an affected county and the

1 mineral developer join in a petition to amend the impact
2 plan.

3 (2) Within 10 days of receipt the board shall publish
4 notice of the petition at least once in a newspaper of
5 general circulation in the affected county. The petition
6 must include:

7 (a) an explanation of the need for an amendment;

8 (b) a statement of the facts and circumstances
9 underlying the need for an amendment; and

10 (c) a description of the corrective measures proposed
11 by the petitioner.

12 (3) Within 60 days after notice that the petition has
13 been received, an affected local government unit or the
14 mineral developer must notify the board in writing if such
15 person objects to the amendments proposed by the petitioner,
16 specifying the reasons why the impact plan should not be
17 amended as proposed. If no objection is received within the
18 60-day period, the impact plan must be amended by the board
19 as proposed by the petitioner.

20 (4) If an objection is received, within 10 days of its
21 receipt, the board shall notify the petitioner and include a
22 copy of all objections received by the board. If the
23 objecting party and the petitioner cannot resolve the
24 objections within 30 days after the expiration of the 60-day
25 period, the board shall conduct a hearing on the validity of

1 the objections within 30 days after the failure of the
 2 parties to resolve the objections. The hearing must be held
 3 in the affected county or, if objections are received from
 4 local government units in more than one county, must be held
 5 in the county which in the board's judgment is more greatly
 6 affected. The provisions of the Montana Administrative
 7 Procedure Act apply to the conduct of the hearing.

8 (5) Following the hearing, the board shall make
 9 findings as to those portions of the amendments which were
 10 objected to and, if appropriate, amend the impact plan
 11 accordingly. The board shall cause the findings and impact
 12 plan, as amended, to be served on all parties. Any local
 13 government unit or the developer is entitled to judicial
 14 review, as provided by Title 2, chapter 4, part 7, in the
 15 district court for the judicial district in which the
 16 hearing was held."

17 **Section 7.** Section 90-6-307, MCA, is amended to read:

18 "90-6-307. Impact plan to be submitted. (1) After an
 19 application for a permit for a large-scale mineral
 20 development is made under 82-4-335, the person seeking the
 21 permit shall submit to the affected counties and the board
 22 an impact plan describing the economic impact the
 23 large-scale mineral development will have on local
 24 government units and shall file proof of such submission to
 25 the counties with the board. Whenever an environmental

1 impact statement on the permit application is prepared under
 2 75-1-201, the lead agency shall cooperate to the fullest
 3 extent practicable with the affected local government units
 4 to eliminate duplication of effort in data collection. The
 5 governing bodies of the affected counties shall publish
 6 notice of the submission of an impact plan at least once in
 7 a newspaper of general circulation in the county. The
 8 mineral developer and the affected local government units
 9 shall ensure that the impact plan includes:

10 (a) a timetable for development, including the opening
 11 date of the development and the estimated closing date;

12 (b) the estimated number of persons coming into the
 13 impacted area as a result of the development;

14 (c) the increased capital and operating cost to local
 15 government units for providing services which can be
 16 expected as a result of the development;

17 (d) the financial or other assistance the developer
 18 will give to local government units to meet the increased
 19 need for services.

20 (2) In the impact plan, the developer shall commit
 21 itself to pay all of the increased capital and net operating
 22 cost to local government units that will be a result of the
 23 development, as identified in the impact plan, either from
 24 tax prepayments, as provided in 90-6-309, special industrial
 25 educational local government facility impact bonds, as

1 provided in 90-6-310, or other funds obtained from the
 2 developer, and shall provide a time schedule within which it
 3 will do so. The plan may provide for funding from other
 4 revenue sources or funding mechanisms if the developer
 5 guarantees that the amount to be provided from these sources
 6 will be paid.

7 (3) Upon request of the governing body of an affected
 8 unit of local government, the mineral developer, prior to
 9 the end of the 90-day review period, shall provide financial
 10 or other assistance as necessary to prepare for and evaluate
 11 the impact plan. The governing body of the affected county
 12 must contract with the developer to obtain the requested
 13 financial assistance for each unit of local government
 14 within the county. Any disbursements to a unit of local
 15 government under this subsection shall be credited against
 16 future tax liabilities, if any.

17 (4) The governing body of the county where the fiscal
 18 impacts on local government units are forecasted in the
 19 impact plan to be most costly shall, within 90 days after
 20 receipt of the impact plan from the developer, conduct a
 21 public hearing on the impact plan.

