

HOUSE BILL NO. 952

INTRODUCED BY RANEY, REAM, FARRELL, T. BECK,
HALLIGAN, GROSFIELD, TVEIT, VAN VALKENBURG, PINSONEAULT,
NATHE, WANZENRIED, MERCER, THOMAS, BENEDICT, FRITZ

IN THE HOUSE

FEBRUARY 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LOCAL GOVERNMENT.

 FIRST READING.

 ON MOTION, REREFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS.

 ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
 AYES, 71; NOES, 28.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LOCAL GOVERNMENT.

 FIRST READING.

MARCH 22, 1991 COMMITTEE RECOMMEND BILL BE
 NOT CONCURRED IN.

 ON MOTION, ADOPTION OF ADVERSE
 COMMITTEE REPORT RECONSIDERED
 TO ALLOW BOTH MINORITY AND MAJORITY
 REPORTS INCLUDED.

MARCH 25, 1991 ON MOTION, MINORITY REPORT
 ADOPTED AND BILL PLACED ON
 SECOND READING.
 AYES, 31; NOES, 17.

MARCH 28, 1991 SECOND READING, CONCURRED IN.

APRIL 1, 1991

THIRD READING, CONCURRED IN.
AYES, 30; NOES, 20.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 1, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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House BILL NO. 952
INTRODUCED BY *Kara Ream Farrell Bud Kelly*
Grosfeld *Van Valkenburg* *Dimmitt* *Winters*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SAND AND GRAVEL OPENCUT MINES AND CONCRETE AND ASPHALT PROCESSING FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431, AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

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

Section 1. Section 76-1-113, MCA, is amended to read:

"76-1-113. Effect of chapter on natural resources.

Nothing (1) Except as provided in subsection (2), nothing in this chapter shall may be deemed considered to authorize an ordinance, resolution, or rule which that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2."

Section 2. Section 76-2-209, MCA, is amended to read:

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"76-2-209. Effect on natural resources. (1) No Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, shall may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter."

Section 3. Section 82-4-431, MCA, is amended to read:

"82-4-431. Contract for reclamation required. (1) After March 16, 1973, no an operator may not conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under



-2- INTRODUCED BILL
HB 952

1 subsections (2)(b) and (2)(c), an operator who holds a
 2 contract for reclamation may operate an opencut mine without
 3 first securing an additional contract or an amendment to the
 4 existing contract or bond if the mine meets the following
 5 criteria:

6 (i) the total amount of material and overburden removed
 7 does not exceed 1,000 cubic yards; and

8 (ii) the operator notifies the department of state lands
 9 prior to beginning such operations and, within 30 days of
 10 notifying the department, submits a completed site
 11 information form, salvages and stockpiles all root-bearing
 12 soil materials, regrades the affected area to 3:1 or flatter
 13 slope and blends the reclaimed area into the adjacent
 14 topography, and during the first appropriate growing season
 15 replaces all topsoil and reseeds or revegetates as required
 16 by the department.

17 (b) The department may refuse to allow the operator to
 18 operate an opencut mine under subsection (2)(a) if, at the
 19 time of notification by the operator to the department, the
 20 operator has a pattern of violations or is in current
 21 violation of this part or rules adopted under this part or
 22 provisions of a contract for reclamation.

23 (c) The department may require an additional bond as a
 24 condition for the operation of an opencut mine under
 25 subsection (2)(a).

1 (3) Opencut mines described in subsection (2) may not
 2 be placed in flowing, ephemeral, or intermittent streams, in
 3 the bottom or head of a confined drainage, in an area where
 4 the operation will intercept ground water or intercept any
 5 slope that is naturally steeper than 3:1, or in any area
 6 where mining would be restricted by other laws.

7 (4) Sand and gravel opencut mines must meet applicable
 8 local zoning regulations adopted under Title 76, chapter 2."

9 **Section 4.** Section 82-4-432, MCA, is amended to read:

10 "82-4-432. Application for contract -- contents --
 11 issuance -- amendment. (1) Applications for a contract ~~shall~~
 12 must be made upon a form furnished by the board, ~~which. The~~
 13 form shall must contain the following:

14 (a) the name of the operator and, if other than the
 15 owner of the land, the name and address of the owner;

16 (b) the type of operation to be conducted;

17 (c) the volume of earth to be removed, as accurately as
 18 the volume may then be estimated, and the volume which has
 19 been previously removed, if any;

20 (d) the location of the operation by legal subdivision,
 21 section, township and range, and county;

22 (e) the date when the operation was or will be
 23 commenced; and

24 (f) a statement that the applicant has the right and
 25 power by legal estate owned to mine by opencut mining the

1 lands so described.

