



1 *Senate* BILL NO. *283*  
 2 INTRODUCED BY *Donny T. Buck - House Rep. Comm.*  
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE  
 6 ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW;  
 7 EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE  
 8 VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE  
 9 COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN  
 10 OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR  
 11 SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS  
 12 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN  
 13 EFFECTIVE DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 82-4-303, MCA, is amended to read:

17 **"82-4-303. Definitions.** As used in this part, unless  
 18 the context indicates otherwise, the following definitions  
 19 apply:

20 (1) "Abandonment of surface or underground mining" may  
 21 be presumed when it is shown that continued operation will  
 22 not resume.

23 (2) "Board" means the board of land commissioners or a  
 24 state employee or state agency as may succeed to its powers  
 25 and duties under this part.

1 (3) "Commissioner" means the commissioner of state  
 2 lands provided for in 2-15-3202.

3 ~~(3)~~(4) "Cyanide ore-processing reagent" means cyanide  
 4 or a cyanide compound used as a reagent in leaching  
 5 operations.

6 ~~(4)~~(5) "Department" means the department of state  
 7 lands.

8 ~~(5)~~(6) "Disturbed land" means that area of land or  
 9 surface water disturbed, beginning at the date of the  
 10 issuance of the permit, and it comprises that area from  
 11 which the overburden, tailings, waste materials, or minerals  
 12 have been removed and tailings ponds, waste dumps, roads,  
 13 conveyor systems, leach dumps, and all similar excavations  
 14 or covering resulting from the operation and which have not  
 15 been previously reclaimed under the reclamation plan.

16 ~~(6)~~(7) "Exploration" means all activities conducted on  
 17 or beneath the surface of lands resulting in material  
 18 disturbance of the surface for the purpose of determining  
 19 the presence, location, extent, depth, grade, and economic  
 20 viability of mineralization in those lands, if any, other  
 21 than mining for production and economic exploitation, as  
 22 well as all roads made for the purpose of facilitating  
 23 exploration, except as noted in 82-4-310.

24 ~~(7)~~(8) "Mineral" means any ore, rock, or substance,  
 25 other than oil, gas, bentonite, clay, coal, sand, gravel,

1 phosphate rock, or uranium, taken from below the surface or  
 2 from the surface of the earth for the purpose of milling,  
 3 concentration, refinement, smelting, manufacturing, or other  
 4 subsequent use or processing or for stockpiling for future  
 5 use, refinement, or smelting.

6 ~~{8}~~(9) "Mining" commences when the operator first mines  
 7 ores or minerals in commercial quantities for sale,  
 8 beneficiation, refining, or other processing or disposition  
 9 or first takes bulk samples for metallurgical testing in  
 10 excess of aggregate of 10,000 short tons.

11 ~~{9}~~(10) "Ore processing" means milling, heap leaching,  
 12 flotation, vat leaching, or other standard hard-rock mineral  
 13 concentration processes.

14 ~~{10}~~(11) "Person" means any person, corporation, firm,  
 15 association, partnership, or other legal entity engaged in  
 16 exploration for or mining of minerals on or below the  
 17 surface of the earth, reprocessing of tailings or waste  
 18 materials, or operation of a hard-rock mill.

19 ~~{11}~~(12) "Placer deposit" means naturally occurring,  
 20 scattered or unconsolidated valuable minerals in gravel or  
 21 alluvium lying above bedrock.

22 ~~{12}~~(13) "Placer or dredge mining" means the mining of  
 23 minerals from a placer deposit by a person or persons.