22 (5) An affected local government unit that has not been
 23 identified in an impact plan submitted to the board as being
 24 likely to experience increased capital and operating costs
 25 for providing services which can be expected as a result of

1 the development may object to the impact plan under the
 2 provisions of this section if the local government unit
 3 clearly demonstrates that it is likely to experience
 4 increased capital and operating costs from the mineral
 5 development.

6 (6) An affected local government unit shall, within 90
 7 days after receipt of the impact plan from the developer,
 8 notify the board in writing if that local government unit
 9 objects to the impact plan, specifying the reasons why the
 10 impact plan is objected to. During the 90-day period, an
 11 affected local government unit may petition for one 30-day
 12 extension by submitting a written request to the board
 13 stating the need and justification for the extension. The
 14 board shall grant the extension unless it finds there is no
 15 reasonable basis for the request. If no objection is
 16 received within the 90-day period or any extension thereof,
 17 the impact plan is approved without any review by the board.
 18 An approved plan is binding and may only be altered under
 19 the amendment provisions of 90-6-311.

20 (7) If objections are received from a local government
 21 unit, the board shall, within 10 days, notify the developer
 22 and forward a copy of the local government unit's objections
 23 to the developer. The local government unit and the
 24 developer have 30 days, or a longer period if both the local
 25 government unit and the developer request an extension, to

1 resolve the objection. If the objections are not resolved,
 2 the board shall conduct a hearing on the validity of the
 3 objections, which shall be held in the affected county or,
 4 if objections are received from local government units in
 5 more than one county, shall be held in the county which, in
 6 the board's judgment, is more greatly affected. The
 7 provisions of the Montana Administrative Procedure Act shall
 8 apply to the conduct of the hearing. The impact plan filed
 9 by the developer shall carry no presumption of correctness
 10 at the hearing.

11 (8) Following the hearing, the board shall, within 60
 12 days, make findings as to those portions of the impact plan
 13 which were objected to and, if appropriate, amend the impact
 14 plan accordingly. The findings and impact plan, as amended,
 15 shall be served by the board upon all parties. Any local
 16 government unit or the developer, if aggrieved by the
 17 decision of the board, is entitled to judicial review, as
 18 provided by Title 2, chapter 4, part 7, in the district
 19 court in and for the judicial district in which the hearing
 20 was held.

21 (9) The developer shall, within 30 days of receipt of
 22 the approved impact plan, provide the board with a written
 23 guarantee that the developer will meet the increased costs
 24 of public services and facilities as specified in the
 25 approved impact plan and according to the time schedule

1 contained in the approved impact plan.

2 (10) The developer may make payments as specified in the
 3 approved impact plan directly to a local government unit or
 4 to the board. The governing body of a local government unit
 5 receiving payments shall deposit the payments into an impact
 6 fund. The developer and the affected governing body shall
 7 each issue to the board written verification of each payment
 8 and its intended use in compliance with the impact plan. The
 9 board shall deposit payments received from a developer into
 10 the hard-rock mining impact account established by 90-6-304.

11 (11) The board shall notify the department of state
 12 lands of its receipt of the written guarantee of payment and
 13 of any failure of the developer to comply with this section.

14 (12) Upon receipt of evidence that an affected local
 15 government unit identified in the approved impact plan is
 16 providing or is preparing to provide an additional service
 17 or facility provided for in the approved impact plan, the
 18 board shall, if the hard-rock mining impact account is used
 19 to deliver payments to the local government unit, pay to
 20 that local government unit, in one sum or in parts, the
 21 money from the hard-rock mining impact account identified in
 22 the plan as the increased cost to the local government unit
 23 of providing that public service or facility.

24 (13) If it is determined that an objection filed by an
 25 affected local government unit under subsections (5) and (6)

1 or 90-6-311(3) is valid and it results in some remedial
 2 order by the board or court of competent jurisdiction, the
 3 local government unit shall be awarded and the developer
 4 shall pay reasonable costs and attorney fees associated with
 5 any administrative or judicial appeals filed under this
 6 section. Any attorney fees and costs awarded shall be in
 7 addition to any amounts paid by the developer under this
 8 part.

