

SENATE BILL NO. 253

INTRODUCED BY BENGTON
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE SENATE

FEBRUARY 1, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 16, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1991 PRINTING REPORT.

 ON MOTION, CONSIDERATION PASSED
 FOR THE DAY.

FEBRUARY 19, 1991 SECOND READING, DO PASS.

FEBRUARY 20, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

APRIL 6, 1991 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED. BILL
 PLACED ON THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
 AYES, 94; NOES, 3.

 RETURNED TO SENATE.

IN THE SENATE

APRIL 9, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *253*
 2 INTRODUCED BY *Bengtson*
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY
 7 RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; ESTABLISHING AN
 8 ANNUAL OPENCUT MINING FEE; INCREASING THE OPENCUT MINING
 9 CONTRACT APPLICATION FEE; AUTHORIZING THE DEPARTMENT OF
 10 STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND
 11 REHABILITATION OF WATER AFFECTED BY OPENCUT MINING;
 12 AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND;
 13 PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF
 14 ASSESSMENT OF CIVIL PENALTIES; AMENDING SECTIONS 82-4-424,
 15 82-4-431, 82-4-432, 82-4-433, AND 82-4-441, MCA; AND
 16 PROVIDING A RETROACTIVE APPLICABILITY DATE."
 17

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

19 **Section 1.** Section 82-4-424, MCA, is amended to read:

20 "82-4-424. Receipt and expenditure of funds. (1) The
 21 board may receive any federal funds, state funds, or any
 22 other funds for the reclamation of land affected by opencut
 23 mining. The board may cause the reclamation work to be done
 24 by its own employees or by employees of other governmental
 25 agencies, soil conservation districts, or through contracts

1 with qualified persons.

2 (2) Any funds or any public works programs available to
 3 the board shall be expended and used to reclaim and
 4 rehabilitate any lands that have been subject to opencut
 5 mining that have not been reclaimed and rehabilitated in
 6 accordance with the standards of this part.

7 (3) There is an opencut mining and reclamation account
 8 within the state special revenue fund established in
 9 17-2-102. There must be deposited in the account all fees,
 10 finances, penalties, and other money that have been or will be
 11 paid under the provisions of this part. The money in the
 12 account is available to the department of state lands
 13 through appropriation and must be spent by the department
 14 for the reclamation and revegetation of land, research
 15 pertaining to the reclamation and revegetation of land, and
 16 the rehabilitation of water affected by opencut mining
 17 operations and for administration of this part. Any unspent
 18 or unencumbered money in the account at the end of a fiscal
 19 year must remain in the account until spent or appropriated
 20 by the legislature."

21 **Section 2.** Section 82-4-431, MCA, is amended to read:

22 "82-4-431. Contract for reclamation required. (1) After
 23 March 16, 1973, no operator may conduct opencut-mining
 24 operations which that will result in the removal of 10,000
 25 cubic yards or more of product or overburden or that will



1 result in the disturbance of land that was previously
 2 reclaimed pursuant to this part until he has entered into a
 3 contract with the board for the reclamation of the land
 4 affected. An operator conducting a number of operations,
 5 each of which results in the removal of less than 10,000
 6 cubic yards of product or overburden but which result in the
 7 removal of 10,000 cubic yards or more of product or
 8 overburden in the aggregate, is subject to the provisions of
 9 this part, except as provided in this section.

10 (2) (a) Except as provided in or conditioned under
 11 subsections (2)(b) and (2)(c), an operator who holds a
 12 contract for reclamation may operate an opencut mine without
 13 first securing an additional contract or an amendment to the
 14 existing contract or bond if the mine meets the following
 15 criteria:

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

18 (ii) the operator notifies the department of state lands
 19 prior to beginning such operations and, within 30 days of
 20 notifying the department, submits a completed site
 21 information form, salvages and stockpiles all root-bearing
 22 soil materials, regrades the affected area to 3:1 or flatter
 23 slope and blends the reclaimed area into the adjacent
 24 topography, and during the first appropriate growing season
 25 replaces all topsoil and reseeds or revegetates as required

1 by the department.

2 (b) The department may refuse to allow the operator to
 3 operate an opencut mine under subsection (2)(a) if, at the
 4 time of notification by the operator to the department, the
 5 operator has a pattern of violations or is in current
 6 violation of this part or rules adopted under this part or
 7 provisions of a contract for reclamation.

8 (c) The department may require an additional bond as a
 9 condition for the operation of an opencut mine under
 10 subsection (2)(a).

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

17 **Section 3.** Section 82-4-432, MCA, is amended to read:

18 "82-4-432. Application for contract -- contents --
 19 issuance -- amendment -- annual fee. (1) Applications for a
 20 contract shall be made upon a form furnished by the board,
 21 which form shall contain the following:

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

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

25 (c) the volume of earth to be removed, as accurately as

1 the volume may then be estimated, and the volume which has
2 been previously removed, if any;

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

5 (e) the date when the operation was or will be
6 commenced; and

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

10 (2) The application shall be accompanied by:

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

13 (b) a fee of \$50 \$100; and

14 (c) the operator's plan of his operation and the method
15 and manner of reclamation that will be used or 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 must be reduced proportionately.

15 (7) An operator shall pay an annual fee of \$50 for each
16 mine site under contract pursuant to this section. The fee
17 must be paid by December 31 of each year that is after the
18 year in which the contract or amendment authorizing mining
19 on that site is issued and that is before the year in which
20 final bond release is granted."

21 **Section 4.** Section 82-4-433, MCA, is amended to read:

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

1 this part and all rules of the board. The bond shall be
 2 signed by the landowner or operator, as appropriate, as
 3 principal, and by a good and sufficient corporate surety
 4 licensed to do business in the state of Montana, as surety.
 5 The bond shall be in an amount not to exceed the costs of
 6 restoration required by this part as determined by the
 7 board. The amount of the bond may not be less than \$200 or
 8 more than \$1,000 per acre unless the department determines,
 9 in writing, that the cost of restoration of the land exceeds
 10 \$1,000 per acre. Upon such a determination, the bond amount
 11 must be set by the board at the cost of restoring the land.