24 ~~{13}~~(14) "Reclamation plan" means the operator's written  
 25 proposal, as required and approved by the board, for

1 reclamation of the land that will be disturbed. The proposal  
 2 shall include, to the extent practical at the time of  
 3 application for an operating permit:

4 (a) a statement of the proposed subsequent use of the  
 5 land after reclamation;

6 (b) plans for surface gradient restoration to a surface  
 7 suitable for the proposed subsequent use of the land after  
 8 reclamation is completed and the proposed method of  
 9 accomplishment;

10 (c) the manner and type of revegetation or other  
 11 surface treatment of disturbed areas;

12 (d) procedures proposed to avoid foreseeable situations  
 13 of public nuisance, endangerment of public safety, damage to  
 14 human life or property, or unnecessary damage to flora and  
 15 fauna in or adjacent to the area;

16 (e) the method of disposal of mining debris;

17 (f) the method of diverting surface waters around the  
 18 disturbed areas where necessary to prevent pollution of  
 19 those waters or unnecessary erosion;

20 (g) the method of reclamation of stream channels and  
 21 stream banks to control erosion, siltation, and pollution;

22 (h) maps and other supporting documents as may be  
 23 reasonably required by the department; and

24 (i) a time schedule for reclamation that meets the  
 25 requirements of 82-4-336.

1        {14}(15) (a) "Small miner" means a person, firm, or  
 2 corporation that engages in the business of mining or  
 3 reprocessing of tailings or waste materials that does not  
 4 remove from the earth during any calendar year material in  
 5 excess of 36,500 tons in the aggregate, that does not hold  
 6 an operating permit under 82-4-335 except for a permit  
 7 issued under 82-4-335(2), and that conducts:

8        (i) an operation resulting in not more than 5 acres of  
 9 the earth's surface being disturbed and unreclaimed; or

10        (ii) two operations which disturb and leave unreclaimed  
 11 less than 5 acres per operation if the respective mining  
 12 properties are:

13        (A) the only operations engaged in by the person, firm,  
 14 or corporation;

15        (B) at least 1 mile apart at their closest point; and

16        (C) not operated simultaneously except during seasonal  
 17 transitional periods not to exceed 30 days.

18        (b) For the purpose of this definition only, the  
 19 department shall, in computing the area covered by the  
 20 operation, exclude access or haulage roads that are required  
 21 by a local, state, or federal agency having jurisdiction  
 22 over that road to be constructed to certain specifications  
 23 if that public agency notifies the department in writing  
 24 that it desires to have the road remain in use and will  
 25 maintain it after mining ceases.

1        {15}(16) "Surface mining" means all or any part of the  
 2 process involved in mining of minerals by removing the  
 3 overburden and mining directly from the mineral deposits  
 4 exposed, including but not limited to open-pit mining of  
 5 minerals naturally exposed at the surface of the earth,  
 6 mining by the auger method, and all similar methods by which  
 7 earth or minerals exposed at the surface are removed in the  
 8 course of mining. Surface mining does not include the  
 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 10 phosphate rock, or uranium or excavation or grading  
 11 conducted for on-site farming, on-site road construction, or  
 12 other on-site building construction.

13        {16}(17) "Underground mining" means all methods of  
 14 mining other than surface mining.

15        {17}(18) "Unit of surface-mined area" means that area of  
 16 land and surface water included within an operating permit  
 17 actually disturbed by surface mining during each 12-month  
 18 period of time, beginning at the date of the issuance of the  
 19 permit, and it comprises and includes the area from which  
 20 overburden or minerals have been removed, the area covered  
 21 by mining debris, and all additional areas used in surface  
 22 mining or underground mining operations which by virtue of  
 23 mining use are susceptible to erosion in excess of the  
 24 surrounding undisturbed portions of land.

25        {18}(19) "Vegetative cover" means the type of

1 vegetation, grass, shrubs, trees, or any other form of  
2 natural cover considered suitable at time of reclamation."

3 **Section 2.** Section 82-4-361, MCA, is amended to read:

4 "82-4-361. Violation -- penalties -- waiver. (1) A  
5 person who violates any of the provisions of this part, the  
6 rules or orders adopted under this part (except 82-4-339),  
7 the provisions of any license or permit, or the conditions  
8 of a small-miner exemption shall pay a civil penalty of not  
9 less than \$100 or more than \$1,000 for the violations and an  
10 additional civil penalty of not less than \$100 or more than  
11 \$1,000 for each day during which a violation continues and  
12 may be enjoined from continuing such violations as provided  
13 in this section. These penalties are recoverable in any  
14 action brought in the name of the state of Montana by the  
15 attorney general in the district court of the first judicial  
16 district of this state in and for the county of Lewis and  
17 Clark or in the district court having jurisdiction of the  
18 defendant.

