

House BILL NO. *266*

INTRODUCED BY *M. Hanson E. Nixon*
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

Stephen
Stamps Yellowtail

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE THE TERM
"PROSPECTING" IN THE MONTANA STRIP AND UNDERGROUND MINE
RECLAMATION ACT TO CONFORM WITH FEDERAL REQUIREMENTS; AND
AMENDING SECTION 82-4-203, MCA."

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

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course



1 of conduct of a strip- or underground-mining operation to
 2 include plans for the removal and utilization of minable and
 3 marketable coal located within the area planned to be mined.

4 (8) "Coal preparation" means the chemical or physical
 5 processing of coal and its cleaning, concentrating, or other
 6 processing or preparation. The term does not mean the
 7 conversion of coal to another energy form or to a gaseous or
 8 liquid hydrocarbon, except for incidental amounts that do
 9 not leave the plant, nor does the term mean processing for
 10 other than commercial purposes.

11 (9) "Coal preparation plant" means a commercial
 12 facility where coal is subject to coal preparation. The term
 13 includes commercial facilities associated with coal
 14 preparation activities but is not limited to loading
 15 buildings, water treatment facilities, water storage
 16 facilities, settling basins and impoundments, and coal
 17 processing and other waste disposal areas.

18 (10) "Commissioner" means the commissioner of state
 19 lands provided for in 2-15-3202.

20 (11) "Contour strip mining" means that strip-mining
 21 method commonly carried out in areas of rough and hilly
 22 topography in which the coal or mineral seam outcrops along
 23 the side of the slope and entrance is made to the seam by
 24 excavating a bench or table cut at and along the site of the
 25 seam outcropping with the excavated overburden commonly

1 being cast down the slope below the mineral seam and the
 2 operating bench.

3 (12) "Degree" means from the horizontal and in each case
 4 is subject to a tolerance of 5% error.

5 (13) "Department" means the department of state lands
 6 provided for in Title 2, chapter 15, part 32.

7 (14) "Failure to conserve coal" means the nonremoval or
 8 nonutilization of minable and marketable coal by an
 9 operation, provided that the nonremoval or nonutilization of
 10 minable and marketable coal in accordance with reclamation
 11 standards established by the department shall not be
 12 considered failure to conserve coal.

13 (15) "Fill bench" means that portion of a bench or table
 14 which is formed by depositing overburden beyond or downslope
 15 from the cut section as formed in the contour method of
 16 strip mining.

17 (16) "Imminent danger to the health and safety of the
 18 public" means the existence of any condition or practice or
 19 any violation of a permit or other requirement of this part
 20 in a strip- or underground-coal-mining and reclamation
 21 operation that could reasonably be expected to cause
 22 substantial physical harm to persons outside the permit area
 23 before such condition, practice, or violation can be abated.
 24 A reasonable expectation of death or serious injury before
 25 abatement exists if a rational person, subjected to the same

1 conditions or practices giving rise to the peril, would not
2 expose himself or herself to the danger during the time
3 necessary for abatement.

4 (17) "Marketable coal" means a minable coal that is
5 economically feasible to mine and is fit for sale in the
6 usual course of trade.

7 (18) "Method of operation" means the method or manner by
8 which the cut, open pit, shaft, or excavation is made, the
9 overburden is placed or handled, water is controlled, and
10 other acts are performed by the operator in the process of
11 uncovering and removing the minerals that affect the
12 reclamation of the area of land affected.

13 (19) "Minaable coal" means that coal which can be removed
14 through strip- or underground-mining methods adaptable to
15 the location that coal is being mined or is planned to be
16 mined.

17 (20) "Mineral" means coal and uranium.

18 (21) "Operation" means all of the premises, facilities,
19 railroad loops, roads, and equipment used in the process of
20 producing and removing mineral from and reclaiming a
21 designated strip-mine or underground-mine area, including
22 coal preparation plants, and all activities, including
23 excavation incident thereto, or prospecting for the purpose
24 of determining the location, quality, or quantity of a
25 natural mineral deposit.

1 (22) "Operator" means a person engaged in strip mining
2 or underground mining who removes or intends to remove more
3 than 10,000 cubic yards of mineral or overburden or a person
4 engaged in coal mining who removes or intends to remove more
5 than 250 tons of coal from the earth by mining within 12
6 consecutive calendar months in any one location or a person
7 engaged in operating a coal preparation plant.

8 (23) "Overburden" means all of the earth and other
9 materials which lie above a natural mineral deposit and also
10 means such earth and other material after removal from their
11 natural state in the process of mining.

12 (24) "Person" means a person, partnership, corporation,
13 association, or other legal entity or any political
14 subdivision or agency of the state or federal government.

