

1 H BILL NO. 588
 2 INTRODUCED BY Hayes
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE THE
 6 ENFORCEMENT OF THE OPENCUT MINING ACT IN THE ATTORNEY
 7 GENERAL'S OFFICE; TO PROVIDE FOR THE ALLOCATION OF FINES,
 8 FEES, AND PENALTIES; TO AMEND THE TIME FRAMES FOR
 9 APPLICATION REVIEW AND PREPARATION OF ENVIRONMENTAL IMPACT
 10 STATEMENTS; TO PROVIDE FOR BONDING AT THE ESTIMATED COST OF
 11 RECLAMATION; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE;
 12 AMENDING SECTIONS 50-1504, 50-1509, 50-1510, AND 50-1513,
 13 R.C.M. 1947."
 14

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

16 Section 1. There is a new R.C.M. section numbered
 17 50-1511.1 that reads as follows:

18 50-1511.1 Opencut mining account. All fees, fines,
 19 penalties, and other money available or paid to the
 20 department under the provisions of this chapter shall be
 21 deposited in the agency fund and credited to an account to
 22 be designated as the opencut mining and reclamation account.
 23 This account shall be available to the department by
 24 appropriation and shall be expended for the administration
 25 and enforcement of this chapter and for the reclamation and

1 revegetation of land and the rehabilitation of water
 2 affected by any mining operations. Any unencumbered and
 3 unexpended balance of this account remaining at the end of
 4 the fiscal year does not lapse but shall be carried forward
 5 for the purposes of this chapter until expended or until
 6 appropriated by subsequent legislative action.

7 Section 2. Section 50-1504, R.C.M. 1947, is amended to
 8 read as follows:

9 "50-1504. Definitions. When used in this act, unless a
 10 different meaning clearly appears from the context, the
 11 following definitions apply:

12 (1) "Contract" means a mined land reclamation contract
 13 prepared by the commission to meet the requirements of this
 14 act.

15 (2) "Open cut mining" means the mining of bentonite,
 16 clay, scoria, phosphate rock, sand or gravel by removing the
 17 overburden lying upon natural deposits thereof, and mining
 18 directly from the natural deposits thereby exposed,
 19 including the removal of overburden for the purpose of
 20 determining the location, quality or quantity of any natural
 21 deposit of bentonite, clay, scoria, phosphate rock, sand or
 22 gravel.

23 (3) "Reclamation" means the reconditioning of the area
 24 of land affected by open cut mining operations to make the
 25 area suitable for productive use including but not limited

1 to, forestry, agriculture, grazing, wildlife, recreation,
2 residential and industrial sites.

3 (4) "Overburden" means all of the earth and other
4 materials which lie above a natural deposit of bentonite,
5 clay, scoria, phosphate rock, sand or gravel. "Spoil" is the
6 overburden disturbed from its natural state in the process
7 of open cut mining.

8 (5) "Operator" means any person engaged in and
9 controlling an open cut mining operation.

10 (6) "Affected land" means the area of land from which
11 overburden is to be or has been removed and upon which the
12 overburden is to be or has been deposited.

13 (7) "Commission" means the state board of land
14 commissioners.

15 (8) "Person" means any natural person, or any firm,
16 association, partnership, cooperative, corporation or any
17 department, agency or instrumentality of the state or any
18 governmental subdivision, or any other entity whatsoever.

19 (9) "Landowner" means the owner of land directly or
20 indirectly affected by an open cut mining operation.

21 (10) "Public notice" means notice given by publication
22 in a newspaper in the general area where the affected land
23 is located. Such notice shall be given once a week for three
24 (3) successive weeks.

25 (11) "Soils materials" are those horizons containing

1 topsoil or other soils leached free of deleterious salts and
2 capable of sustaining plant growth and recognized as such by
3 standard authorities.

4 (12) "Refuse" means all waste material directly
5 connected with the open cut mining operations.

6 (13) "Final cut" means the last pit created in an open
7 cut mined area.

8 (14) "High wall" means that side of the pit adjacent to
9 unmined land.

10 (15) "Reclamation plan" means the description of
11 current land use, topographical data, water data, soils
12 data, leased areas, intended mine areas and description of
13 proposed reclamation of the land with appropriate maps.

14 (16) "Progress report" means a report showing the land
15 which the operator has affected by open cut mining during
16 the year. Such report shall show the number of acres of
17 affected land and all reclamation accomplished.

18 (17) "Department" means the department of state lands
19 provided for the Title 82A, chapter 11.