2 (2) The application ~~shall~~ must be accompanied by:

3 (a) a bond or security meeting the requirements as set
4 out in this part;

5 (b) a fee of \$50; and

6 (c) a statement from the local governing body having
7 jurisdiction over the area to be mined certifying that a
8 proposed sand and gravel opencut mine and its operating and
9 reclamation plans comply with applicable local zoning
10 regulations adopted under Title 76, chapter 2; and

11 ~~(c)~~(d) the operator's plan of his operation and the
12 method and manner of reclamation that will be used or
13 followed.

14 (3) If, prior to applying for a contract, the operator
15 notifies the board of his intention to submit a plan and
16 requests the board to examine the area to be mined, the
17 board shall cause the area to be examined and make
18 recommendations to the operator regarding reclamation.

19 (4) Upon receipt of the application, bond or security,
20 and fee due from the operator and upon agreement to the
21 terms of the contract by the parties, the board may issue a
22 contract to the applicant which entitles him to continue in
23 or engage in opencut mining on the land therein described.

24 (5) An operator desiring to have his contract amended
25 to cover additional contiguous or nearby land may file an

1 amended application with the board. Upon receipt of the
2 amended application and such additional bond as may be
3 required and upon agreement to the terms of the amendment by
4 the parties, the board may issue an amendment to the
5 original contract covering the additional land described in
6 the amended application without the payment of any
7 additional fee.

8 (6) An operator may withdraw any land covered by
9 contract, except affected land, by notifying the board
10 thereof, in which case the penalty of the bond or security
11 filed by the operator pursuant to the provisions of this
12 part shall be reduced proportionately."

13 NEW SECTION. Section 5. Saving clause. [This act] does
14 not affect rights and duties that matured or penalties that
15 were incurred before [the effective date of this act].

16 NEW SECTION. Section 6. Applicability. [This act]
17 applies to any area for which the right to mine is granted
18 by issuance of a contract or contract amendment pursuant to
19 82-4-432 after [the effective date of this act].

20 NEW SECTION. Section 7. Effective date. [This act] is
21 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 HB0952, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


This bill requires sand and gravel opencut mines and concrete and asphalt processing facilities to comply with applicable local zoning regulations.

ASSUMPTIONS:

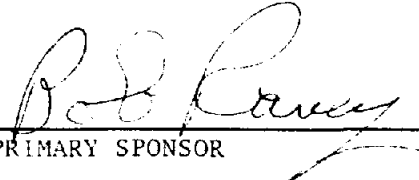
1. The Department of State Lands and the Department of Commerce can implement this bill with existing resources.

FISCAL IMPACT:

No fiscal impact.



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



BOB RANEY, PRIMARY SPONSOR DATE
Fiscal Note for HB0952, as introduced 2/25/91
HB 952

APPROVED BY COMM.
ON LOCAL GOVERNMENT

HOUSE BILL NO. 952

INTRODUCED BY RANEY, REAM, FARRELL, T. BECK,

HALLIGAN, GROSFIELD, TVEIT, VAN VALKENBURG, PINSONEAULT,

NATHE, WANZENRIED, MERCER, THOMAS, BENEDICT, FRITZ

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

Section 1. Section 76-1-113, MCA, is amended to read:

"76-1-113. Effect of chapter on natural resources.

Nothing (1) Except as provided in subsection (2), nothing in this chapter shall may be deemed considered to authorize an ordinance, resolution, or rule which that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted

under Title 76, chapter 2."

Section 2. Section 76-2-209, MCA, is amended to read:

"76-2-209. Effect on natural resources. (1) No Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, shall may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter."

Section 3. Section 82-4-431, MCA, is amended to read:

"82-4-431. Contract for reclamation required. (1) After March 16, 1973, no an operator may not conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the

1 provisions of this part, except as provided in this section.