15 (25) "Prime farmland" means that land previously
16 prescribed by the United States secretary of agriculture on
17 the basis of such factors as moisture availability,
18 temperature regime, chemical balance, permeability,
19 surface-layer composition, susceptibility to flooding, and
20 erosion characteristics and which historically has been used
21 for intensive agricultural purposes and as defined in the
22 Federal Register.

23 (26) "Prospecting" means the removal of overburden, core
24 drilling, construction of roads, or any other disturbance of
25 the surface for the purpose of determining the location,

1 quantity, or quality of a natural mineral deposit and, on
 2 areas designated unsuitable for coal mining pursuant to
 3 82-4-227 and 82-4-228, the gathering of surface or
 4 subsurface geologic, physical, or chemical data by mapping,
 5 trenching, geophysical, or other techniques necessary to
 6 determine the quality and quantity of overburden and coal in
 7 an area and the gathering of environmental data to establish
 8 the conditions of an area before beginning surface coal
 9 mining and reclamation operations under this part.

10 (27) "Reclamation" means backfilling, subsidence
 11 stabilization, water control, grading, highwall reduction,
 12 topsoiling, planting, revegetation, and other work to
 13 restore an area of land affected by strip mining or
 14 underground mining under a plan approved by the department.

15 (28) "Remining" means conducting surface coal mining and
 16 reclamation operations that affect previously mined areas
 17 (for example, the recovery of additional mineral from
 18 existing gob or tailings piles).

19 (29) "Strip mining" means any part of the process
 20 followed in the production of mineral by the open-cut method,
 21 including mining by the auger method or any similar method
 22 which penetrates a mineral deposit and removes mineral
 23 directly through a series of openings made by a machine
 24 which enters the deposit from a surface excavation or any
 25 other mining method or process in which the strata or

1 overburden is removed or displaced in order to recover the
 2 mineral. For the purposes of this part only, strip mining
 3 also includes remining and coal preparation. The terms
 4 "remining" and "coal preparation" are not included in the
 5 definition of "strip mining" for purposes of Title 15,
 6 chapter 35, part 1.

7 (30) "Subsidence" means a vertically downward movement
 8 of overburden materials resulting from the actual mining of
 9 an underlying mineral deposit or associated underground
 10 excavations.

11 (31) "Surface owner" means a person who holds legal or
 12 equitable title to the land surface and whose principal
 13 place of residence is on the land or who personally conducts
 14 farming or ranching operations upon a farm or ranch unit to
 15 be directly affected by strip-mining operations or who
 16 receives directly a significant portion of his income, if
 17 any, from such farming or ranching operations or the state
 18 of Montana where the state owns the surface.

19 (32) "Topsoil" means the unconsolidated mineral matter
 20 naturally present on the surface of the earth that has been
 21 subjected to and influenced by genetic and environmental
 22 factors of parent material, climate, macro- and
 23 microorganisms, and topography, all acting over a period of
 24 time, and that is necessary for the growth and regeneration
 25 of vegetation on the surface of the earth.

1 (33) "Underground mining" means any part of the process
2 followed in the production of a mineral such that vertical
3 or horizontal shafts, slopes, drifts, or incline planes
4 connected with excavations penetrating the mineral stratum
5 or strata are utilized and includes mining by in situ
6 methods.

7 (34) "Unwarranted failure to comply" means the failure
8 of a permittee to prevent the occurrence of any violation of
9 his permit or any requirement of this part due to
10 indifference, lack of diligence, or lack of reasonable care,
11 or the failure to abate any violation of such permit or this
12 part due to indifference, lack of diligence, or lack of
13 reasonable care.

14 (35) "Waiver" means any document which demonstrates the
15 clear intention to release rights in the surface estate for
16 the purpose of permitting the extraction of subsurface
17 minerals by strip-mining methods.

18 (36) "Written consent" means such written statement as
19 is executed by the owner of the surface estate, upon a form
20 approved by the department, demonstrating that such owner
21 consents to entry of an operator for the purpose of
22 conducting strip-mining operations and that such consent is
23 given only to such strip-mining and reclamation operations
24 which fully comply with the terms and requirements of this
25 part."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0266, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

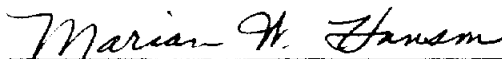
This bill redefines the term "prospecting in the Montana Strip and Underground Mine Reclamation Act to conform with federal requirements.

FISCAL IMPACT:

No fiscal impact

 1-22-91

RGE SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/23/91

MARIAN W. HANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0266, as introduced

HB 266

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 266

INTRODUCED BY M. HANSON, ELLISON, WEEDING, DEVLIN,

HAYNE, YELLOWTAIL

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SECOND READING



1 (7) "Coal conservation plan" means the planned course
2 of conduct of a strip- or underground-mining operation to
3 include plans for the removal and utilization of minable and
4 marketable coal located within the area planned to be mined.