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

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that  
2 the violation does not represent potential harm to public  
3 health, public safety, or the environment and does not  
4 impair the administration of this part. The board shall  
5 adopt rules to implement and administer a procedure for  
6 waiver of a penalty under this subsection."

7 **Section 3.** Section 82-4-362, MCA, is amended to read:

8 "82-4-362. Suspension of permits -- hearing. (1) If any  
9 of the requirements of this part, the rules adopted under  
10 this part, or the a license, permit, or reclamation plan  
11 have has not been complied with within the time limits set  
12 by the department or board or by this part, the department  
13 shall serve a notice of noncompliance on the licensee or  
14 permittee or, if necessary, the commissioner shall order the  
15 suspension of the permit. The commissioner may order  
16 immediate suspension of a permit whenever he makes a finding  
17 that a violation of this part, the rules adopted under this  
18 part, or a license or permit, including the reclamation  
19 plan, is creating an imminent danger to the health or safety  
20 of persons outside the permit area. The notice or order must  
21 be handed to the licensee or permittee in person or served  
22 by certified or registered mail addressed to the permanent  
23 address shown on the application for a license or permit.  
24 The notice of noncompliance must specify in what respects  
25 the operator has failed to comply with this part, the rules

1 adopted under this part, or the reclamation plan.

2 (2) If the licensee or permittee has not complied with  
3 the requirements set forth in the notice of noncompliance or  
4 order of suspension within the time limits set therein, the  
5 permit may be revoked by order of the board and the  
6 performance bond forfeited to the department. The licensee  
7 or permittee is entitled to a hearing before the department  
8 on the revocation of a permit or license or the forfeiture  
9 of a performance bond if a hearing is requested within 30  
10 days after service of notice as provided in subsection (1).  
11 The notice must state when those measures may be undertaken  
12 and must give notice of opportunity for a hearing. If a  
13 hearing is requested within the 30-day period, the permit or  
14 license may not be revoked and the bond may not be forfeited  
15 until a final decision is made by the department.

16 (3) If a permittee fails to pay the fee or file the  
17 report required under 82-4-339, the department shall serve  
18 notice of this failure, by certified mail or personal  
19 delivery, on the permittee. If the permittee does not comply  
20 within 30 days of receipt of the notice, the commissioner  
21 shall suspend the permit. The commissioner shall reinstate  
22 the permit upon compliance."

23 NEW SECTION. **Section 4.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0283, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act revising the enforcement provisions of the metal mine reclamation law; expanding the scope of enforcement actions to include violations of a license or permit; and clarifying that the Commissioner of State Lands may suspend the permit of an operation creating an imminent danger to the health or safety of persons outside the permit area.

ASSUMPTIONS:

1. This bill will not affect the revenues or expenditures of the Department of State Lands.
2. This bill clarifies conditions under which the Commissioner of State Lands may suspend a license, permit, or reclamation plan.

FISCAL IMPACT:

None

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

  
\_\_\_\_\_  
STEVE DOHERTY, PRIMARY SPONSOR                      DATE

Fiscal Note for SB0283, as introduced.

**SB 283**

APPROVED BY COMM. ON  
NATURAL RESOURCES

Senate BILL NO. 283

INTRODUCED BY Donny F. Beck - House Rep. Caucus -

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW; EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

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

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of state lands.

(6) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel,



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 2 from the surface of the earth for the purpose of milling,  
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16 (e) the method of disposal of mining debris;

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 19 those waters or unnecessary erosion;

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 23 reasonably required by the department; and

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 14 or corporation;

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 17 transitional periods not to exceed 30 days.