20 Section 3. Section 50-1509, R.C.M. 1947, is amended to
21 read as follows:

22 "50-1509. Terms of bond required -- deposit in lieu of
23 bond -- substitution of bond -- forfeiture -- release.

24 (1) Any bond required to be filed in this act by the
25 operator shall be in such form as the commission prescribes,

1 payable to the state of Montana, and conditioned upon the
 2 operator's full compliance with all requirements of this act
 3 and all rules and regulations of the commission. Such bond
 4 shall be signed by the landowner or operator, as
 5 appropriate, as principal, and by a good and sufficient
 6 corporate surety, licensed to do business in the state of
 7 Montana, as surety. The penalty of such bond shall be in an
 8 amount not to exceed the costs of restoration required by
 9 this act as determined by the commission, but ~~shall~~ may not
 10 be less than ~~two-hundred-dollars-(\$200)-nor-more-than-one~~
 11 ~~thousand-dollars-(\$1,000)~~ per acre.

12 (2) In lieu of such bond, the operator may deposit
 13 cash and government securities or a bond with property
 14 sureties with the commission in an amount equal to that of
 15 the required bond on conditions as above prescribed. In the
 16 discretion of the commission, surety bond requirements may
 17 be fulfilled by the operator's posting a bond with land and
 18 improvements and facilities thereon as security, in which
 19 event no surety shall be required. The penalty of the bond
 20 or amount of cash and securities shall be increased or
 21 reduced from time to time as provided in this act. Such bond
 22 or security shall be and remain in effect until the mined
 23 acreages have been reclaimed, as provided under the
 24 contract, and approved and released by the commission, and
 25 shall from time to time cover only actual mined acreages and

1 may be increased or reduced to cover only such acreages as
 2 remained unreclaimed.

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

13 (4) The commission shall cause to be reclaimed any
 14 affected land with respect to which a bond has been
 15 forfeited.

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

22 Section 4. Section 50-1510, R.C.M. 1947, is amended to
 23 read as follows:

24 "50-1510. Contract requirements -- performance bond --
 25 effective period of contract. The contract shall meet the

1 following requirements:

2 (1) (a) The operator shall submit a reclamation plan
3 to the commission before commencing any open cut mining, and
4 may not commence mining before it receives approval from the
5 commission. The operator may request and receive a meeting
6 with the commission prior to submission of the plan. ~~If the~~
7 ~~commission does not notify the operator that it has approved~~
8 ~~or disapproved a plan within thirty (30) days after the~~
9 ~~commission has received the plan, the commission shall be~~
10 ~~deemed to have approved the plan. The commission, however,~~
11 ~~may for sufficient cause extend its period of consideration~~
12 ~~for an additional thirty (30) days if it notifies the~~
13 ~~operator prior to the end of the original thirty (30) day~~
14 ~~period.~~

15 (b) Prior to issuance of a contract, the department
16 shall inspect the site. Within 60 days of receipt of a
17 complete application, the department shall determine whether
18 a draft environmental impact statement is required under the
19 Montana Environmental Policy Act. If an impact statement is
20 not required, the commission shall, within 120 days of
21 receipt of the complete application, approve the contract or
22 inform the applicant of the deficiencies in the application.
23 If the site is not accessible due to extended adverse
24 weather conditions, the department may extend the time
25 period to allow inspection of the site and reasonable

1 review. The department must serve written notice of
2 extension upon the applicant in person or by certified mail
3 and any such extension is subject to appeal to the
4 commission in accordance with the Montana Administrative
5 Procedure Act. If an impact statement is required, the
6 commission must either approve or disapprove the contract
7 within 365 days of receipt of a complete application.

8 (c) The commission shall submit all reclamation plans
9 or amendments to the reclamation plan to the landowner for
10 his recommendations and shall consider those recommendations
11 in deciding whether to approve or disapprove any plan or
12 amendments. The commission may seek technical help from any
13 state or federal agency. The commission must submit the plan
14 immediately to the director, university of Montana state
15 wide archaeological survey for evaluation of possible
16 archaeological or historical values in the area to be mined.
17 The commission may approve a reclamation plan only if the
18 commission has found that the plan provides for the best
19 possible reclamation procedures available under the
20 circumstances at the time, so that after mining operations
21 are completed the affected land shall be reclaimed to a
22 productive use. Once the reclamation plan has been accepted
23 in writing by the commission, it shall become a part of the
24 contract but shall be subject to annual review and
25 modification by the commission.