12 (2) In lieu of the bond, the operator may deposit with
 13 the board cash, and government securities, a letter of
 14 credit in a form acceptable to the department of state
 15 lands, or a bond with property sureties in an amount equal
 16 to that of the required bond on conditions as above
 17 prescribed. In the discretion of the board, surety bond
 18 requirements may be fulfilled by the operator's posting a
 19 bond with land and improvements and facilities thereon as
 20 security, in which event no surety may be required. The
 21 penalty of the bond or amount of cash and securities shall
 22 be increased or reduced from time to time as provided in
 23 this part. The bond or security remains in effect until the
 24 affected land has been reclaimed as provided under the
 25 contract and the reclamation has been approved and the bond

1 or security has been released by the board. The bond or
 2 security shall cover only actual affected land and may be
 3 increased or reduced to cover only such acreages as remain
 4 unreclaimed.

5 (3) If the license of a surety upon a bond filed with
 6 the board pursuant to this part is suspended or revoked, the
 7 operator, within 30 days after receiving notice thereof from
 8 the board, shall substitute for that surety a good and
 9 sufficient surety licensed to do business in the state. Upon
 10 failure of the operator to make substitution of surety, the
 11 board may suspend the contract of the operator to conduct
 12 operations upon the land described in the contract until the
 13 substitution has been made.

14 (4) The board shall cause the reclamation of any
 15 affected land with respect to which a bond has been
 16 forfeited.

17 (5) Whenever an operator has completed all of the
 18 requirements under the provisions of this part as to any
 19 affected land, he shall notify the board thereof. If the
 20 board releases the operator from further obligation
 21 regarding such affected land, the penalty of the bond shall
 22 be reduced proportionately."

23 **Section 5.** Section 82-4-441, MCA, is amended to read:

24 "82-4-441. Penalty -- enforcement. (1) A person who
 25 violates any of the provisions of this part or rules adopted

1 thereunder or provisions of a contract for reclamation shall
 2 pay a civil penalty of not less than \$100 or more than
 3 \$1,000 for the violation and an additional civil penalty of
 4 not less than \$100 or more than \$1,000 for each day during
 5 which a violation continues following the service of notice
 6 of the violation, and the person may be enjoined from
 7 continuing such violation as provided in this section. ~~These~~
 8 ~~penalties--are--recoverable-in-an-action-brought-in-the-name~~
 9 ~~of-the-state-of-Montana-by--the--attorney--general--in--the~~
 10 ~~district--court--having--jurisdiction-of-the-defendant-or-by~~
 11 ~~mutual-agreement-of-the-parties-involved,--in--the--district~~
 12 ~~court-of-the-first-judicial-district,--Penalty-money-shall-be~~
 13 ~~credited-to-the-general-fund.~~

14 ~~(2) The-attorney-general-shall, upon-the-request-of-the~~
 15 ~~department,--sue--for-the-recovery-of-the-penalties-provided~~
 16 ~~for-in-this-section-and-bring-an-action--for--a--restraining~~
 17 ~~order--or--a--temporary--or--permanent-injunction-against-an~~
 18 ~~operator-or-other-person-violating-or-threatening-to-violate~~
 19 ~~an-order-adopted-under-this-part.~~

20 (3) The civil penalties provided for in this section
 21 may be waived for a minor violation if it is determined that
 22 the violation does not represent potential harm to public
 23 health, public safety, or the environment and does not
 24 impair the administration of this part. The board shall
 25 adopt rules to implement and administer a procedure for

1 waiver of a penalty under this subsection.

2 (3) The department of state lands shall notify the
 3 person or operator of the violation. The person or operator
 4 is entitled, by filing a written request within 20 days of
 5 receipt of the notice of violation, to a hearing on the
 6 issues of whether the alleged violation has occurred and
 7 whether the penalty proposed to be imposed is proper. The
 8 department shall issue a statement of proposed penalty no
 9 more than 10 days after notice of violation. After the
 10 hearing or after the time for requesting a hearing has
 11 expired, the board shall make findings of fact, issue a
 12 written decision as to the occurrence of the violation and
 13 the amount of penalty warranted, and order the payment of a
 14 penalty in that amount. The person or operator shall remit
 15 the amount of the penalty within 30 days of the order. If
 16 the person or operator wishes to obtain judicial review of
 17 the assessment, he shall submit with the penalty a statement
 18 that the penalty is being paid under protest and the
 19 department shall hold the payment in escrow until judicial
 20 review is complete. A person or operator who fails to
 21 request and submit testimony at the hearing provided for in
 22 this subsection or who fails to pay the assessed penalty
 23 under protest within 30 days of the order assessing the
 24 penalty forfeits his right to seek judicial review of the
 25 violation or penalty determinations. These penalties are

1 recoverable in an action brought by the department in the
2 district court of the first judicial district of this state,
3 in and for the county of Lewis and Clark, or the district
4 court of the county in which the opencut mine is located.

5 (4) The department may bring an action to enjoin an
6 operator or other person violating or threatening to violate
7 this part, rules adopted pursuant to this part, or a
8 contract made pursuant to this part in the district court of
9 the first judicial district of this state, in and for the
10 county of Lewis and Clark, or the district court of the
11 county in which the opencut mine is located."

12 NEW SECTION. Section 6. Retroactive applicability.
13 [Section 3(7)] applies retroactively, within the meaning of
14 1-2-109, to calendar years beginning after December 31,
15 1990.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0253, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) prohibits mining of previously reclaimed land without an opencut contract; 2) establishes an annual opencut mining fee of \$50 for each mine site under contract; 3) increases the opencut mining contract application fee from \$50 to \$100; 4) authorizes the Department of State Lands to spend money for reclamation of land and rehabilitation of water affected by opencut mining; 5) authorizes acceptance of letters of credit as bond; and 6) provides administrative procedures for and appeals of assessment of civil penalties.