2 (2) (a) Except as provided in or conditioned under
3 subsections (2)(b) and (2)(c), an operator who holds a
4 contract for reclamation may operate an opencut mine without
5 first securing an additional contract or an amendment to the
6 existing contract or bond if the mine meets the following
7 criteria:

8 (i) the total amount of material and overburden removed
9 does not exceed 1,000 cubic yards; and

10 (ii) the operator notifies the department of state lands
11 prior to beginning such operations and, within 30 days of
12 notifying the department, submits a completed site
13 information form, salvages and stockpiles all root-bearing
14 soil materials, regrades the affected area to 3:1 or flatter
15 slope and blends the reclaimed area into the adjacent
16 topography, and during the first appropriate growing season
17 replaces all topsoil and reseeds or revegetates as required
18 by the department.

19 (b) The department may refuse to allow the operator to
20 operate an opencut mine under subsection (2)(a) if, at the
21 time of notification by the operator to the department, the
22 operator has a pattern of violations or is in current
23 violation of this part or rules adopted under this part or
24 provisions of a contract for reclamation.

25 (c) The department may require an additional bond as a

1 condition for the operation of an opencut mine under
2 subsection (2)(a).

3 (3) Opencut mines described in subsection (2) may not
4 be placed in flowing, ephemeral, or intermittent streams, in
5 the bottom or head of a confined drainage, in an area where
6 the operation will intercept ground water or intercept any
7 slope that is naturally steeper than 3:1, or in any area
8 where mining would be restricted by other laws.

9 (4) Sand and gravel opencut mines must meet applicable
10 local zoning regulations adopted under Title 76, chapter 2."

11 **Section 4.** Section 82-4-432, MCA, is amended to read:

12 **"82-4-432. Application for contract -- contents --**
13 **issuance -- amendment.** (1) Applications for a contract ~~shall~~
14 must be made upon a form furnished by the board, ~~which.~~ The
15 form shall must contain the following:

16 (a) the name of the operator and, if other than the
17 owner of the land, the name and address of the owner;

18 (b) the type of operation to be conducted;

19 (c) the volume of earth to be removed, as accurately as
20 the volume may then be estimated, and the volume which has
21 been previously removed, if any;

22 (d) the location of the operation by legal subdivision,
23 section, township and range, and county;

24 (e) the date when the operation was or will be
25 commenced; and

1 (f) a statement that the applicant has the right and
2 power by legal estate owned to mine by opencut mining the
3 lands so described.

4 (2) The application ~~shall~~ must be accompanied by:

5 (a) a bond or security meeting the requirements as set
6 out in this part;

7 (b) a fee of \$50; and

8 (c) a statement from the local governing body having
9 jurisdiction over the area to be mined certifying that a
10 proposed sand and gravel opencut mine and its operating and
11 reclamation plans comply with applicable local zoning
12 regulations adopted under Title 76, chapter 2; and

13 ~~(c)(d)~~ the operator's plan of his operation and the
14 method and manner of reclamation that will be used or
15 followed.

16 (3) If, prior to applying for a contract, the operator
17 notifies the board of his intention to submit a plan and
18 requests the board to examine the area to be mined, the
19 board shall cause the area to be examined and make
20 recommendations to the operator regarding reclamation.

21 (4) Upon receipt of the application, bond or security,
22 and fee due from the operator and upon agreement to the
23 terms of the contract by the parties, the board may issue a
24 contract to the applicant which entitles him to continue in
25 or engage in opencut mining on the land therein described.

1 (5) An operator desiring to have his contract amended
2 to cover additional contiguous or nearby land may file an
3 amended application with the board. Upon receipt of the
4 amended application and such additional bond as may be
5 required and upon agreement to the terms of the amendment by
6 the parties, the board may issue an amendment to the
7 original contract covering the additional land described in
8 the amended application without the payment of any
9 additional fee.

10 (6) An operator may withdraw any land covered by
11 contract, except affected land, by notifying the board
12 thereof, in which case the penalty of the bond or security
13 filed by the operator pursuant to the provisions of this
14 part shall be reduced proportionately."