9 (14) Upon a determination by the department of state
 10 lands that a permittee under 82-4-335 has become or will
 11 become a large-scale mineral developer, the permittee may
 12 petition the board for a waiver of the impact plan
 13 requirement. The board may grant a waiver or conditional
 14 waiver of this requirement only if it has provided notice
 15 and opportunity for hearing to the permittee and to all
 16 affected local government units. The board shall adopt
 17 criteria under which a waiver may be granted. A waiver
 18 issued by the board may be revoked as provided in the
 19 conditional waiver or if the permittee and contractors at
 20 the mineral development increase their payrolls from the
 21 date of the waiver by 75 or more persons, provided the
 22 revocation is requested by an affected local government unit
 23 and notice and opportunity for hearing are given to the
 24 permittee and all affected local government units. The board
 25 shall notify the board of land commissioners of any waiver

1 that has been revoked.

2 (15) When a person who holds an operating permit under
 3 82-4-335 and who has filed an impact plan fails to comply
 4 with the review and implementation requirements in this part
 5 and part 4 of this chapter, the board shall certify to the
 6 board of land commissioners that the failure to comply has
 7 occurred and shall certify when a permittee who has
 8 previously failed to comply comes into compliance."

9 NEW SECTION. **Section 8.** Effective date. [This act] is
 10 effective on passage and approval.

-End-

1 HOUSE BILL NO. 237

2 INTRODUCED BY ELLISON, D. BROWN, KELLER, RANEY,
3 GILBERT, QUILICI, GRADY, M. HANSON, GROSFIELD

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE
6 PERMISSIBLE PROJECTS FINANCED BY HARD-ROCK MINING IMPACT
7 BONDS; TO CLARIFY THE PROCEDURE FOR THE ISSUANCE OF BONDS;
8 TO PROVIDE FOR INTERLOCAL AGREEMENTS TO FACILITATE BOND
9 ISSUES; AMENDING SECTIONS 15-16-201, 82-4-335, 82-4-339,
10 90-6-302, 90-6-307, 90-6-310, AND 90-6-311, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 90-6-302, MCA, is amended to read:

15 "90-6-302. Definitions. In this part the following
16 definitions apply:

17 (1) "Board" means the hard-rock mining impact board
18 established in 2-15-1822.

19 (2) "Bonds" include bonds, notes, warrants, debentures,
20 certificates of indebtedness, temporary bonds, temporary
21 notes, interim receipts, interim certificates, and all
22 instruments or obligations evidencing or representing
23 indebtedness or evidencing or representing the borrowing of
24 money or evidencing or representing a charge, lien, or
25 encumbrance on specific revenues, special assessments,

1 income, or property of a political subdivision, including
2 all instruments or obligations payable from a special fund.

3 (3) "Facility" means a facility that is owned,
4 operated, or maintained by a local government unit and that,
5 under the impact plan submitted under the provisions of
6 90-6-307, can be expected to have increased capital and
7 operating costs as a result of the large-scale mineral
8 development.

9 ~~(3)~~(4) "Local government unit" means a county, city,
10 town, school district, or any of the following independent
11 special districts:

- 12 (a) rural fire district;
13 (b) public hospital district;
14 (c) refuse disposal district;
15 (d) county water and sewer district;
16 (e) county water district; ~~or~~
17 (f) county sewer district; ~~or~~
18 (g) park district.

19 ~~(4)~~(5) "Large-scale mineral development" means the
20 construction or operation of a hard-rock mine and the
21 associated milling facility for which a permit is applied
22 for under 82-4-335 on or after May 18, 1981, and for which
23 the average number of persons on the payroll of the mineral
24 developer and of contractors at the mineral development
25 exceeds or is projected to exceed 75 for any consecutive

1 6-month period. A mining operation that would qualify as a
2 large-scale mineral development under this subsection is not
3 a large-scale mineral development if the mine owner and
4 operator are small miners as defined in 82-4-303."

5 **Section 2.** Section 90-6-310, MCA, is amended to read:

6 **"90-6-310. Education Local government facility impact**
7 **bonds.** (1) When the need for ~~new--school~~ the construction,
8 renovation, improvement, or acquisition of local government
9 facilities as a result of the large-scale mineral
10 development is determined under 90-6-307, the owners of a
11 large-scale mineral development may enter into a written
12 agreement with the ~~trustees-of-a-school-district-that-has~~
13 local government unit having the burden for the issuance--of
14 bonds--to--cover-the-cost-of-such-new-construction increased
15 capital and operating costs expected to be incurred by the
16 facilities. The ~~trustees--of--a--school--district~~ local
17 government unit may execute a written agreement with the
18 owner of a large-scale mineral development for the issuance
19 of any special industrial ~~educational~~ local government
20 facility impact bonds provided for in this section.