ASSUMPTIONS:


1. There will be 15 new opencut mining contracts in the 1993 biennium.
2. The 852 opencut mines will pay the \$50 annual mining fee.
3. Currently, the opencut mining application fees are deposited to the general fund. This bill redirects the application fees to the opencut mining and reclamation state special revenue account.

FISCAL IMPACT:

Department of State Lands:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
Application Fees	750	1,500	750	750	1,500	750
Annual Mining Fees	<u>0</u>	<u>42,600</u>	<u>42,600</u>	<u>0</u>	<u>42,600</u>	<u>42,600</u>
Total	750	44,100	43,350	750	44,100	43,350
<u>Distribution of Revenues</u>						
General Fund	750	0	750	750	0	750
Open Cut Mining Acct. (02)	<u>0</u>	<u>44,100</u>	<u>44,100</u>	<u>0</u>	<u>44,100</u>	<u>44,100</u>
Total	750	44,100	43,350	750	44,100	43,350


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning
 DATE 2-5-91


 ESTHER G. BENGTON, PRIMARY SPONSOR
 DATE 2/7/91
 Fiscal Note for SB0253, as introduced **SB 253**

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0253, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) prohibits mining of previously reclaimed land without an opencut contract; 2) authorizes the Department of State Lands to spend money for reclamation of land and rehabilitation of water affected by opencut mining; 3) authorizes acceptance of letters of credit as bond; and 4) provides administrative procedures for and appeals of assessment of civil penalties.


ASSUMPTIONS:

1. There will continue to be 250 new opencut applications each year @ \$50 per application fee plus fines and penalties of \$3,000 per year.
2. Revenues will be deposited in the opencut state special revenue account and used to supplement inadequate reclamation bond forfeitures for sediment control, noxious weed control, and small reclamation research plots on difficult reclamation sites.
3. Currently, application fees, fines and penalties are deposited into the general fund. This bill deposits the funds to an open cut state special revenue account.
4. There are no changes to program expenditures.

FISCAL IMPACT:

Department of State Lands:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
Application Fees	12,500	12,500	0	12,500	12,500	0
Fines and penalties	3,000	3,000	0	3,000	3,000	0
Total	15,500	15,500	0	15,500	15,500	0
<u>Distribution of Revenues:</u>						
General Fund	15,500	0	(15,500)	15,500	0	(15,500)
Open Cut Mining Acct. (02)	0	15,500	15,500	0	15,500	15,500
Total	15,500	15,500	0	15,500	15,500	0


 ROD SUNDSTED, BUDGET DIRECTOR 2-18-91 DATE
 Office of Budget and Program Planning


 ESTHER G. BENGTSON, PRIMARY SPONSOR 2/19/91 DATE

Fiscal Note for SB0253, second reading

SB 253

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 253

INTRODUCED BY BENGTON

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY
RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; ESTABLISHING AN
ANNUAL OPENCUT-MINING-FEE, INCREASING THE OPENCUT-MINING
CONTRACT-APPLICATION-FEE; AUTHORIZING THE DEPARTMENT OF
STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND
REHABILITATION OF WATER AFFECTED BY OPENCUT MINING;
AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND;
PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF
ASSESSMENT OF CIVIL PENALTIES; AND AMENDING SECTIONS
82-4-424, 82-4-431, 82-4-432, 82-4-433, AND 82-4-441, MCA;
AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 82-4-424, MCA, is amended to read:

"82-4-424. Receipt and expenditure of funds. (1) The
board may receive any federal funds, state funds, or any
other funds for the reclamation of land affected by opencut
mining. The board may cause the reclamation work to be done
by its own employees or by employees of other governmental
agencies, soil conservation districts, or through contracts

with qualified persons.

(2) Any funds or any public works programs available to
the board shall be expended and used to reclaim and
rehabilitate any lands that have been subject to opencut
mining that have not been reclaimed and rehabilitated in
accordance with the standards of this part.

(3) There is an opencut mining and reclamation account
within the state special revenue fund established in
17-2-102. There must be deposited in the account all fees,
fines, penalties, and other money that have been or will be
paid under the provisions of this part. The money in the
account is available to the department of state lands
through appropriation and must be spent by the department
for the reclamation and revegetation of land, research
pertaining to the reclamation and revegetation of land, and
the rehabilitation of water affected by opencut mining
operations and for administration of this part. Any unspent
or unencumbered money in the account at the end of a fiscal
year must remain in the account until spent or appropriated
by the legislature."

Section 2. Section 82-4-431, MCA, is amended to read:

"82-4-431. Contract for reclamation required. (1) After
March 16, 1973, no operator may conduct opencut-mining
operations which that will result in the removal of 10,000
cubic yards or more of product or overburden or that will

SECOND READING

SB 253



1 result in the disturbance of land that was previously
 2 reclaimed pursuant to this part until he has entered into a
 3 contract with the board for the reclamation of the land
 4 affected. An operator conducting a number of operations,
 5 each of which results in the removal of less than 10,000
 6 cubic yards of product or overburden but which result in the
 7 removal of 10,000 cubic yards or more of product or
 8 overburden in the aggregate, is subject to the provisions of
 9 this part, except as provided in this section.

10 (2) (a) Except as provided in or conditioned under
 11 subsections (2)(b) and (2)(c), an operator who holds a
 12 contract for reclamation may operate an opencut mine without
 13 first securing an additional contract or an amendment to the
 14 existing contract or bond if the mine meets the following
 15 criteria:

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

18 (ii) the operator notifies the department of state lands
 19 prior to beginning such operations and, within 30 days of
 20 notifying the department, submits a completed site
 21 information form, salvages and stockpiles all root-bearing
 22 soil materials, regrades the affected area to 3:1 or flatter
 23 slope and blends the reclaimed area into the adjacent
 24 topography, and during the first appropriate growing season
 25 replaces all topsoil and reseeds or revegetates as required

1 by the department.

2 (b) The department may refuse to allow the operator to
 3 operate an opencut mine under subsection (2)(a) if, at the
 4 time of notification by the operator to the department, the
 5 operator has a pattern of violations or is in current
 6 violation of this part or rules adopted under this part or
 7 provisions of a contract for reclamation.