1 (2) The commission may not approve any reclamation
2 plan unless the plan provides that:

3 (a) the land will be reclaimed for one or more
4 specified uses, including but not limited to: forest,
5 pasture, orchard, cropland, residence, recreation, industry,
6 habitat (including food, cover or water) for wildlife or
7 other uses;

8 (b) to the extent reasonable and practicable, the
9 operator shall establish vegetative cover commensurate with
10 the proposed land use;

11 (c) where operations result in a need to prevent acid
12 drainage or sedimentation, on or in adjoining lands or
13 streams, there shall be provisions for the construction of
14 earth dams or other reasonable devices to control water
15 drainage, provided the formation of such impoundments or
16 devices will not interfere with other landowners rights or
17 contribute to water pollution;

18 (d) to accomplish practical utilization of soil
19 materials, such material will be utilized for placement on
20 affected areas if required by the reclamation plan after
21 completion or termination of that particular phase of the
22 mining operations at a depth sufficient for plant growth on
23 slopes of 3:1 or less. Grading specifications shall be
24 commensurate with the topography sought and land use
25 designated;

1 (e) metal and other waste shall be removed or buried;

2 (f) all access, haul and other support roads shall be
3 located, constructed and maintained in such a manner as to
4 control and minimize channeling and other erosion;

5 (g) the operator shall submit annually to the
6 commission a progress report;

7 (h) all operations shall be conducted so as to avoid
8 range and forest fires and spontaneous combustion. Open
9 burning of carbonaceous materials shall be in accordance
10 with suitable practices for fire prevention and control;

11 (i) archaeological and historical values in areas to
12 be mined shall be given appropriate protection;

13 (j) except for rock faces, bench faces and excavations
14 used for water impoundments, each surface area of the mined
15 premises which will be disturbed shall be revegetated when
16 its use for extractive purposes is no longer required.
17 Seeding and planting shall be done in a manner to achieve a
18 permanent suitable vegetative cover for wildlife, livestock
19 and retardation of erosion. All seed will be drilled unless
20 otherwise provided in the plan;

21 (k) reclamation shall be as concurrent with mining
22 operations as feasible, and must be completed within a
23 specified length of time.

24 (3) If reclamation according to the plan has not been
25 completed in the time specified, the commission shall after

1 thirty (30) days written notice order the operator to cease
 2 mining, and, if the operator does not cease, shall institute
 3 an action to enjoin further operation and may sue for
 4 damages for breach of contract, for payment of the
 5 performance bond, or for both.

6 (4) (a) At any time during the period of reclamation
 7 the operator may for good reason submit to the commission a
 8 new reclamation plan or amendment to the existing plan
 9 including extensions of time.

10 (b) The commission may approve the proposed new
 11 reclamation plan, or amendments to the existing plan if:

12 (i) the operator has in good faith carried on
 13 reclamation according to the existing plan, and

14 (ii) the proposed new plan, or amendments to the
 15 existing plan, will result in reclamation as desirable or
 16 more so than the reclamation proposed under the existing
 17 plan, or

18 (iii) it is highly improbable reclamation will be
 19 successful unless the existing plan is replaced or amended.
 20 When accepted, the proposed new reclamation plan or the
 21 proposed amendments to the existing plan becomes a part of
 22 the contract.

23 (5) The operator shall provide a performance bond, or
 24 an alternative acceptable to the commission, in an amount
 25 commensurate with the estimated cost of reclamation, but in

1 no case shall the bond be less than two hundred dollars
 2 (\$200) per acre. The estimated cost of reclamation shall be
 3 set forth in the reclamation plan.

4 (6) The contract, reclamation plan and amendments
 5 accepted by the commission shall be a public record and open
 6 to inspection.

7 (7) The contract shall become effective when signed by
 8 the commission and the operator, and shall remain in force
 9 until terminated by mutual consent or by the commission upon
 10 six (6) months notice."

11 Section 5. Section 50-1513, R.C.M. 1947, is amended to
 12 read as follows:

13 ~~"50-1513. Operation-----without-----contract-----as~~
 14 ~~misdemeanor--penalty Penalty for violation. Anyone required~~
 15 ~~by this act to have a contract and who engages in open cut~~
 16 ~~mining without previously securing a contract to do so as~~
 17 ~~prescribed by this act is guilty of a misdemeanor and upon~~
 18 ~~conviction thereof shall be fined not less than five~~
 19 ~~hundred dollars--(\$500)--and not more than one thousand~~
 20 ~~dollars--(\$1,000)--Each day of operation without a contract~~
 21 ~~required by this act shall be deemed a separate violation.~~

22 (1) A person who violates any of the provisions of
 23 this chapter or rules adopted hereunder shall pay a civil
 24 penalty of not less than \$100 or more than \$1,000 for the
 25 violations and an additional civil penalty of not less than

1 \$100 or more than \$1,000 for each day during which a
2 violation continues and may be enjoined from continuing such
3 violations as provided in this section. These penalties are
4 recoverable in an action brought in the name of the state of
5 Montana by the attorney general in the district court of the
6 first judicial district of this state, in and for the county
7 of Lewis and Clark, or in the district court having
8 jurisdiction of the defendant.