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 19 department shall, in computing the area covered by the  
 20 operation, exclude access or haulage roads that are required  
 21 by a local, state, or federal agency having jurisdiction  
 22 over that road to be constructed to certain specifications  
 23 if that public agency notifies the department in writing  
 24 that it desires to have the road remain in use and will  
 25 maintain it after mining ceases.

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 2 process involved in mining of minerals by removing the  
 3 overburden and mining directly from the mineral deposits  
 4 exposed, including but not limited to open-pit mining of  
 5 minerals naturally exposed at the surface of the earth,  
 6 mining by the auger method, and all similar methods by which  
 7 earth or minerals exposed at the surface are removed in the  
 8 course of mining. Surface mining does not include the  
 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 10 phosphate rock, or uranium or excavation or grading  
 11 conducted for on-site farming, on-site road construction, or  
 12 other on-site building construction.

13        ~~{16}~~(17) "Underground mining" means all methods of  
 14 mining other than surface mining.

15        ~~{17}~~(18) "Unit of surface-mined area" means that area of  
 16 land and surface water included within an operating permit  
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 19 permit, and it comprises and includes the area from which  
 20 overburden or minerals have been removed, the area covered  
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 22 mining or underground mining operations which by virtue of  
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1 vegetation, grass, shrubs, trees, or any other form of  
2 natural cover considered suitable at time of reclamation."

3 **Section 2.** Section 82-4-361, MCA, is amended to read:

4 "82-4-361. Violation -- penalties -- waiver. (1) A  
5 person who violates any of the provisions of this part, the  
6 rules or orders adopted under this part (except 82-4-339),  
7 the provisions of any license or permit, or the conditions  
8 of a small-miner exemption shall pay a civil penalty of not  
9 less than \$100 or more than \$1,000 for the violations and an  
10 additional civil penalty of not less than \$100 or more than  
11 \$1,000 for each day during which a violation continues and  
12 may be enjoined from continuing such violations as provided  
13 in this section. These penalties are recoverable in any  
14 action brought in the name of the state of Montana by the  
15 attorney general in the district court of the first judicial  
16 district of this state in and for the county of Lewis and  
17 Clark or in the district court having jurisdiction of the  
18 defendant.

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

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that  
2 the violation does not represent potential harm to public  
3 health, public safety, or the environment and does not  
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5 adopt rules to implement and administer a procedure for  
6 waiver of a penalty under this subsection."

7 **Section 3.** Section 82-4-362, MCA, is amended to read:

8 "82-4-362. Suspension of permits -- hearing. (1) If any  
9 of the requirements of this part, the rules adopted under  
10 this part, or the a license, permit, or reclamation plan  
11 have has not been complied with within the time limits set  
12 by the department or board or by this part, the department  
13 shall serve a notice of noncompliance on the licensee or  
14 permittee or, if necessary, the commissioner shall order the  
15 suspension of the permit. The commissioner may order  
16 immediate suspension of a permit whenever he makes a finding  
17 that a violation of this part, the rules adopted under this  
18 part, or a license or permit, including the reclamation  
19 plan, is creating an imminent danger to the health or safety  
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21 be handed to the licensee or permittee in person or served  
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23 address shown on the application for a license or permit.  
24 The notice of noncompliance must specify in what respects  
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1 adopted under this part, or the reclamation plan.

2 (2) If the licensee or permittee has not complied with  
3 the requirements set forth in the notice of noncompliance or  
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6 performance bond forfeited to the department. The licensee  
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23 NEW SECTION. **Section 4.** Effective date. [This act] is  
24 effective July 1, 1991.

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THIRD READING

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1 phosphate rock, or uranium, taken from below the surface or  
 2 from the surface of the earth for the purpose of milling,  
 3 concentration, refinement, smelting, manufacturing, or other  
 4 subsequent use or processing or for stockpiling for future  
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 15 association, partnership, or other legal entity engaged in  
 16 exploration for or mining of minerals on or below the  
 17 surface of the earth, reprocessing of tailings or waste  
 18 materials, or operation of a hard-rock mill.

19 ~~(11)~~(12) "Placer deposit" means naturally occurring,  
 20 scattered or unconsolidated valuable minerals in gravel or  
 21 alluvium lying above bedrock.