8 (c) The department may require an additional bond as a
 9 condition for the operation of an opencut mine under
 10 subsection (2)(a).

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

17 ~~Section 3, Section 82-4-432, MCA, is amended to read:~~

18 ~~"82-4-432. Application for contract-----contents-----~~
 19 ~~issuance-----amendment ---annual fee, (1) Applications for a~~
 20 ~~contract shall be made upon a form furnished by the board,~~
 21 ~~which form shall contain the following:~~

22 ~~(a) the name of the operator and, if other than the~~
 23 ~~owner of the land, the name and address of the owner;~~

24 ~~(b) the type of operation to be conducted;~~

25 ~~(c) the volume of earth to be removed, as accurately as~~

1 the volume may then be estimated, and the volume which has
2 been previously removed, if any;

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

5 (e) the date when the operation was or will be
6 commenced; and

7 (f) a statement that the applicant has the right and
8 power by legal estate owned to mine by opencut mining the
9 lands so described;

10 (2) The application shall be accompanied by:

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

13 (b) a fee of \$50 \$100; and

14 (c) the operator's plan of his operation and the method
15 and manner of reclamation that will be used or 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 must be reduced proportionately.

15 (7) An operator shall pay an annual fee of \$50 for each
16 mine site under contract pursuant to this section. The fee
17 must be paid by December 31 of each year that is after the
18 year in which the contract or amendment authorizing mining
19 on that site is issued and that is before the year in which
20 final bond release is granted."

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

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

1 this part and all rules of the board. The bond shall be
 2 signed by the landowner or operator, as appropriate, as
 3 principal, and by a good and sufficient corporate surety
 4 licensed to do business in the state of Montana, as surety.
 5 The bond shall be in an amount not to exceed the costs of
 6 restoration required by this part as determined by the
 7 board. The amount of the bond may not be less than \$200 or
 8 more than \$1,000 per acre unless the department determines,
 9 in writing, that the cost of restoration of the land exceeds
 10 \$1,000 per acre. Upon such a determination, the bond amount
 11 must be set by the board at the cost of restoring the land.

12 (2) In lieu of the bond, the operator may deposit with
 13 the board cash, and government securities, a letter of
 14 credit in a form acceptable to the department of state
 15 lands, or a bond with property sureties in an amount equal
 16 to that of the required bond on conditions as above
 17 prescribed. In the discretion of the board, surety bond
 18 requirements may be fulfilled by the operator's posting a
 19 bond with land and improvements and facilities thereon as
 20 security, in which event no surety may be required. The
 21 penalty of the bond or amount of cash and securities shall
 22 be increased or reduced from time to time as provided in
 23 this part. The bond or security remains in effect until the
 24 affected land has been reclaimed as provided under the
 25 contract and the reclamation has been approved and the bond

1 or security has been released by the board. The bond or
 2 security shall cover only actual affected land and may be
 3 increased or reduced to cover only such acreages as remain
 4 unreclaimed.

5 (3) If the license of a surety upon a bond filed with
 6 the board pursuant to this part is suspended or revoked, the
 7 operator, within 30 days after receiving notice thereof from
 8 the board, shall substitute for that surety a good and
 9 sufficient surety licensed to do business in the state. Upon
 10 failure of the operator to make substitution of surety, the
 11 board may suspend the contract of the operator to conduct
 12 operations upon the land described in the contract until the
 13 substitution has been made.

14 (4) The board shall cause the reclamation of any
 15 affected land with respect to which a bond has been
 16 forfeited.

17 (5) Whenever an operator has completed all of the
 18 requirements under the provisions of this part as to any
 19 affected land, he shall notify the board thereof. If the
 20 board releases the operator from further obligation
 21 regarding such affected land, the penalty of the bond shall
 22 be reduced proportionately."

23 **Section 4.** Section 82-4-441, MCA, is amended to read:

24 "82-4-441. Penalty -- enforcement. (1) A person who
 25 violates any of the provisions of this part or rules adopted

1 thereunder or provisions of a contract for reclamation shall
 2 pay a civil penalty of not less than \$100 or more than
 3 \$1,000 for the violation and an additional civil penalty of
 4 not less than \$100 or more than \$1,000 for each day during
 5 which a violation continues following the service of notice
 6 of the violation, and the person may be enjoined from
 7 continuing such violation as provided in this section. These
 8 ~~penalties--are--recoverable-in-an-action-brought-in-the-name~~
 9 ~~of-the-state-of-Montana--by--the--attorney--general--in--the~~
 10 ~~district--court--having--jurisdiction-of-the-defendant-or-by~~
 11 ~~mutual-agreement-of-the-parties-involved,--in--the--district~~
 12 ~~court-of-the-first-judicial-district.--Penalty-money-shall-be~~
 13 ~~credited-to-the-general-fund.~~

14 (2) ~~The-attorney-general-shall,--upon-the-request-of-the~~
 15 ~~department,--sue--for-the-recovery-of-the-penalties-provided~~
 16 ~~for-in-this-section-and-bring-an-action--for--a--restraining~~
 17 ~~order--or--a--temporary--or--permanent-injunction-against-an~~
 18 ~~operator-or-other-person-violating-or-threatening-to-violate~~
 19 ~~an-order-adopted-under-this-part.~~

20 (3) The civil penalties provided for in this section
 21 may be waived for a minor violation if it is determined that
 22 the violation does not represent potential harm to public
 23 health, public safety, or the environment and does not
 24 impair the administration of this part. The board shall
 25 adopt rules to implement and administer a procedure for

1 waiver of a penalty under this subsection.