9 (2) The attorney general shall, upon the request of
10 the department, sue for the recovery of the penalties
11 provided for in this section and bring an action for a
12 restraining order or a temporary or permanent injunction
13 against an operator or other person violating or threatening
14 to violate an order adopted under this chapter."

15 Section 6. Effective date. This act is effective on
16 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 303-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 77, there is hereby submitted a Fiscal Note for House Bill 588 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to place the enforcement of the opencut mining act in the Attorney General's Office; to provide for the allocation of fines, fees and penalties; to amend the time frames for application review and preparation of environmental impact statements; to provide for an immediate effective date.

FISCAL IMPACT:

None.

Richard L. Franke
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 4, 1977

Approved by Committee
on Natural Resources

HOUSE BILL NO. 588
INTRODUCED BY HARPER

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE THE ENFORCEMENT OF THE OPENCUT MINING ACT IN THE ATTORNEY GENERAL'S OFFICE; TO PROVIDE FOR THE ALLOCATION OF FINES, FEES, AND PENALTIES; TO AMEND THE TIME FRAMES FOR APPLICATION REVIEW AND PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; TO PROVIDE FOR BONDING AT THE ESTIMATED COST OF RECLAMATION; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTIONS 50-1504, 50-1509, 50-1510, AND 50-1513, R.C.M. 1947."

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

Section 1. There is a new R.C.M. section numbered 50-1511.1 that reads as follows:

50-1511.1 Opencut mining account. All fees, fines, penalties, and other money available or paid to the department under the provisions of this chapter shall be deposited in the agency fund and credited to an account to be designated as the opencut mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the administration

and enforcement of this chapter and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and unexpended balance of this account remaining at the end of the fiscal year does not lapse but shall be carried forward for the purposes of this chapter until expended or until appropriated by subsequent legislative action.

Section 2. Section 50-1504, R.C.M. 1947, is amended to read as follows:

"50-1504. Definitions. When used in this act, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the

1 area suitable for productive use including but not limited
2 to, forestry, agriculture, grazing, wildlife, recreation,
3 residential and industrial sites.

4 (4) "Overburden" means all of the earth and other
5 materials which lie above a natural deposit of bentonite,
6 clay, scoria, phosphate rock, sand or gravel. "Spoil" is the
7 overburden disturbed from its natural state in the process
8 of open cut mining.

9 (5) "Operator" means any person engaged in and
10 controlling an open cut mining operation.

11 (6) "Affected land" means the area of land from which
12 overburden is to be or has been removed and upon which the
13 overburden is to be or has been deposited.

14 (7) "Commission" means the state board of land
15 commissioners.

16 (8) "Person" means any natural person, or any firm,
17 association, partnership, cooperative, corporation or any
18 department, agency or instrumentality of the state or any
19 governmental subdivision, or any other entity whatsoever.

20 (9) "Landowner" means the owner of land directly or
21 indirectly affected by an open cut mining operation.

22 (10) "Public notice" means notice given by publication
23 in a newspaper in the general area where the affected land
24 is located. Such notice shall be given once a week for three
25 (3) successive weeks.

1 (11) "Soils materials" are those horizons containing
2 topsoil or other soils leached free of deleterious salts and
3 capable of sustaining plant growth and recognized as such by
4 standard authorities.

5 (12) "Refuse" means all waste material directly
6 connected with the open cut mining operations.

7 (13) "Final cut" means the last pit created in an open
8 cut mined area.

9 (14) "High wall" means that side of the pit adjacent to
10 unmined land.

11 (15) "Reclamation plan" means the description of
12 current land use, topographical data, water data, soils
13 data, leased areas, intended mine areas and description of
14 proposed reclamation of the land with appropriate maps.

15 (16) "Progress report" means a report showing the land
16 which the operator has affected by open cut mining during
17 the year. Such report shall show the number of acres of
18 affected land and all reclamation accomplished.

19 (17) "Department" means the department of state lands
20 provided for the Title 82A, chapter 11."