22 ~~(12)~~(13) "Placer or dredge mining" means the mining of  
 23 minerals from a placer deposit by a person or persons.

24 ~~(13)~~(14) "Reclamation plan" means the operator's written  
 25 proposal, as required and approved by the board, for

1 reclamation of the land that will be disturbed. The proposal  
 2 shall include, to the extent practical at the time of  
 3 application for an operating permit:

4 (a) a statement of the proposed subsequent use of the  
 5 land after reclamation;

6 (b) plans for surface gradient restoration to a surface  
 7 suitable for the proposed subsequent use of the land after  
 8 reclamation is completed and the proposed method of  
 9 accomplishment;

10 (c) the manner and type of revegetation or other  
 11 surface treatment of disturbed areas;

12 (d) procedures proposed to avoid foreseeable situations  
 13 of public nuisance, endangerment of public safety, damage to  
 14 human life or property, or unnecessary damage to flora and  
 15 fauna in or adjacent to the area;

16 (e) the method of disposal of mining debris;

17 (f) the method of diverting surface waters around the  
 18 disturbed areas where necessary to prevent pollution of  
 19 those waters or unnecessary erosion;

20 (g) the method of reclamation of stream channels and  
 21 stream banks to control erosion, siltation, and pollution;

22 (h) maps and other supporting documents as may be  
 23 reasonably required by the department; and

24 (i) a time schedule for reclamation that meets the  
 25 requirements of 82-4-336.

1        ~~{14}~~{15} (a) "Small miner" means a person, firm, or  
 2 corporation that engages in the business of mining or  
 3 reprocessing of tailings or waste materials that does not  
 4 remove from the earth during any calendar year material in  
 5 excess of 36,500 tons in the aggregate, that does not hold  
 6 an operating permit under 82-4-335 except for a permit  
 7 issued under 82-4-335(2), and that conducts:

8        (i) an operation resulting in not more than 5 acres of  
 9 the earth's surface being disturbed and unreclaimed; or

10       (ii) two operations which disturb and leave unreclaimed  
 11 less than 5 acres per operation if the respective mining  
 12 properties are:

13       (A) the only operations engaged in by the person, firm,  
 14 or corporation;

15       (B) at least 1 mile apart at their closest point; and

16       (C) not operated simultaneously except during seasonal  
 17 transitional periods not to exceed 30 days.

18       (b) For the purpose of this definition only, the  
 19 department shall, in computing the area covered by the  
 20 operation, exclude access or haulage roads that are required  
 21 by a local, state, or federal agency having jurisdiction  
 22 over that road to be constructed to certain specifications  
 23 if that public agency notifies the department in writing  
 24 that it desires to have the road remain in use and will  
 25 maintain it after mining ceases.

1        ~~{15}~~{16} "Surface mining" means all or any part of the  
 2 process involved in mining of minerals by removing the  
 3 overburden and mining directly from the mineral deposits  
 4 exposed, including but not limited to open-pit mining of  
 5 minerals naturally exposed at the surface of the earth,  
 6 mining by the auger method, and all similar methods by which  
 7 earth or minerals exposed at the surface are removed in the  
 8 course of mining. Surface mining does not include the  
 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 10 phosphate rock, or uranium or excavation or grading  
 11 conducted for on-site farming, on-site road construction, or  
 12 other on-site building construction.

13       ~~{16}~~{17} "Underground mining" means all methods of  
 14 mining other than surface mining.

15       ~~{17}~~{18} "Unit of surface-mined area" means that area of  
 16 land and surface water included within an operating permit  
 17 actually disturbed by surface mining during each 12-month  
 18 period of time, beginning at the date of the issuance of the  
 19 permit, and it comprises and includes the area from which  
 20 overburden or minerals have been removed, the area covered  
 21 by mining debris, and all additional areas used in surface  
 22 mining or underground mining operations which by virtue of  
 23 mining use are susceptible to erosion in excess of the  
 24 surrounding undisturbed portions of land.