2 (3) The department of state lands shall notify the
 3 person or operator of the violation. The person or operator
 4 is entitled, by filing a written request within 20 days of
 5 receipt of the notice of violation, to a hearing on the
 6 issues of whether the alleged violation has occurred and
 7 whether the penalty proposed to be imposed is proper. The
 8 department shall issue a statement of proposed penalty no
 9 more than 10 days after notice of violation. After the
 10 hearing or after the time for requesting a hearing has
 11 expired, the board shall make findings of fact, issue a
 12 written decision as to the occurrence of the violation and
 13 the amount of penalty warranted, and order the payment of a
 14 penalty in that amount. The person or operator shall remit
 15 the amount of the penalty within 30 days of the order. If
 16 the person or operator wishes to obtain judicial review of
 17 the assessment, he shall submit with the penalty a statement
 18 that the penalty is being paid under protest and the
 19 department shall hold the payment in escrow until judicial
 20 review is complete. A person or operator who fails to
 21 request and submit testimony at the hearing provided for in
 22 this subsection or who fails to pay the assessed penalty
 23 under protest within 30 days of the order assessing the
 24 penalty forfeits his right to seek judicial review of the
 25 violation or penalty determinations. These penalties are

1 recoverable in an action brought by the department in the
2 district court of the first judicial district of this state,
3 in and for the county of Lewis and Clark, or the district
4 court of the county in which the opencut mine is located.

5 (4) The department may bring an action to enjoin an
6 operator or other person violating or threatening to violate
7 this part, rules adopted pursuant to this part, or a
8 contract made pursuant to this part in the district court of
9 the first judicial district of this state, in and for the
10 county of Lewis and Clark, or the district court of the
11 county in which the opencut mine is located."

12 ~~NEW-SECTION:--Section-6:--Retroactive-----applicability:~~
13 ~~{Section-3(7)}-applies-retroactively,-within-the-meaning--of~~
14 ~~1-2-199,--to--calendar--years--beginning--after--December-31,~~
15 ~~1990.~~

-End-

1 SENATE BILL NO. 253
 2 INTRODUCED BY BENGTSON
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY
 7 RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; ~~ESTABLISHING-AN~~
 8 ~~ANNUAL-OPENCUT-MINING-FEE;--INCREASING--THE--OPENCUT--MINING~~
 9 ~~CONTRACT--APPLICATION--FEE;~~ AUTHORIZING THE DEPARTMENT OF
 10 STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND
 11 REHABILITATION OF WATER AFFECTED BY OPENCUT MINING;
 12 AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND;
 13 PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF
 14 ASSESSMENT OF CIVIL PENALTIES; AND AMENDING SECTIONS
 15 82-4-424, 82-4-431, ~~82-4-432~~ 82-4-433, AND 82-4-441, MCA;
 16 ~~AND-PROVIDING-A-RETROACTIVE-APPLICABILITY-DATE."~~

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 **Section 1.** Section 82-4-424, MCA, is amended to read:
 20 **"82-4-424. Receipt and expenditure of funds.** (1) The
 21 board may receive any federal funds, state funds, or any
 22 other funds for the reclamation of land affected by opencut
 23 mining. The board may cause the reclamation work to be done
 24 by its own employees or by employees of other governmental
 25 agencies, soil conservation districts, or through contracts

1 with qualified persons.
 2 (2) Any funds or any public works programs available to
 3 the board shall be expended and used to reclaim and
 4 rehabilitate any lands that have been subject to opencut
 5 mining that have not been reclaimed and rehabilitated in
 6 accordance with the standards of this part.
 7 (3) There is an opencut mining and reclamation account
 8 within the state special revenue fund established in
 9 17-2-102. There must be deposited in the account all fees,
 10 finances, penalties, and other money that have been or will be
 11 paid under the provisions of this part. The money in the
 12 account is available to the department of state lands
 13 through appropriation and must be spent by the department
 14 for the reclamation and revegetation of land, research
 15 pertaining to the reclamation and revegetation of land, and
 16 the rehabilitation of water affected by opencut mining
 17 operations and for administration of this part. Any unspent
 18 or unencumbered money in the account at the end of a fiscal
 19 year must remain in the account until spent or appropriated
 20 by the legislature."

21 **Section 2.** Section 82-4-431, MCA, is amended to read:
 22 **"82-4-431. Contract for reclamation required.** (1) After
 23 March 16, 1973, no operator may conduct opencut-mining
 24 operations which that will result in the removal of 10,000
 25 cubic yards or more of product or overburden or that will



1 result in the disturbance of land that was previously
 2 reclaimed pursuant to this part until he has entered into a
 3 contract with the board for the reclamation of the land
 4 affected. An operator conducting a number of operations,
 5 each of which results in the removal of less than 10,000
 6 cubic yards of product or overburden but which result in the
 7 removal of 10,000 cubic yards or more of product or
 8 overburden in the aggregate, is subject to the provisions of
 9 this part, except as provided in this section.

10 (2) (a) Except as provided in or conditioned under
 11 subsections (2)(b) and (2)(c), an operator who holds a
 12 contract for reclamation may operate an opencut mine without
 13 first securing an additional contract or an amendment to the
 14 existing contract or bond if the mine meets the following
 15 criteria:

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

18 (ii) the operator notifies the department of state lands
 19 prior to beginning such operations and, within 30 days of
 20 notifying the department, submits a completed site
 21 information form, salvages and stockpiles all root-bearing
 22 soil materials, regrades the affected area to 3:1 or flatter
 23 slope and blends the reclaimed area into the adjacent
 24 topography, and during the first appropriate growing season
 25 replaces all topsoil and reseeds or revegetates as required

1 by the department.

2 (b) The department may refuse to allow the operator to
 3 operate an opencut mine under subsection (2)(a) if, at the
 4 time of notification by the operator to the department, the
 5 operator has a pattern of violations or is in current
 6 violation of this part or rules adopted under this part or
 7 provisions of a contract for reclamation.

8 (c) The department may require an additional bond as a
 9 condition for the operation of an opencut mine under
 10 subsection (2)(a).