21 (2) The agreement with the owners of a large-scale
22 mineral development shall provide for a payment guarantee,
23 in addition to the taxes imposed by the ~~school--district~~
24 local government unit on property owners generally, of the
25 principal and interest on the bonds provided for in this

1 section. Payment will then be made by an annual special tax
2 levy on the property of the large-scale mineral development
3 sufficient to retire the principal and interest on these
4 special impact bonds. The bonds shall not be an obligation
5 of the ~~trustees--or--the--school-district~~ local government
6 unit, but shall be special obligations limited to the
7 revenue derived from the special tax levy. A local
8 government unit shall establish a levy and, to the extent
9 bonds are issued as provided in this section, shall pledge
10 the special fund and all revenues of the special tax levy to
11 the repayment of the bonds.

12 (3) The debt limits set forth in 7-7-2203, 7-7-4201,
13 and 20-9-406 ~~and--the--provisions-of-20-9-410-and-20-9-421~~
14 ~~through-20-9-432y-inclusive,~~ do not apply to bonds issued in
15 accordance with this section. The interest on such bonds
16 shall not be subject to state taxes.

17 (4) The impact bonds shall be authorized by the
18 governing body of the local government unit by a resolution
19 that states:

20 (a) the facility for which the bonds are issued;

21 (b) the amount of the bonds;

22 (c) the rate of interest the bonds bear;

23 (d) the date of the bonds and the maturity date or
24 dates of the bonds;

25 (e) the dates interest is payable on the bonds;

1 (f) the redemption options, if any, with respect to the
2 bonds; and

3 (g) the manner of execution of the bonds.

4 (5) The impact bonds shall be:

5 (a) in registered form as to principal and interest;

6 (b) payable in installments and at times not exceeding
7 30 years from their date of issuance; and

8 (c) payable at a place or places and be evidenced in a
9 manner the governing body determines is in the best interest
10 of the local government unit.

11 (6) Any impact bonds issued under the authority of this
12 section may be sold at public or private sale in a manner,
13 at a time or times, and at a price above or below par as may
14 be determined by the governing body of the local government
15 unit. All expenses, premiums, and commissions that the local
16 government unit considers necessary or advantageous in
17 connection with the authorization, sale, and issuance of the
18 bonds may be paid by the governing body of the local
19 government unit from the proceeds of the sale of the bonds.

20 (7) If more than one local government unit adopts a
21 resolution to issue impact bonds, the local government units
22 may enter into an interlocal agreement under 7-11-101
23 through 7-11-108, providing for the issue of impact bonds of
24 the local government units to be combined in a single
25 offering, if the governing body of each local government

1 unit authorizing the bonds determines that the pooling of
2 bonds:

3 (a) is in the best interest of the local government
4 units;

5 (b) will facilitate the sale of the bonds under more
6 advantageous terms;

7 (c) will lower the interest rates; or

8 (d) will lower the cost of issuance.

9 (8) In addition to the specific requirements of
10 7-11-105, the interlocal agreement shall provide:

11 (a) that the bond titles shall denote that impact bonds
12 of different local government units have been pooled and
13 shall refer to each local government unit executing the
14 interlocal agreement;

15 (b) for a single debt service fund, to be held by a
16 qualified trust company, to which each local government unit
17 shall pledge and pay the annual special tax levies levied
18 against the large-scale mineral development; and

19 (c) that the bonds are payable solely from and against
20 the debt service funds under the interlocal agreement."

21 **Section 3.** Section 15-16-201, MCA, is amended to read:

22 "15-16-201. Tax prepayment -- new industrial
23 facilities. (1) A person intending to construct or locate a
24 major new industrial facility, as defined in subsection (2)
25 of this section, shall upon request of the board of county

1 commissioners of the county in which the facility is to be
 2 located, prepay, when permission is granted to construct or
 3 locate by the appropriate governmental agency, an amount
 4 equal to three times the estimated property tax due the year
 5 the facility is completed. The person who is to prepay under
 6 this section shall not be obligated to prepay the entire
 7 amount at one time but, upon request of the board of county
 8 commissioners of the county, shall prepay only that amount
 9 shown to be needed from time to time. To assure this payment
 10 or payments, the person who is to prepay shall guarantee to
 11 the board of county commissioners and also have a bank or
 12 banks guarantee that these amounts will be paid as needed
 13 for expenditures created by the impact. When the facility is
 14 completed and assessed by the department of revenue, it
 15 shall be subject during the first 3 years and thereafter to
 16 taxation as all other property similarly situated, except
 17 that one-fifth of the amount prepaid shall be allowed as a
 18 credit against property taxes in each of the first 5 years
 19 after the start of productive operation of the facility.