15 ~~NEW SECTION. --Section 5. --Saving clause. --(This act) does~~
16 ~~not affect rights and duties that matured or penalties that~~
17 ~~were incurred before (the effective date of this act).~~

18 NEW SECTION. Section 5. Applicability. (1) [This act]
19 applies to any area for which the right to mine is granted
20 by issuance of a contract or contract amendment pursuant to
21 82-4-432 after (the effective date of this act). DOES NOT
22 APPLY TO:

23 (A) AN AREA FOR WHICH A CONTRACT WAS ISSUED PRIOR TO
24 [THE EFFECTIVE DATE OF THIS ACT] OR FOR WHICH AN APPLICATION
25 FOR CONTRACT OR CONTRACT AMENDMENT WAS FILED WITH THE

1 DEPARTMENT OF STATE LANDS PRIOR TO FEBRUARY 23, 1991; OR
 2 (B) AN AREA:
 3 (I) THAT IS CONTIGUOUS TO AN AREA DESCRIBED IN
 4 SUBSECTION (1)(A);
 5 (II) FOR WHICH THE HOLDER OF THE CONTRACT HAS THE LEGAL
 6 RIGHT TO MINE ON [THE EFFECTIVE DATE OF THIS ACT]; AND
 7 (III) FOR WHICH THE CONTRACT HOLDER FILES WITH THE
 8 DEPARTMENT ON OR BEFORE JANUARY 1, 1992, ON A FORM PROVIDED
 9 BY THE DEPARTMENT, A LEGAL DESCRIPTION OF THE AREA, EVIDENCE
 10 OF THE LEGAL RIGHT TO MINE, AND CERTIFICATION THAT THE
 11 CONTRACT HOLDER HOLDS THE PROPERTY FOR THE PURPOSE OF FUTURE
 12 SAND OR GRAVEL MINING.
 13 (2) BEFORE JUNE 1, 1991, THE DEPARTMENT SHALL MAIL
 14 NOTICE OF THE PROVISIONS AND PASSAGE OF [THIS ACT] AND THE
 15 FORM DESCRIBED IN SUBSECTION (1)(B)(III) TO EACH PERSON WHO
 16 HOLDS A CURRENT CONTRACT ON [THE EFFECTIVE DATE OF THIS ACT]
 17 OR WHO HAD, PRIOR TO FEBRUARY 23, 1991, SUBMITTED AN
 18 APPLICATION FOR CONTRACT OR CONTRACT AMENDMENT THAT THE
 19 DEPARTMENT HAD NOT APPROVED OR DENIED AS OF FEBRUARY 23,
 20 1991.
 21 (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF AREAS FOR
 22 WHICH CERTIFICATIONS HAVE BEEN FILED PURSUANT TO SUBSECTION
 23 (1)(B) AND SHALL PROVIDE A COPY OF THE LIST TO ANY PERSON
 24 WHO REQUESTS THE LIST.
 25 NEW SECTION. Section 6. Effective date. [This act] is

1 effective on passage and approval.

-End-

1 HOUSE BILL NO. 952

2 INTRODUCED BY RANEY, REAM, FARRELL, T. BECK,

3 HALLIGAN, GROSFIELD, TVEIT, VAN VALKENBURG, PINSONEAULT,

4 NATHE, WANZENRIED, MERCER, THOMAS, BENEDICT, FRITZ

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SAND AND
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8 FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING
9 REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431,
10 AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
11 AND AN APPLICABILITY PROVISION."
12

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18 ordinance, resolution, or rule which that would prevent the
19 complete use, development, or recovery of any mineral,
20 forest, or agricultural resources by the owner thereof.

21 (2) The complete use, development, or recovery of a
22 mineral by an operation that mines sand and gravel and an
23 operation that mixes concrete or batches asphalt on a site
24 that is located within a geographic area zoned as
25 residential are subject to the zoning regulations adopted

1 under Title 76, chapter 2."2 **Section 2.** Section 76-2-209, MCA, is amended to read:

3 "76-2-209. Effect on natural resources. (1) No Except
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21 reclamation of the land affected. An operator conducting a
22 number of operations, each of which results in the removal
23 of less than 10,000 cubic yards of product or overburden but
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1 provisions of this part, except as provided in this section.

2 (2) (a) Except as provided in or conditioned under
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4 contract for reclamation may operate an opencut mine without
5 first securing an additional contract or an amendment to the
6 existing contract or bond if the mine meets the following
7 criteria:

8 (i) the total amount of material and overburden removed
9 does not exceed 1,000 cubic yards; and

10 (ii) the operator notifies the department of state lands
11 prior to beginning such operations and, within 30 days of
12 notifying the department, submits a completed site
13 information form, salvages and stockpiles all root-bearing
14 soil materials, regrades the affected area to 3:1 or flatter
15 slope and blends the reclaimed area into the adjacent
16 topography, and during the first appropriate growing season
17 replaces all topsoil and reseeds or revegetates as required
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20 operate an opencut mine under subsection (2)(a) if, at the
21 time of notification by the operator to the department, the
22 operator has a pattern of violations or is in current
23 violation of this part or rules adopted under this part or
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12 **"82-4-432. Application for contract -- contents --**
13 **issuance -- amendment.** (1) Applications for a contract ~~shall~~
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17 owner of the land, the name and address of the owner;