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

17 ~~Section 3. Section 82-4-432, MCA, is amended to read:~~

18 ~~"82-4-432. Application for contract-----contents----~~
 19 ~~issuance-----amendment ---annual fee--(1) Applications for a~~
 20 ~~contract shall be made upon a form furnished by the board,~~
 21 ~~which form shall contain the following:~~

- 22 (a) the name of the operator and, if other than the
- 23 owner of the land, the name and address of the owner;
- 24 (b) the type of operation to be conducted;
- 25 (c) the volume of earth to be removed, as accurately as

1 the volume may then be estimated, and the volume which has
 2 been previously removed, if any;

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

5 (e) the date when the operation was or will be
 6 commenced, and

7 (f) a statement that the applicant has the right and
 8 power by legal estate owned to mine by open-cut mining the
 9 lands so described;

10 (2) The application shall be accompanied by:

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

13 (b) a fee of \$50 \$100; and

14 (c) the operator's plan of his operation and the method
 15 and manner of reclamation that will be used or 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 open-cut 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 must be reduced proportionately;

15 (7) An operator shall pay an annual fee of \$50 for each
 16 mine site under contract pursuant to this section. The fee
 17 must be paid by December 31 of each year that is after the
 18 year in which the contract or amendment authorizing mining
 19 on that site is issued and that is before the year in which
 20 final bond release is granted."

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

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

1 this part and all rules of the board. The bond shall be
 2 signed by the landowner or operator, as appropriate, as
 3 principal, and by a good and sufficient corporate surety
 4 licensed to do business in the state of Montana, as surety.
 5 The bond shall be in an amount not to exceed the costs of
 6 restoration required by this part as determined by the
 7 board. The amount of the bond may not be less than \$200 or
 8 more than \$1,000 per acre unless the department determines,
 9 in writing, that the cost of restoration of the land exceeds
 10 \$1,000 per acre. Upon such a determination, the bond amount
 11 must be set by the board at the cost of restoring the land.

12 (2) In lieu of the bond, the operator may deposit with
 13 the board cash, and government securities, a letter of
 14 credit in a form acceptable to the department of state
 15 lands, or a bond with property sureties in an amount equal
 16 to that of the required bond on conditions as above
 17 prescribed. In the discretion of the board, surety bond
 18 requirements may be fulfilled by the operator's posting a
 19 bond with land and improvements and facilities thereon as
 20 security, in which event no surety may be required. The
 21 penalty of the bond or amount of cash and securities shall
 22 be increased or reduced from time to time as provided in
 23 this part. The bond or security remains in effect until the
 24 affected land has been reclaimed as provided under the
 25 contract and the reclamation has been approved and the bond

1 or security has been released by the board. The bond or
 2 security shall cover only actual affected land and may be
 3 increased or reduced to cover only such acreages as remain
 4 unreclaimed.

5 (3) If the license of a surety upon a bond filed with
 6 the board pursuant to this part is suspended or revoked, the
 7 operator, within 30 days after receiving notice thereof from
 8 the board, shall substitute for that surety a good and
 9 sufficient surety licensed to do business in the state. Upon
 10 failure of the operator to make substitution of surety, the
 11 board may suspend the contract of the operator to conduct
 12 operations upon the land described in the contract until the
 13 substitution has been made.

14 (4) The board shall cause the reclamation of any
 15 affected land with respect to which a bond has been
 16 forfeited.

17 (5) Whenever an operator has completed all of the
 18 requirements under the provisions of this part as to any
 19 affected land, he shall notify the board thereof. If the
 20 board releases the operator from further obligation
 21 regarding such affected land, the penalty of the bond shall
 22 be reduced proportionately."

23 **Section 4.** Section 82-4-441, MCA, is amended to read:

24 "82-4-441. Penalty -- enforcement. (1) A person who
 25 violates any of the provisions of this part or rules adopted

1 thereunder or provisions of a contract for reclamation shall
 2 pay a civil penalty of not less than \$100 or more than
 3 \$1,000 for the violation and an additional civil penalty of
 4 not less than \$100 or more than \$1,000 for each day during
 5 which a violation continues following the service of notice
 6 of the violation, and the person may be enjoined from
 7 continuing such violation as provided in this section. ~~These~~
 8 ~~penalties--are--recoverable-in-an-action-brought-in-the-name~~
 9 ~~of-the-state-of-Montana--by--the--attorney--general--in--the~~
 10 ~~district--court--having--jurisdiction-of-the-defendant-or-by~~
 11 ~~mutual-agreement-of-the-parties-involved,--in--the--district~~
 12 ~~court-of-the-first-judicial-district. Penalty money shall be~~
 13 ~~credited-to-the-general-fund.~~

14 (2) ~~The attorney general shall, upon the request of the~~
 15 ~~department, sue for the recovery of the penalties provided~~
 16 ~~for in this section and bring an action for a restraining~~
 17 ~~order or a temporary or permanent injunction against an~~
 18 ~~operator or other person violating or threatening to violate~~
 19 ~~an order adopted under this part.~~

20 (3) The civil penalties provided for in this section
 21 may be waived for a minor violation if it is determined that
 22 the violation does not represent potential harm to public
 23 health, public safety, or the environment and does not
 24 impair the administration of this part. The board shall
 25 adopt rules to implement and administer a procedure for

1 waiver of a penalty under this subsection.

2 (3) The department of state lands shall notify the
 3 person or operator of the violation. The person or operator
 4 is entitled, by filing a written request within 20 days of
 5 receipt of the notice of violation, to a hearing on the
 6 issues of whether the alleged violation has occurred and
 7 whether the penalty proposed to be imposed is proper. The
 8 department shall issue a statement of proposed penalty no
 9 more than 10 days after notice of violation. After the
 10 hearing or after the time for requesting a hearing has
 11 expired, the board shall make findings of fact, issue a
 12 written decision as to the occurrence of the violation and
 13 the amount of penalty warranted, and order the payment of a
 14 penalty in that amount. The person or operator shall remit
 15 the amount of the penalty within 30 days of the order. If
 16 the person or operator wishes to obtain judicial review of
 17 the assessment, he shall submit with the penalty a statement
 18 that the penalty is being paid under protest and the
 19 department shall hold the payment in escrow until judicial
 20 review is complete. A person or operator who fails to
 21 request and submit testimony at the hearing provided for in
 22 this subsection or who fails to pay the assessed penalty
 23 under protest within 30 days of the order assessing the
 24 penalty forfeits his right to seek judicial review of the
 25 violation or penalty determinations. These penalties are

1 recoverable in an action brought by the department in the
2 district court of the first judicial district of this state,
3 in and for the county of Lewis and Clark, or the district
4 court of the county in which the opencut mine is located.