25       ~~{18}~~{19} "Vegetative cover" means the type of

1 vegetation, grass, shrubs, trees, or any other form of  
2 natural cover considered suitable at time of reclamation."

3 **Section 2.** Section 82-4-361, MCA, is amended to read:

4 "82-4-361. Violation -- penalties -- waiver. (1) A  
5 person who violates any of the provisions of this part, the  
6 rules or orders adopted under this part (except 82-4-339),  
7 the provisions of any license or permit, or the conditions  
8 of a small-miner exemption shall pay a civil penalty of not  
9 less than \$100 or more than \$1,000 for the violations and an  
10 additional civil penalty of not less than \$100 or more than  
11 \$1,000 for each day during which a violation continues and  
12 may be enjoined from continuing such violations as provided  
13 in this section. These penalties are recoverable in any  
14 action brought in the name of the state of Montana by the  
15 attorney general in the district court of the first judicial  
16 district of this state in and for the county of Lewis and  
17 Clark or in the district court having jurisdiction of the  
18 defendant.

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

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that  
2 the violation does not represent potential harm to public  
3 health, public safety, or the environment and does not  
4 impair the administration of this part. The board shall  
5 adopt rules to implement and administer a procedure for  
6 waiver of a penalty under this subsection."

7 **Section 3.** Section 82-4-362, MCA, is amended to read:

8 "82-4-362. Suspension of permits -- hearing. (1) If any  
9 of the requirements of this part, the rules adopted under  
10 this part, or the a license, permit, or reclamation plan  
11 have has not been complied with within the time limits set  
12 by the department or board or by this part, the department  
13 shall serve a notice of noncompliance on the licensee or  
14 permittee or, if necessary, the commissioner shall order the  
15 suspension of the permit. The commissioner may order  
16 immediate suspension of a permit whenever he makes a finding  
17 that a violation of this part, the rules adopted under this  
18 part, or a license or permit, including the reclamation  
19 plan, is creating an imminent danger to the health or safety  
20 of persons outside the permit area. The notice or order must  
21 be handed to the licensee or permittee in person or served  
22 by certified or registered mail addressed to the permanent  
23 address shown on the application for a license or permit.  
24 The notice of noncompliance must specify in what respects  
25 the operator has failed to comply with this part, the rules



1 adopted under this part, or the reclamation plan.

2 (2) If the licensee or permittee has not complied with  
3 the requirements set forth in the notice of noncompliance or  
4 order of suspension within the time limits set therein, the  
5 permit may be revoked by order of the board and the  
6 performance bond forfeited to the department. The licensee  
7 or permittee is entitled to a hearing before the department  
8 on the revocation of a permit or license or the forfeiture  
9 of a performance bond if a hearing is requested within 30  
10 days after service of notice as provided in subsection (1).  
11 The notice must state when those measures may be undertaken  
12 and must give notice of opportunity for a hearing. If a  
13 hearing is requested within the 30-day period, the permit or  
14 license may not be revoked and the bond may not be forfeited  
15 until a final decision is made by the department.

16 (3) If a permittee fails to pay the fee or file the  
17 report required under 82-4-339, the department shall serve  
18 notice of this failure, by certified mail or personal  
19 delivery, on the permittee. If the permittee does not comply  
20 within 30 days of receipt of the notice, the commissioner  
21 shall suspend the permit. The commissioner shall reinstate  
22 the permit upon compliance."

23 NEW SECTION. **Section 4.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-

## SENATE BILL NO. 283

INTRODUCED BY DOHERTY, T. BECK, GRINDE

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW; EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

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

~~†3†~~(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~†4†~~(5) "Department" means the department of state lands.

~~†5†~~(6) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~†6†~~(7) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~†7†~~(8) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel,

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1 phosphate rock, or uranium, taken from below the surface or  
 2 from the surface of the earth for the purpose of milling,  
 3 concentration, refinement, smelting, manufacturing, or other  
 4 subsequent use or processing or for stockpiling for future  
 5 use, refinement, or smelting.