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6 processing of coal and its cleaning, concentrating, or other
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16 (35) "Waiver" means any document which demonstrates the
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18 the purpose of permitting the extraction of subsurface
19 minerals by strip-mining methods.

20 (36) "Written consent" means such written statement as
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22 approved by the department, demonstrating that such owner
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24 conducting strip-mining operations and that such consent is
25 given only to such strip-mining and reclamation operations

1 which fully comply with the terms and requirements of this
2 part."

-End-

1 HOUSE BILL NO. 266

2 INTRODUCED BY M. HANSON, ELLISON, WEEDING, DEVLIN,

3 HAYNE, YELLOWTAIL

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THIRD READING

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11 means such earth and other material after removal from their
12 natural state in the process of mining.

13 (24) "Person" means a person, partnership, corporation,
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15 subdivision or agency of the state or federal government.

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17 prescribed by the United States secretary of agriculture on
18 the basis of such factors as moisture availability,
19 temperature regime, chemical balance, permeability,
20 surface-layer composition, susceptibility to flooding, and
21 erosion characteristics and which historically has been used
22 for intensive agricultural purposes and as defined in the
23 Federal Register.

24 (26) "Prospecting" means the removal of overburden, core
25 drilling, construction of roads, or any other disturbance of

1 the surface for the purpose of determining the location,
 2 quantity, or quality of a natural mineral deposit and, on
 3 areas designated unsuitable for coal mining pursuant to
 4 82-4-227 and 82-4-228, the gathering of surface or
 5 subsurface geologic, physical, or chemical data by mapping,
 6 trenching, geophysical, or other techniques necessary to
 7 determine the quality and quantity of overburden and coal in
 8 an area and the gathering of environmental data to establish
 9 the conditions of an area before beginning surface-coal
 10 STRIP- OR UNDERGROUND-COAL-mining and reclamation operations
 11 under this part.

12 (27) "Reclamation" means backfilling, subsidence
 13 stabilization, water control, grading, highwall reduction,
 14 topsoiling, planting, revegetation, and other work to
 15 restore an area of land affected by strip mining or
 16 underground mining under a plan approved by the department.

17 (28) "Remining" means conducting surface coal mining and
 18 reclamation operations that affect previously mined areas
 19 (for example, the recovery of additional mineral from
 20 existing gob or tailings piles).

21 (29) "Strip mining" means any part of the process
 22 followed in the production of mineral by the opencut method,
 23 including mining by the auger method or any similar method
 24 which penetrates a mineral deposit and removes mineral
 25 directly through a series of openings made by a machine

1 which enters the deposit from a surface excavation or any
 2 other mining method or process in which the strata or
 3 overburden is removed or displaced in order to recover the
 4 mineral. For the purposes of this part only, strip mining
 5 also includes remining and coal preparation. The terms
 6 "remining" and "coal preparation" are not included in the
 7 definition of "strip mining" for purposes of Title 15,
 8 chapter 35, part 1.

9 (30) "Subsidence" means a vertically downward movement
 10 of overburden materials resulting from the actual mining of
 11 an underlying mineral deposit or associated underground
 12 excavations.

13 (31) "Surface owner" means a person who holds legal or
 14 equitable title to the land surface and whose principal
 15 place of residence is on the land or who personally conducts
 16 farming or ranching operations upon a farm or ranch unit to
 17 be directly affected by strip-mining operations or who
 18 receives directly a significant portion of his income, if
 19 any, from such farming or ranching operations or the state
 20 of Montana where the state owns the surface.

21 (32) "Topsoil" means the unconsolidated mineral matter
 22 naturally present on the surface of the earth that has been
 23 subjected to and influenced by genetic and environmental
 24 factors of parent material, climate, macro- and
 25 microorganisms, and topography, all acting over a period of

1 time, and that is necessary for the growth and regeneration
 2 of vegetation on the surface of the earth.

3 (33) "Underground mining" means any part of the process
 4 followed in the production of a mineral such that vertical
 5 or horizontal shafts, slopes, drifts, or incline planes
 6 connected with excavations penetrating the mineral stratum
 7 or strata are utilized and includes mining by in situ
 8 methods.

9 (34) "Unwarranted failure to comply" means the failure
 10 of a permittee to prevent the occurrence of any violation of
 11 his permit or any requirement of this part due to
 12 indifference, lack of diligence, or lack of reasonable care,
 13 or the failure to abate any violation of such permit or this
 14 part due to indifference, lack of diligence, or lack of
 15 reasonable care.