5 (4) The department may bring an action to enjoin an
6 operator or other person violating or threatening to violate
7 this part, rules adopted pursuant to this part, or a
8 contract made pursuant to this part in the district court of
9 the first judicial district of this state, in and for the
10 county of Lewis and Clark, or the district court of the
11 county in which the opencut mine is located."

12 ~~NEW-SECTION--Section-6--Retroactive----applicability--~~
13 ~~{Section-3(7)}--applies-retroactively--within-the-meaning--of~~
14 ~~1-2-1997--to--calendar--years--beginning--after--December-31,~~
15 ~~1998.~~

-End-

1 SENATE BILL NO. 253

2 INTRODUCED BY BENGTSON

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY
 7 RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; ~~ESTABLISHING AN~~
 8 ~~ANNUAL OPENCUT MINING FEE; INCREASING THE OPENCUT MINING~~
 9 ~~CONTRACT APPLICATION FEE;~~ AUTHORIZING THE DEPARTMENT OF
 10 STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND
 11 REHABILITATION OF WATER AFFECTED BY OPENCUT MINING;
 12 AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND;
 13 PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF
 14 ASSESSMENT OF CIVIL PENALTIES; AND AMENDING SECTIONS
 15 82-4-424, 82-4-431, ~~82-4-432~~, 82-4-433, AND 82-4-441, MCA;
 16 ~~AND PROVIDING A RETROACTIVE APPLICABILITY DATE."~~

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:19 **Section 1.** Section 82-4-424, MCA, is amended to read:

20 "82-4-424. Receipt and expenditure of funds. (1) The
 21 board may receive any federal funds, state funds, or any
 22 other funds for the reclamation of land affected by opencut
 23 mining. The board may cause the reclamation work to be done
 24 by its own employees or by employees of other governmental
 25 agencies, soil conservation districts, or through contracts

1 with qualified persons.

2 (2) Any funds or any public works programs available to
 3 the board shall be expended and used to reclaim and
 4 rehabilitate any lands that have been subject to opencut
 5 mining that have not been reclaimed and rehabilitated in
 6 accordance with the standards of this part.

7 (3) There is an opencut mining and reclamation account
 8 within the state special revenue fund established in
 9 17-2-102. There must be deposited in the account all fees,
 10 finances, penalties, and other money that have been or will be
 11 paid under the provisions of this part. The money in the
 12 account is available to the department of state lands
 13 through appropriation and must be spent by the department
 14 for the reclamation and revegetation of land, research
 15 pertaining to the reclamation and revegetation of land, and
 16 the rehabilitation of water affected by opencut mining
 17 operations and for administration of this part. Any unspent
 18 or unencumbered money in the account at the end of a fiscal
 19 year must remain in the account until spent or appropriated
 20 by the legislature."

21 **Section 2.** Section 82-4-431, MCA, is amended to read:

22 "82-4-431. Contract for reclamation required. (1) After
 23 March 16, 1973, no operator may conduct opencut-mining
 24 operations which that will result in the removal of 10,000
 25 cubic yards or more of product or overburden or that will

REFERENCE BILL
 SB 253

1 result in the disturbance of land that was previously
 2 reclaimed pursuant to this part until he has entered into a
 3 contract with the board for the reclamation of the land
 4 affected. An operator conducting a number of operations,
 5 each of which results in the removal of less than 10,000
 6 cubic yards of product or overburden but which result in the
 7 removal of 10,000 cubic yards or more of product or
 8 overburden in the aggregate, is subject to the provisions of
 9 this part, except as provided in this section.

10 (2) (a) Except as provided in or conditioned under
 11 subsections (2)(b) and (2)(c), an operator who holds a
 12 contract for reclamation may operate an opencut mine without
 13 first securing an additional contract or an amendment to the
 14 existing contract or bond if the mine meets the following
 15 criteria:

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

18 (ii) the operator notifies the department of state lands
 19 prior to beginning such operations and, within 30 days of
 20 notifying the department, submits a completed site
 21 information form, salvages and stockpiles all root-bearing
 22 soil materials, regrades the affected area to 3:1 or flatter
 23 slope and blends the reclaimed area into the adjacent
 24 topography, and during the first appropriate growing season
 25 replaces all topsoil and reseeds or revegetates as required

1 by the department.

2 (b) The department may refuse to allow the operator to
 3 operate an opencut mine under subsection (2)(a) if, at the
 4 time of notification by the operator to the department, the
 5 operator has a pattern of violations or is in current
 6 violation of this part or rules adopted under this part or
 7 provisions of a contract for reclamation.

8 (c) The department may require an additional bond as a
 9 condition for the operation of an opencut mine under
 10 subsection (2)(a).

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

17 ~~Section 3. Section 82-4-432, MCA, is amended to read:~~

18 ~~"82-4-432. Application for contract-----contents----~~
 19 ~~issuance-----amendment ---annual fee--- Applications for a~~
 20 ~~contract shall be made upon a form furnished by the board,~~
 21 ~~which form shall contain the following:~~

22 ~~(a) the name of the operator and, if other than the~~
 23 ~~owner of the land, the name and address of the owner;~~

24 ~~(b) the type of operation to be conducted;~~

25 ~~(c) the volume of earth to be removed, as accurately as~~

1 the volume may then be estimated, and the volume which has
2 been previously removed, if any;

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

5 (e) the date when the operation was or will be
6 commenced; and

7 (f) a statement that the applicant has the right and
8 power by legal estate owned to mine by open-cut mining the
9 lands so described;

10 (2) The application shall be accompanied by:

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

13 (b) a fee of \$50 \$100; and

14 (c) the operator's plan of his operation and the method
15 and manner of reclamation that will be used or 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 open-cut 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 must be reduced proportionately;

15 (7) An operator shall pay an annual fee of \$50 for each
16 mine site under contract pursuant to this section. The fee
17 must be paid by December 31 of each year that is after the
18 year in which the contract or amendment authorizing mining
19 on that site is issued and that is before the year in which
20 final bond release is granted.