6 ~~(8)~~(9) "Mining" commences when the operator first mines  
 7 ores or minerals in commercial quantities for sale,  
 8 beneficiation, refining, or other processing or disposition  
 9 or first takes bulk samples for metallurgical testing in  
 10 excess of aggregate of 10,000 short tons.

11 ~~(9)~~(10) "Ore processing" means milling, heap leaching,  
 12 flotation, vat leaching, or other standard hard-rock mineral  
 13 concentration processes.

14 ~~(10)~~(11) "Person" means any person, corporation, firm,  
 15 association, partnership, or other legal entity engaged in  
 16 exploration for or mining of minerals on or below the  
 17 surface of the earth, reprocessing of tailings or waste  
 18 materials, or operation of a hard-rock mill.

19 ~~(11)~~(12) "Placer deposit" means naturally occurring,  
 20 scattered or unconsolidated valuable minerals in gravel or  
 21 alluvium lying above bedrock.

22 ~~(12)~~(13) "Placer or dredge mining" means the mining of  
 23 minerals from a placer deposit by a person or persons.

24 ~~(13)~~(14) "Reclamation plan" means the operator's written  
 25 proposal, as required and approved by the board, for

1 reclamation of the land that will be disturbed. The proposal  
 2 shall include, to the extent practical at the time of  
 3 application for an operating permit:

4 (a) a statement of the proposed subsequent use of the  
 5 land after reclamation;

6 (b) plans for surface gradient restoration to a surface  
 7 suitable for the proposed subsequent use of the land after  
 8 reclamation is completed and the proposed method of  
 9 accomplishment;

10 (c) the manner and type of revegetation or other  
 11 surface treatment of disturbed areas;

12 (d) procedures proposed to avoid foreseeable situations  
 13 of public nuisance, endangerment of public safety, damage to  
 14 human life or property, or unnecessary damage to flora and  
 15 fauna in or adjacent to the area;

16 (e) the method of disposal of mining debris;

17 (f) the method of diverting surface waters around the  
 18 disturbed areas where necessary to prevent pollution of  
 19 those waters or unnecessary erosion;

20 (g) the method of reclamation of stream channels and  
 21 stream banks to control erosion, siltation, and pollution;

22 (h) maps and other supporting documents as may be  
 23 reasonably required by the department; and

24 (i) a time schedule for reclamation that meets the  
 25 requirements of 82-4-336.

1        ~~†14†~~(15) (a) "Small miner" means a person, firm, or  
 2 corporation that engages in the business of mining or  
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 4 remove from the earth during any calendar year material in  
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 7 issued under 82-4-335(2), and that conducts:

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 9 the earth's surface being disturbed and unreclaimed; or

10        (ii) two operations which disturb and leave unreclaimed  
 11 less than 5 acres per operation if the respective mining  
 12 properties are:

13        (A) the only operations engaged in by the person, firm,  
 14 or corporation;

15        (B) at least 1 mile apart at their closest point; and

16        (C) not operated simultaneously except during seasonal  
 17 transitional periods not to exceed 30 days.

18        (b) For the purpose of this definition only, the  
 19 department shall, in computing the area covered by the  
 20 operation, exclude access or haulage roads that are required  
 21 by a local, state, or federal agency having jurisdiction  
 22 over that road to be constructed to certain specifications  
 23 if that public agency notifies the department in writing  
 24 that it desires to have the road remain in use and will  
 25 maintain it after mining ceases.

1        ~~†15†~~(16) "Surface mining" means all or any part of the  
 2 process involved in mining of minerals by removing the  
 3 overburden and mining directly from the mineral deposits  
 4 exposed, including but not limited to open-pit mining of  
 5 minerals naturally exposed at the surface of the earth,  
 6 mining by the auger method, and all similar methods by which  
 7 earth or minerals exposed at the surface are removed in the  
 8 course of mining. Surface mining does not include the  
 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 10 phosphate rock, or uranium or excavation or grading  
 11 conducted for on-site farming, on-site road construction, or  
 12 other on-site building construction.