20 (2) A major new industrial facility is a manufacturing
 21 or mining facility other than a large-scale mineral
 22 development as defined in 90-6-302(4)(5) which will employ
 23 on an average annual basis at least 100 people in
 24 construction or operation of the facility and which will
 25 create a substantial adverse impact on existing state,

1 county, or municipal services."

2 **Section 4.** Section 82-4-335, MCA, is amended to read:

3 **"82-4-335. Operating permit -- limitation.** (1) A person
 4 may not engage in mining, ore processing, or reprocessing of
 5 tailings or waste material, construct or operate a hard-rock
 6 mill, use cyanide ore-processing reagents, or disturb land
 7 in anticipation of those activities in the state without
 8 first obtaining an operating permit from the board. A
 9 separate operating permit is required for each complex.

10 (2) A small miner who intends to use a cyanide
 11 ore-processing reagent shall obtain an operating permit for
 12 that part of his operation where the cyanide ore-processing
 13 reagent will be used or disposed of.

14 (3) Prior to receiving an operating permit from the
 15 board, a person shall pay the basic permit fee of \$25 and
 16 shall submit an application on a form provided by the board,
 17 which must contain the following information and any other
 18 pertinent data required by rule:

19 (a) name and address of the operator and, if a
 20 corporation or other business entity, the name and address
 21 of its principal officers, partners, and the like and its
 22 resident agent for service of process, if required by law;

23 (b) minerals expected to be mined;

24 (c) a proposed reclamation plan;

25 (d) expected starting date of operations;

1 (e) a map showing the specific area to be mined and the
 2 boundaries of the land which will be disturbed, topographic
 3 detail, the location and names of all streams, roads,
 4 railroads, and utility lines on or immediately adjacent to
 5 the area, location of proposed access roads to be built, and
 6 the names and addresses of the surface and mineral owners of
 7 all lands within the mining area, to the extent known to the
 8 applicant;

9 (f) types of access roads to be built and manner of
 10 reclamation of road sites on abandonment;

11 (g) a plan which will provide, within limits of normal
 12 operating procedures of the industry, for completion of the
 13 operation;

14 (h) ground water and surface water hydrologic data
 15 gathered from a sufficient number of sources and length of
 16 time to characterize the hydrologic regime;

17 (i) a plan detailing the design, operation, and
 18 monitoring of impounding structures, including but not
 19 limited to tailings impoundments and water reservoirs,
 20 sufficient to ensure that the structures are safe and
 21 stable;

22 (j) a plan identifying methods to be used to monitor
 23 for the accidental discharge of objectionable materials and
 24 remedial action plans to be used to control and mitigate
 25 discharges to surface or ground water; and

1 (k) an evaluation of the expected life of any tailings
 2 impoundment or waste area and the potential for expansion of
 3 the tailings impoundment or waste site.

4 (4) Except as provided in subsection (6), the permit
 5 provided for in subsection (1) for a large-scale mineral
 6 development as defined in 90-6-302 must be conditioned to
 7 provide that activities under the permit may not commence
 8 until the impact plan is approved under 90-6-307 and until
 9 the permittee has provided a written guarantee to the
 10 department and to the hard-rock mining impact board of
 11 compliance within the time schedule with the commitment made
 12 in the approved impact plan, as provided in 90-6-307. If the
 13 permittee does not comply with that commitment within the
 14 time scheduled, the board, upon receipt of written notice
 15 from the hard-rock mining impact board, shall suspend the
 16 permit until it receives written notice from the hard-rock
 17 mining impact board that the permittee is in compliance.

18 (5) When the department determines that a permittee has
 19 become or will become a large-scale mineral developer
 20 pursuant to 82-4-339 and 90-6-302~~(4)~~(5) and provides notice
 21 as required under 82-4-339, within 6 months of receiving the
 22 notice, the permittee shall provide the board with proof
 23 that he has obtained a waiver of the impact plan requirement
 24 from the hard-rock mining impact board or that he has filed
 25 an impact plan with the hard-rock mining impact board and

1 the appropriate county or counties. If the permittee does
 2 not file the required proof or if the hard-rock mining
 3 impact board certifies to the board that the permittee has
 4 failed to comply with the hard-rock mining impact review and
 5 implementation requirements in Title 90, chapter 6, parts 3
 6 and 4, the board shall suspend the permit until the
 7 permittee files the required proof or until the hard-rock
 8 mining impact board certifies that the permittee has
 9 complied with the hard-rock mining impact review and
 10 implementation requirements.