18 (b) the type of operation to be conducted;

19 (c) the volume of earth to be removed, as accurately as
20 the volume may then be estimated, and the volume which has
21 been previously removed, if any;

22 (d) the location of the operation by legal subdivision,
23 section, township and range, and county;

24 (e) the date when the operation was or will be
25 commenced; and

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 2 power by legal estate owned to mine by opencut mining the
 3 lands so described.

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5 (a) a bond or security meeting the requirements as set
 6 out in this part;

7 (b) a fee of \$50; and

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 9 jurisdiction over the area to be mined certifying that a
 10 proposed sand and gravel opencut mine and its operating and
 11 reclamation plans comply with applicable local zoning
 12 regulations adopted under Title 76, chapter 2; and

13 ~~(c)(d)~~ the operator's plan of his operation and the
 14 method and manner of reclamation that will be used or
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 17 notifies the board of his intention to submit a plan and
 18 requests the board to examine the area to be mined, the
 19 board shall cause the area to be examined and make
 20 recommendations to the operator regarding reclamation.

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 22 and fee due from the operator and upon agreement to the
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 25 or engage in opencut mining on the land therein described.

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 2 to cover additional contiguous or nearby land may file an
 3 amended application with the board. Upon receipt of the
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 5 required and upon agreement to the terms of the amendment by
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 7 original contract covering the additional land described in
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 11 contract, except affected land, by notifying the board
 12 thereof, in which case the penalty of the bond or security
 13 filed by the operator pursuant to the provisions of this
 14 part shall be reduced proportionately."

15 ~~NEW SECTION. Section 5. Saving clause. {This act} does~~
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 17 ~~were incurred before {the effective date of this act}.~~

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 24 [THE EFFECTIVE DATE OF THIS ACT] OR FOR WHICH AN APPLICATION
 25 FOR CONTRACT OR CONTRACT AMENDMENT WAS FILED WITH THE

1 DEPARTMENT OF STATE LANDS PRIOR TO FEBRUARY 23, 1991; OR

2 (B) AN AREA.

3 (I) THAT IS CONTIGUOUS TO AN AREA DESCRIBED IN
4 SUBSECTION (1)(A);

5 (II) FOR WHICH THE HOLDER OF THE CONTRACT HAS THE LEGAL
6 RIGHT TO MINE ON [THE EFFECTIVE DATE OF THIS ACT]; AND

7 (III) FOR WHICH THE CONTRACT HOLDER FILES WITH THE
8 DEPARTMENT ON OR BEFORE JANUARY 1, 1992, ON A FORM PROVIDED
9 BY THE DEPARTMENT, A LEGAL DESCRIPTION OF THE AREA, EVIDENCE
10 OF THE LEGAL RIGHT TO MINE, AND CERTIFICATION THAT THE
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13 (2) BEFORE JUNE 1, 1991, THE DEPARTMENT SHALL MAIL
14 NOTICE OF THE PROVISIONS AND PASSAGE OF [THIS ACT] AND THE
15 FORM DESCRIBED IN SUBSECTION (1)(B)(III) TO EACH PERSON WHO
16 HOLDS A CURRENT CONTRACT ON [THE EFFECTIVE DATE OF THIS ACT]
17 OR WHO HAD, PRIOR TO FEBRUARY 23, 1991, SUBMITTED AN
18 APPLICATION FOR CONTRACT OR CONTRACT AMENDMENT THAT THE
19 DEPARTMENT HAD NOT APPROVED OR DENIED AS OF FEBRUARY 23,
20 1991.

21 (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF AREAS FOR
22 WHICH CERTIFICATIONS HAVE BEEN FILED PURSUANT TO SUBSECTION
23 (1)(B) AND SHALL PROVIDE A COPY OF THE LIST TO ANY PERSON
24 WHO REQUESTS THE LIST.

25 NEW SECTION. Section 6. Effective date. [This act] is

1 effective on passage and approval.