16 (35) "Waiver" means any document which demonstrates the
 17 clear intention to release rights in the surface estate for
 18 the purpose of permitting the extraction of subsurface
 19 minerals by strip-mining methods.

20 (36) "Written consent" means such written statement as
 21 is executed by the owner of the surface estate, upon a form
 22 approved by the department, demonstrating that such owner
 23 consents to entry of an operator for the purpose of
 24 conducting strip-mining operations and that such consent is
 25 given only to such strip-mining and reclamation operations

1 which fully comply with the terms and requirements of this
 2 part."

-End-

HOUSE BILL NO. 266

INTRODUCED BY M. HANSON, ELLISON, WEEDING, DEVLIN,

HAYNE, YELLOWTAIL

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE THE TERM "PROSPECTING" IN THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTION 82-4-203, MCA."

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

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation,

and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

REFERENCE BILL



1 (7) "Coal conservation plan" means the planned course
2 of conduct of a strip- or underground-mining operation to
3 include plans for the removal and utilization of minable and
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical
6 processing of coal and its cleaning, concentrating, or other
7 processing or preparation. The term does not mean the
8 conversion of coal to another energy form or to a gaseous or
9 liquid hydrocarbon, except for incidental amounts that do
10 not leave the plant, nor does the term mean processing for
11 other than commercial purposes.

12 (9) "Coal preparation plant" means a commercial
13 facility where coal is subject to coal preparation. The term
14 includes commercial facilities associated with coal
15 preparation activities but is not limited to loading
16 buildings, water treatment facilities, water storage
17 facilities, settling basins and impoundments, and coal
18 processing and other waste disposal areas.

19 (10) "Commissioner" means the commissioner of state
20 lands provided for in 2-15-3202.

21 (11) "Contour strip mining" means that strip-mining
22 method commonly carried out in areas of rough and hilly
23 topography in which the coal or mineral seam outcrops along
24 the side of the slope and entrance is made to the seam by
25 excavating a bench or table cut at and along the site of the

1 seam outcropping with the excavated overburden commonly
2 being cast down the slope below the mineral seam and the
3 operating bench.

4 (12) "Degree" means from the horizontal and in each case
5 is subject to a tolerance of 5% error.

6 (13) "Department" means the department of state lands
7 provided for in Title 2, chapter 15, part 32.

8 (14) "Failure to conserve coal" means the nonremoval or
9 nonutilization of minable and marketable coal by an
10 operation, provided that the nonremoval or nonutilization of
11 minable and marketable coal in accordance with reclamation
12 standards established by the department shall not be
13 considered failure to conserve coal.

14 (15) "Fill bench" means that portion of a bench or table
15 which is formed by depositing overburden beyond or downslope
16 from the cut section as formed in the contour method of
17 strip mining.

18 (16) "Imminent danger to the health and safety of the
19 public" means the existence of any condition or practice or
20 any violation of a permit or other requirement of this part
21 in a strip- or underground-coal-mining and reclamation
22 operation that could reasonably be expected to cause
23 substantial physical harm to persons outside the permit area
24 before such condition, practice, or violation can be abated.
25 A reasonable expectation of death or serious injury before

1 abatement exists if a rational person, subjected to the same
2 conditions or practices giving rise to the peril, would not
3 expose himself or herself to the danger during the time
4 necessary for abatement.

5 (17) "Marketable coal" means a minable coal that is
6 economically feasible to mine and is fit for sale in the
7 usual course of trade.

8 (18) "Method of operation" means the method or manner by
9 which the cut, open pit, shaft, or excavation is made, the
10 overburden is placed or handled, water is controlled, and
11 other acts are performed by the operator in the process of
12 uncovering and removing the minerals that affect the
13 reclamation of the area of land affected.

14 (19) "Minaable coal" means that coal which can be removed
15 through strip- or underground-mining methods adaptable to
16 the location that coal is being mined or is planned to be
17 mined.

18 (20) "Mineral" means coal and uranium.

19 (21) "Operation" means all of the premises, facilities,
20 railroad loops, roads, and equipment used in the process of
21 producing and removing mineral from and reclaiming a
22 designated strip-mine or underground-mine area, including
23 coal preparation plants, and all activities, including
24 excavation incident thereto, or prospecting for the purpose
25 of determining the location, quality, or quantity of a

1 natural mineral deposit.

2 (22) "Operator" means a person engaged in strip mining
3 or underground mining who removes or intends to remove more
4 than 10,000 cubic yards of mineral or overburden or a person
5 engaged in coal mining who removes or intends to remove more
6 than 250 tons of coal from the earth by mining within 12
7 consecutive calendar months in any one location or a person
8 engaged in operating a coal preparation plant.

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10 materials which lie above a natural mineral deposit and also
11 means such earth and other material after removal from their
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