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

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

1 this part and all rules of the board. The bond shall be
 2 signed by the landowner or operator, as appropriate, as
 3 principal, and by a good and sufficient corporate surety
 4 licensed to do business in the state of Montana, as surety.
 5 The bond shall be in an amount not to exceed the costs of
 6 restoration required by this part as determined by the
 7 board. The amount of the bond may not be less than \$200 or
 8 more than \$1,000 per acre unless the department determines,
 9 in writing, that the cost of restoration of the land exceeds
 10 \$1,000 per acre. Upon such a determination, the bond amount
 11 must be set by the board at the cost of restoring the land.

12 (2) In lieu of the bond, the operator may deposit with
 13 the board cash, and government securities, a letter of
 14 credit in a form acceptable to the department of state
 15 lands, or a bond with property sureties in an amount equal
 16 to that of the required bond on conditions as above
 17 prescribed. In the discretion of the board, surety bond
 18 requirements may be fulfilled by the operator's posting a
 19 bond with land and improvements and facilities thereon as
 20 security, in which event no surety may be required. The
 21 penalty of the bond or amount of cash and securities shall
 22 be increased or reduced from time to time as provided in
 23 this part. The bond or security remains in effect until the
 24 affected land has been reclaimed as provided under the
 25 contract and the reclamation has been approved and the bond

1 or security has been released by the board. The bond or
 2 security shall cover only actual affected land and may be
 3 increased or reduced to cover only such acreages as remain
 4 unreclaimed.

5 (3) If the license of a surety upon a bond filed with
 6 the board pursuant to this part is suspended or revoked, the
 7 operator, within 30 days after receiving notice thereof from
 8 the board, shall substitute for that surety a good and
 9 sufficient surety licensed to do business in the state. Upon
 10 failure of the operator to make substitution of surety, the
 11 board may suspend the contract of the operator to conduct
 12 operations upon the land described in the contract until the
 13 substitution has been made.

14 (4) The board shall cause the reclamation of any
 15 affected land with respect to which a bond has been
 16 forfeited.

17 (5) Whenever an operator has completed all of the
 18 requirements under the provisions of this part as to any
 19 affected land, he shall notify the board thereof. If the
 20 board releases the operator from further obligation
 21 regarding such affected land, the penalty of the bond shall
 22 be reduced proportionately."

23 **Section 4.** Section 82-4-441, MCA, is amended to read:

24 "82-4-441. Penalty -- enforcement. (1) A person who
 25 violates any of the provisions of this part or rules adopted

1 thereunder or provisions of a contract for reclamation shall
 2 pay a civil penalty of not less than \$100 or more than
 3 \$1,000 for the violation and an additional civil penalty of
 4 not less than \$100 or more than \$1,000 for each day during
 5 which a violation continues following the service of notice
 6 of the violation, and the person may be enjoined from
 7 continuing such violation as provided in this section. ~~These~~
 8 ~~penalties--are--recoverable--in--an--action--brought--in--the--name~~
 9 ~~of--the--state--of--Montana--by--the--attorney--general--in--the~~
 10 ~~district--court--having--jurisdiction--of--the--defendant--or--by~~
 11 ~~mutual--agreement--of--the--parties--involved,--in--the--district~~
 12 ~~court--of--the--first--judicial--district. Penalty money shall be~~
 13 ~~credited to the general fund.~~

14 (2) ~~The attorney general shall, upon the request of the~~
 15 ~~department, sue for the recovery of the penalties provided~~
 16 ~~for in this section and bring an action for a restraining~~
 17 ~~order or a temporary or permanent injunction against an~~
 18 ~~operator or other person violating or threatening to violate~~
 19 ~~an order adopted under this part.~~

20 (3) The civil penalties provided for in this section
 21 may be waived for a minor violation if it is determined that
 22 the violation does not represent potential harm to public
 23 health, public safety, or the environment and does not
 24 impair the administration of this part. The board shall
 25 adopt rules to implement and administer a procedure for

1 waiver of a penalty under this subsection.

2 (3) The department of state lands shall notify the
 3 person or operator of the violation. The person or operator
 4 is entitled, by filing a written request within 20 days of
 5 receipt of the notice of violation, to a hearing on the
 6 issues of whether the alleged violation has occurred and
 7 whether the penalty proposed to be imposed is proper. The
 8 department shall issue a statement of proposed penalty no
 9 more than 10 days after notice of violation. After the
 10 hearing or after the time for requesting a hearing has
 11 expired, the board shall make findings of fact, issue a
 12 written decision as to the occurrence of the violation and
 13 the amount of penalty warranted, and order the payment of a
 14 penalty in that amount. The person or operator shall remit
 15 the amount of the penalty within 30 days of the order. If
 16 the person or operator wishes to obtain judicial review of
 17 the assessment, he shall submit with the penalty a statement
 18 that the penalty is being paid under protest and the
 19 department shall hold the payment in escrow until judicial
 20 review is complete. A person or operator who fails to
 21 request and submit testimony at the hearing provided for in
 22 this subsection or who fails to pay the assessed penalty
 23 under protest within 30 days of the order assessing the
 24 penalty forfeits his right to seek judicial review of the
 25 violation or penalty determinations. These penalties are

1 recoverable in an action brought by the department in the
2 district court of the first judicial district of this state,
3 in and for the county of Lewis and Clark, or the district
4 court of the county in which the opencut mine is located.

5 (4) The department may bring an action to enjoin an
6 operator or other person violating or threatening to violate
7 this part, rules adopted pursuant to this part, or a
8 contract made pursuant to this part in the district court of
9 the first judicial district of this state, in and for the
10 county of Lewis and Clark, or the district court of the
11 county in which the opencut mine is located."

12 ~~NEW SECTION--Section-6--Retroactive---applicability-~~
13 ~~{Section-3(7)}-applies-retroactively,-within-the-meaning--of~~
14 ~~1-2-189,-to--calendar--years--beginning--after-December-31-~~
15 ~~1990-~~

-End-