-End-

1 HOUSE BILL NO. 952

2 INTRODUCED BY RANEY, REAM, FARRELL, T. BECK,
3 HALLIGAN, GROSFIELD, TVEIT, VAN VALKENBURG, PINSONEAULT,
4 NATHE, WANZENRIED, MERCER, THOMAS, BENEDICT, FRITZ

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SAND AND
7 GRAVEL OPENCUT MINES AND CONCRETE AND ASPHALT PROCESSING
8 FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING
9 REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431,
10 AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
11 AND AN APPLICABILITY PROVISION."

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

14 **Section 1.** Section 76-1-113, MCA, is amended to read:

15 "76-1-113. Effect of chapter on natural resources.
16 Nothing (1) Except as provided in subsection (2), nothing in
17 this chapter shall may be deemed considered to authorize an
18 ordinance, resolution, or rule which that would prevent the
19 complete use, development, or recovery of any mineral,
20 forest, or agricultural resources by the owner thereof.

21 (2) The complete use, development, or recovery of a
22 mineral by an operation that mines sand and gravel and an
23 operation that mixes concrete or batches asphalt on a site
24 that is located within a geographic area zoned as
25 residential are subject to the zoning regulations adopted

1 under Title 76, chapter 2."

2 **Section 2.** Section 76-2-209, MCA, is amended to read:

3 "76-2-209. Effect on natural resources. (1) No Except
4 as provided in 82-4-431 and 82-4-432, a resolution or rule
5 adopted pursuant to the provisions of this part, except
6 76-2-206, shall may not prevent the complete use,
7 development, or recovery of any mineral, forest, or
8 agricultural resources by the owner thereof.

9 (2) The complete use, development, or recovery of a
10 mineral by an operation that mines sand and gravel and an
11 operation that mixes concrete or batches asphalt on a site
12 that is located within a geographic area zoned as
13 residential are subject to the zoning regulations adopted
14 under this chapter."

15 **Section 3.** Section 82-4-431, MCA, is amended to read:

16 "82-4-431. Contract for reclamation required. (1) After
17 March 16, 1973, no an operator may not conduct
18 opencut-mining operations which will result in the removal
19 of 10,000 cubic yards or more of product or overburden until
20 he has entered into a contract with the board for the
21 reclamation of the land affected. An operator conducting a
22 number of operations, each of which results in the removal
23 of less than 10,000 cubic yards of product or overburden but
24 which result in the removal of 10,000 cubic yards or more of
25 product or overburden in the aggregate, is subject to the

1 provisions of this part, except as provided in this section.

2 (2) (a) Except as provided in or conditioned under
3 subsections (2)(b) and (2)(c), an operator who holds a
4 contract for reclamation may operate an opencut mine without
5 first securing an additional contract or an amendment to the
6 existing contract or bond if the mine meets the following
7 criteria:

8 (i) the total amount of material and overburden removed
9 does not exceed 1,000 cubic yards; and

10 (ii) the operator notifies the department of state lands
11 prior to beginning such operations and, within 30 days of
12 notifying the department, submits a completed site
13 information form, salvages and stockpiles all root-bearing
14 soil materials, regrades the affected area to 3:1 or flatter
15 slope and blends the reclaimed area into the adjacent
16 topography, and during the first appropriate growing season
17 replaces all topsoil and reseeds or revegetates as required
18 by the department.

19 (b) The department may refuse to allow the operator to
20 operate an opencut mine under subsection (2)(a) if, at the
21 time of notification by the operator to the department, the
22 operator has a pattern of violations or is in current
23 violation of this part or rules adopted under this part or
24 provisions of a contract for reclamation.

25 (c) The department may require an additional bond as a

1 condition for the operation of an opencut mine under
2 subsection (2)(a).

3 (3) Opencut mines described in subsection (2) may not
4 be placed in flowing, ephemeral, or intermittent streams, in
5 the bottom or head of a confined drainage, in an area where
6 the operation will intercept ground water or intercept any
7 slope that is naturally steeper than 3:1, or in any area
8 where mining would be restricted by other laws.

9 (4) Sand and gravel opencut mines must meet applicable
10 local zoning regulations adopted under Title 76, chapter 2."