11 (6) Compliance with 90-6-307 is not required for
 12 exploration and bulk sampling for metallurgical testing when
 13 the aggregate samples are less than 10,000 tons.

14 (7) A person may not be issued an operating permit if
 15 that person's failure to comply with the provisions of this
 16 part, the rules adopted under this part, or a permit or
 17 license issued under this part has resulted in the
 18 forfeiture of a bond unless that person meets the conditions
 19 described in 82-4-360."

20 **Section 5.** Section 82-4-339, MCA, is amended to read:

21 **"82-4-339. Annual report of activities by permittee --**
 22 **fee -- notice of large-scale mineral developer status.** (1)
 23 Within 30 days after completion or abandonment of operations
 24 on an area under permit or within 30 days after each
 25 anniversary date of the permit, whichever is earlier, or at

1 such later date as may be provided by rules of the board and
 2 each year thereafter until reclamation is completed and
 3 approved, the permittee shall pay the annual fee of \$25 and
 4 shall file a report of activities completed during the
 5 preceding year on a form prescribed by the board which
 6 report shall:

- 7 (a) identify the permittee and the permit number;
 8 (b) locate the operation by subdivision, section,
 9 township, and range and with relation to the nearest town or
 10 other well-known geographic feature;
 11 (c) estimate acreage to be newly disturbed by operation
 12 in the next 12-month period;
 13 (d) include the number of persons on the payroll for
 14 the previous permit year and for the next permit year at
 15 intervals that the department considers sufficient to enable
 16 a determination of the permittee's status under
 17 90-6-302(4)(5); and
 18 (e) update any maps previously submitted or
 19 specifically requested by the board. Such maps shall show:
 20 (i) the permit area;
 21 (ii) the unit of disturbed land;
 22 (iii) the area to be disturbed during the next 12-month
 23 period;
 24 (iv) if completed, the date of completion of operations;
 25 (v) if not completed, the additional area estimated to

1 be further disturbed by the operation within the following
 2 permit year; and

3 (vi) the date of beginning, amount, and current status
 4 of reclamation performed during the previous 12 months.

5 (2) Whenever the department determines that the
 6 permittee has become or will, during the next permit year,
 7 become a large-scale mineral developer, it shall immediately
 8 serve written notice of that fact on the permittee, the
 9 hard-rock mining impact board, and the county or counties in
 10 which the operation is located."

11 **Section 6.** Section 90-6-311, MCA, is amended to read:

12 "90-6-311. **Impact plan amendments.** (1) The impact plan
 13 may provide for amendment under definite conditions
 14 specified in the plan. Also, the governing body of an
 15 affected county or the mineral developer may petition the
 16 board for an amendment to an approved impact plan if:

17 (a) employment at the large-scale mineral development
 18 is forecast to increase or decrease by at least 75 persons,
 19 as determined under 90-6-302+~~4~~(5), over or under the
 20 employment levels contemplated by the approved impact plan;
 21 or

22 (b) it becomes apparent that an approved impact plan is
 23 materially inaccurate because of errors in assessment and 2
 24 years have not elapsed since the date the facility begins
 25 commercial production; or

1 (c) the governing body of an affected county and the
 2 mineral developer join in a petition to amend the impact
 3 plan.

4 (2) Within 10 days of receipt the board shall publish
 5 notice of the petition at least once in a newspaper of
 6 general circulation in the affected county. The petition
 7 must include:

8 (a) an explanation of the need for an amendment;

9 (b) a statement of the facts and circumstances
 10 underlying the need for an amendment; and

11 (c) a description of the corrective measures proposed
 12 by the petitioner.

13 (3) Within 60 days after notice that the petition has
 14 been received, an affected local government unit or the
 15 mineral developer must notify the board in writing if such
 16 person objects to the amendments proposed by the petitioner,
 17 specifying the reasons why the impact plan should not be
 18 amended as proposed. If no objection is received within the
 19 60-day period, the impact plan must be amended by the board
 20 as proposed by the petitioner.