13        ~~†16†~~(17) "Underground mining" means all methods of  
 14 mining other than surface mining.

15        ~~†17†~~(18) "Unit of surface-mined area" means that area of  
 16 land and surface water included within an operating permit  
 17 actually disturbed by surface mining during each 12-month  
 18 period of time, beginning at the date of the issuance of the  
 19 permit, and it comprises and includes the area from which  
 20 overburden or minerals have been removed, the area covered  
 21 by mining debris, and all additional areas used in surface  
 22 mining or underground mining operations which by virtue of  
 23 mining use are susceptible to erosion in excess of the  
 24 surrounding undisturbed portions of land.

25        ~~†18†~~(19) "Vegetative cover" means the type of

1 vegetation, grass, shrubs, trees, or any other form of  
2 natural cover considered suitable at time of reclamation."

3 **Section 2.** Section 82-4-361, MCA, is amended to read:

4 "82-4-361. Violation -- penalties -- waiver. (1) A  
5 person who violates any of the provisions of this part, the  
6 rules or orders adopted under this part (except 82-4-339),  
7 the provisions of any license or permit, or the conditions  
8 of a small-miner exemption shall pay a civil penalty of not  
9 less than \$100 or more than \$1,000 for the violations and an  
10 additional civil penalty of not less than \$100 or more than  
11 \$1,000 for each day during which a violation continues and  
12 may be enjoined from continuing such violations as provided  
13 in this section. These penalties are recoverable in any  
14 action brought in the name of the state of Montana by the  
15 attorney general in the district court of the first judicial  
16 district of this state in and for the county of Lewis and  
17 Clark or in the district court having jurisdiction of the  
18 defendant.

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

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that  
2 the violation does not represent potential harm to public  
3 health, public safety, or the environment and does not  
4 impair the administration of this part. The board shall  
5 adopt rules to implement and administer a procedure for  
6 waiver of a penalty under this subsection."

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8 "82-4-362. Suspension of permits -- hearing. (1) If any  
9 of the requirements of this part, the rules adopted under  
10 this part, or the a license, permit, or reclamation plan  
11 have has not been complied with within the time limits set  
12 by the department or board or by this part, the department  
13 shall serve a notice of noncompliance on the licensee or  
14 permittee or, if necessary, the commissioner shall order the  
15 suspension of the permit. The commissioner may order  
16 immediate suspension of a permit whenever he makes a finding  
17 that a violation of this part, the rules adopted under this  
18 part, or a license or permit, including the reclamation  
19 plan, is creating an imminent danger to the health or safety  
20 of persons outside the permit area. The notice or order must  
21 be handed to the licensee or permittee in person or served  
22 by certified or registered mail addressed to the permanent  
23 address shown on the application for a license or permit.  
24 The notice of noncompliance must specify in what respects  
25 the operator has failed to comply with this part, the rules

1 adopted under this part, or the reclamation plan.

2 (2) If the licensee or permittee has not complied with  
3 the requirements set forth in the notice of noncompliance or  
4 order of suspension within the time limits set therein, the  
5 permit may be revoked by order of the board and the  
6 performance bond forfeited to the department. The licensee  
7 or permittee is entitled to a hearing before the department  
8 on the revocation of a permit or license or the forfeiture  
9 of a performance bond if a hearing is requested within 30  
10 days after service of notice as provided in subsection (1).  
11 The notice must state when those measures may be undertaken  
12 and must give notice of opportunity for a hearing. If a  
13 hearing is requested within the 30-day period, the permit or  
14 license may not be revoked and the bond may not be forfeited  
15 until a final decision is made by the department.

16 (3) If a permittee fails to pay the fee or file the  
17 report required under 82-4-339, the department shall serve  
18 notice of this failure, by certified mail or personal  
19 delivery, on the permittee. If the permittee does not comply  
20 within 30 days of receipt of the notice, the commissioner  
21 shall suspend the permit. The commissioner shall reinstate  
22 the permit upon compliance."

23 NEW SECTION. **Section 4.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-