11 **Section 4.** Section 82-4-432, MCA, is amended to read:

12 "82-4-432. Application for contract -- contents --
13 issuance -- amendment. (1) Applications for a contract ~~shall~~
14 must be made upon a form furnished by the board, ~~which.~~ The
15 form shall must contain the following:

16 (a) the name of the operator and, if other than the
17 owner of the land, the name and address of the owner;

18 (b) the type of operation to be conducted;

19 (c) the volume of earth to be removed, as accurately as
20 the volume may then be estimated, and the volume which has
21 been previously removed, if any;

22 (d) the location of the operation by legal subdivision,
23 section, township and range, and county;

24 (e) the date when the operation was or will be
25 commenced; and

1 (f) a statement that the applicant has the right and
 2 power by legal estate owned to mine by opencut mining the
 3 lands so described.

4 (2) The application ~~shall~~ must be accompanied by:

5 (a) a bond or security meeting the requirements as set
 6 out in this part;

7 (b) a fee of \$50; and

8 (c) a statement from the local governing body having
 9 jurisdiction over the area to be mined certifying that a
 10 proposed sand and gravel opencut mine and its operating and
 11 reclamation plans comply with applicable local zoning
 12 regulations adopted under Title 76, chapter 2; and

13 ~~(c)(d)~~ the operator's plan of his operation and the
 14 method and manner of reclamation that will be used or
 15 followed.

16 (3) If, prior to applying for a contract, the operator
 17 notifies the board of his intention to submit a plan and
 18 requests the board to examine the area to be mined, the
 19 board shall cause the area to be examined and make
 20 recommendations to the operator regarding reclamation.

21 (4) Upon receipt of the application, bond or security,
 22 and fee due from the operator and upon agreement to the
 23 terms of the contract by the parties, the board may issue a
 24 contract to the applicant which entitles him to continue in
 25 or engage in opencut mining on the land therein described.

1 (5) An operator desiring to have his contract amended
 2 to cover additional contiguous or nearby land may file an
 3 amended application with the board. Upon receipt of the
 4 amended application and such additional bond as may be
 5 required and upon agreement to the terms of the amendment by
 6 the parties, the board may issue an amendment to the
 7 original contract covering the additional land described in
 8 the amended application without the payment of any
 9 additional fee.

10 (6) An operator may withdraw any land covered by
 11 contract, except affected land, by notifying the board
 12 thereof, in which case the penalty of the bond or security
 13 filed by the operator pursuant to the provisions of this
 14 part shall be reduced proportionately."

15 ~~NEW SECTION. Section 5. Saving clause. (This act) does~~
 16 ~~not affect rights and duties that matured or penalties that~~
 17 ~~were incurred before (the effective date of this act).~~

18 NEW SECTION. Section 5. Applicability. (1) [This act]
 19 applies to any area for which the right to mine is granted
 20 by issuance of a contract or contract amendment pursuant to
 21 82-4-432 after (the effective date of this act). DOES NOT
 22 APPLY TO:

23 (A) AN AREA FOR WHICH A CONTRACT WAS ISSUED PRIOR TO
 24 [THE EFFECTIVE DATE OF THIS ACT] OR FOR WHICH AN APPLICATION
 25 FOR CONTRACT OR CONTRACT AMENDMENT WAS FILED WITH THE

1 DEPARTMENT OF STATE LANDS PRIOR TO FEBRUARY 23, 1991; OR
 2 (B) AN AREA:
 3 (I) THAT IS CONTIGUOUS TO AN AREA DESCRIBED IN
 4 SUBSECTION (1)(A);
 5 (I) FOR WHICH THE HOLDER OF THE CONTRACT HAS THE LEGAL
 6 RIGHT TO MINE ON [THE EFFECTIVE DATE OF THIS ACT]; AND
 7 (III) FOR WHICH THE CONTRACT HOLDER FILES WITH THE
 8 DEPARTMENT ON OR BEFORE JANUARY 1, 1992, ON A FORM PROVIDED
 9 BY THE DEPARTMENT, A LEGAL DESCRIPTION OF THE AREA, EVIDENCE
 10 OF THE LEGAL RIGHT TO MINE, AND CERTIFICATION THAT THE
 11 CONTRACT HOLDER HOLDS THE PROPERTY FOR THE PURPOSE OF FUTURE
 12 SAND OR GRAVEL MINING.
 13 (2) BEFORE JUNE 1, 1991, THE DEPARTMENT SHALL MAIL
 14 NOTICE OF THE PROVISIONS AND PASSAGE OF [THIS ACT] AND THE
 15 FORM DESCRIBED IN SUBSECTION (1)(B)(III) TO EACH PERSON WHO
 16 HOLDS A CURRENT CONTRACT ON [THE EFFECTIVE DATE OF THIS ACT]
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