21 (4) If an objection is received, within 10 days of its
 22 receipt, the board shall notify the petitioner and include a
 23 copy of all objections received by the board. If the
 24 objecting party and the petitioner cannot resolve the
 25 objections within 30 days after the expiration of the 60-day

1 period, the board shall conduct a hearing on the validity of
 2 the objections within 30 days after the failure of the
 3 parties to resolve the objections. The hearing must be held
 4 in the affected county or, if objections are received from
 5 local government units in more than one county, must be held
 6 in the county which in the board's judgment is more greatly
 7 affected. The provisions of the Montana Administrative
 8 Procedure Act apply to the conduct of the hearing.

9 (5) Following the hearing, the board shall make
 10 findings as to those portions of the amendments which were
 11 objected to and, if appropriate, amend the impact plan
 12 accordingly. The board shall cause the findings and impact
 13 plan, as amended, to be served on all parties. Any local
 14 government unit or the developer is entitled to judicial
 15 review, as provided by Title 2, chapter 4, part 7, in the
 16 district court for the judicial district in which the
 17 hearing was held."

18 **Section 7.** Section 90-6-307, MCA, is amended to read:

19 **"90-6-307. Impact plan to be submitted.** (1) After an
 20 application for a permit for a large-scale mineral
 21 development is made under 82-4-335, the person seeking the
 22 permit shall submit to the affected counties and the board
 23 an impact plan describing the economic impact the
 24 large-scale mineral development will have on local
 25 government units and shall file proof of such submission to

1 the counties with the board. Whenever an environmental
 2 impact statement on the permit application is prepared under
 3 75-1-201, the lead agency shall cooperate to the fullest
 4 extent practicable with the affected local government units
 5 to eliminate duplication of effort in data collection. The
 6 governing bodies of the affected counties shall publish
 7 notice of the submission of an impact plan at least once in
 8 a newspaper of general circulation in the county. The
 9 mineral developer and the affected local government units
 10 shall ensure that the impact plan includes:

11 (a) a timetable for development, including the opening
 12 date of the development and the estimated closing date;

13 (b) the estimated number of persons coming into the
 14 impacted area as a result of the development;

15 (c) the increased capital and operating cost to local
 16 government units for providing services which can be
 17 expected as a result of the development;

18 (d) the financial or other assistance the developer
 19 will give to local government units to meet the increased
 20 need for services.

21 (2) In the impact plan, the developer shall commit
 22 itself to pay all of the increased capital and net operating
 23 cost to local government units that will be a result of the
 24 development, as identified in the impact plan, either from
 25 tax prepayments, as provided in 90-6-309, special industrial

1 ~~educational~~ local government facility impact bonds, as
 2 provided in 90-6-310, or other funds obtained from the
 3 developer, and shall provide a time schedule within which it
 4 will do so. The plan may provide for funding from other
 5 revenue sources or funding mechanisms if the developer
 6 guarantees that the amount to be provided from these sources
 7 will be paid.

8 (3) Upon request of the governing body of an affected
 9 unit of local government, the mineral developer, prior to
 10 the end of the 90-day review period, shall provide financial
 11 or other assistance as necessary to prepare for and evaluate
 12 the impact plan. The governing body of the affected county
 13 must contract with the developer to obtain the requested
 14 financial assistance for each unit of local government
 15 within the county. Any disbursements to a unit of local
 16 government under this subsection shall be credited against
 17 future tax liabilities, if any.

18 (4) The governing body of the county where the fiscal
 19 impacts on local government units are forecasted in the
 20 impact plan to be most costly shall, within 90 days after
 21 receipt of the impact plan from the developer, conduct a
 22 public hearing on the impact plan.

23 (5) An affected local government unit that has not been
 24 identified in an impact plan submitted to the board as being
 25 likely to experience increased capital and operating costs

1 for providing services which can be expected as a result of
 2 the development may object to the impact plan under the
 3 provisions of this section if the local government unit
 4 clearly demonstrates that it is likely to experience
 5 increased capital and operating costs from the mineral
 6 development.

7 (6) An affected local government unit shall, within 90
 8 days after receipt of the impact plan from the developer,
 9 notify the board in writing if that local government unit
 10 objects to the impact plan, specifying the reasons why the
 11 impact plan is objected to. During the 90-day period, an
 12 affected local government unit may petition for one 30-day
 13 extension by submitting a written request to the board
 14 stating the need and justification for the extension. The
 15 board shall grant the extension unless it finds there is no
 16 reasonable basis for the request. If no objection is
 17 received within the 90-day period or any extension thereof,
 18 the impact plan is approved without any review by the board.
 19 An approved plan is binding and may only be altered under
 20 the amendment provisions of 90-6-311.

21 (7) If objections are received from a local government
 22 unit, the board shall, within 10 days, notify the developer
 23 and forward a copy of the local government unit's objections
 24 to the developer. The local government unit and the
 25 developer have 30 days, or a longer period if both the local

1 government unit and the developer request an extension, to
 2 resolve the objection. If the objections are not resolved,
 3 the board shall conduct a hearing on the validity of the
 4 objections, which shall be held in the affected county or,
 5 if objections are received from local government units in
 6 more than one county, shall be held in the county which, in
 7 the board's judgment, is more greatly affected. The
 8 provisions of the Montana Administrative Procedure Act shall
 9 apply to the conduct of the hearing. The impact plan filed
 10 by the developer shall carry no presumption of correctness
 11 at the hearing.

12 (8) Following the hearing, the board shall, within 60
 13 days, make findings as to those portions of the impact plan
 14 which were objected to and, if appropriate, amend the impact
 15 plan accordingly. The findings and impact plan, as amended,
 16 shall be served by the board upon all parties. Any local
 17 government unit or the developer, if aggrieved by the
 18 decision of the board, is entitled to judicial review, as
 19 provided by Title 2, chapter 4, part 7, in the district
 20 court in and for the judicial district in which the hearing
 21 was held.

22 (9) The developer shall, within 30 days of receipt of
 23 the approved impact plan, provide the board with a written
 24 guarantee that the developer will meet the increased costs
 25 of public services and facilities as specified in the

1 approved impact plan and according to the time schedule
 2 contained in the approved impact plan.

3 (10) The developer may make payments as specified in the
 4 approved impact plan directly to a local government unit or
 5 to the board. The governing body of a local government unit
 6 receiving payments shall deposit the payments into an impact
 7 fund. The developer and the affected governing body shall
 8 each issue to the board written verification of each payment
 9 and its intended use in compliance with the impact plan. The
 10 board shall deposit payments received from a developer into
 11 the hard-rock mining impact account established by 90-6-304.

12 (11) The board shall notify the department of state
 13 lands of its receipt of the written guarantee of payment and
 14 of any failure of the developer to comply with this section.

15 (12) Upon receipt of evidence that an affected local
 16 government unit identified in the approved impact plan is
 17 providing or is preparing to provide an additional service
 18 or facility provided for in the approved impact plan, the
 19 board shall, if the hard-rock mining impact account is used
 20 to deliver payments to the local government unit, pay to
 21 that local government unit, in one sum or in parts, the
 22 money from the hard-rock mining impact account identified in
 23 the plan as the increased cost to the local government unit
 24 of providing that public service or facility.

25 (13) If it is determined that an objection filed by an

1 affected local government unit under subsections (5) and (6)
 2 or 90-6-311(3) is valid and it results in some remedial
 3 order by the board or court of competent jurisdiction, the
 4 local government unit shall be awarded and the developer
 5 shall pay reasonable costs and attorney fees associated with
 6 any administrative or judicial appeals filed under this
 7 section. Any attorney fees and costs awarded shall be in
 8 addition to any amounts paid by the developer under this
 9 part.

10 (14) Upon a determination by the department of state
 11 lands that a permittee under 82-4-335 has become or will
 12 become a large-scale mineral developer, the permittee may
 13 petition the board for a waiver of the impact plan
 14 requirement. The board may grant a waiver or conditional
 15 waiver of this requirement only if it has provided notice
 16 and opportunity for hearing to the permittee and to all
 17 affected local government units. The board shall adopt
 18 criteria under which a waiver may be granted. A waiver
 19 issued by the board may be revoked as provided in the
 20 conditional waiver or if the permittee and contractors at
 21 the mineral development increase their payrolls from the
 22 date of the waiver by 75 or more persons, provided the
 23 revocation is requested by an affected local government unit
 24 and notice and opportunity for hearing are given to the
 25 permittee and all affected local government units. The board

1 shall notify the board of land commissioners of any waiver
 2 that has been revoked.

3 (15) When a person who holds an operating permit under
 4 82-4-335 and who has filed an impact plan fails to comply
 5 with the review and implementation requirements in this part
 6 and part 4 of this chapter, the board shall certify to the
 7 board of land commissioners that the failure to comply has
 8 occurred and shall certify when a permittee who has
 9 previously failed to comply comes into compliance."

10 NEW SECTION. **Section 8.** Effective date. [This act] is
 11 effective on passage and approval.

-End-