21 Section 3. Section 50-1509, R.C.M. 1947, is amended to
22 read as follows:

23 "50-1509. Terms of bond required -- deposit in lieu of
24 bond -- substitution of bond -- forfeiture -- release.
25 (1) Any bond required to be filed in this act by the

1 operator shall be in such form as the commission prescribes,
 2 payable to the state of Montana, and conditioned upon the
 3 operator's full compliance with all requirements of this act
 4 and all rules and regulations of the commission. Such bond
 5 shall be signed by the landowner or operator, as
 6 appropriate, as principal, and by a good and sufficient
 7 corporate surety, licensed to do business in the state of
 8 Montana, as surety. The penalty of such bond shall be in an
 9 amount not to exceed the costs of restoration required by
 10 this act as determined by the commission, but ~~shall~~ may not
 11 be less than ~~two-hundred-dollars-(\$200)-nor-more-than-one~~
 12 ~~thousand-dollars-(\$1,000)~~ per acre.

13 (2) In lieu of such bond, the operator may deposit
 14 cash and government securities or a bond with property
 15 sureties with the commission in an amount equal to that of
 16 the required bond on conditions as above prescribed. In the
 17 discretion of the commission, surety bond requirements may
 18 be fulfilled by the operator's posting a bond with land and
 19 improvements and facilities thereon as security, in which
 20 event no surety shall be required. The penalty of the bond
 21 or amount of cash and securities shall be increased or
 22 reduced from time to time as provided in this act. Such bond
 23 or security shall be and remain in effect until the mined
 24 acreages have been reclaimed, as provided under the
 25 contract, and approved and released by the commission, and

1 shall from time to time cover only actual mined acreages and
 2 may be increased or reduced to cover only such acreages as
 3 remained unreclaimed.

4 (3) If the license to do business in the state of any
 5 surety upon a bond filed with the commission pursuant to
 6 this act shall be suspended or revoked, the operator, within
 7 thirty (30) days after receiving notice thereof from the
 8 commission, shall substitute for such 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 commission shall have the right to suspend the contract of
 12 the operator to conduct operations upon the land described
 13 in such contract until such substitution has been made.

14 (4) The commission shall cause to be reclaimed any
 15 affected land with respect to which a bond has been
 16 forfeited.

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

23 Section 4. Section 50-1510, R.C.M. 1947, is amended to
 24 read as follows:

25 "50-1510. Contract requirements -- performance bond --

1 effective period of contract. The contract shall meet the
2 following requirements:

3 (1) ~~(a)~~ The operator shall submit a reclamation plan
4 to the commission before commencing any open cut mining, and
5 may not commence mining before it receives approval from the
6 commission. The operator may request and receive a meeting
7 with the commission prior to submission of the plan. ~~If the~~
8 ~~commission does not notify the operator that it has approved~~
9 ~~or disapproved a plan within thirty (30) days after the~~
10 ~~commission has received the plan, the commission shall be~~
11 ~~deemed to have approved the plan. The commission, however,~~
12 ~~may for sufficient cause extend its period of consideration~~
13 ~~for an additional thirty (30) days if it notifies the~~
14 ~~operator prior to the end of the original thirty (30) day~~
15 ~~period.~~

16 (b) Prior to issuance of a contract, the department
17 shall inspect the site. Within 60 days of receipt of a
18 complete application, the department shall determine whether
19 a draft environmental impact statement is required under the
20 Montana Environmental Policy Act; AND IF an impact
21 statement is not required, the commission shall, within 120
22 days of receipt of the complete application, approve the
23 contract or inform the applicant of the deficiencies in the
24 application. If the site is not accessible due to extended
25 adverse weather conditions, the department may extend the

1 time period to allow inspection of the site and reasonable
2 review. The department must serve written notice of
3 extension upon the applicant in person or by certified mail
4 and any such extension is subject to appeal to the
5 commission in accordance with the Montana Administrative
6 Procedure Act. If an impact statement is required, the
7 commission must either approve or disapprove the contract
8 within 365 days of receipt of a complete application.

9 (c) The commission shall submit all reclamation plans
10 or amendments to the reclamation plan to the landowner for
11 his recommendations and shall consider those recommendations
12 in deciding whether to approve or disapprove any plan or
13 amendments. The commission may seek technical help from any
14 state or federal agency. The commission must submit the plan
15 immediately to the director, university of Montana state
16 wide archaeological survey for evaluation of possible
17 archaeological or historical values in the area to be mined.
18 The commission may approve a reclamation plan only if the
19 commission has found that the plan provides for the best
20 possible reclamation procedures available under the
21 circumstances at the time, so that after mining operations
22 are completed the affected land shall be reclaimed to a
23 productive use. Once the reclamation plan has been accepted
24 in writing by the commission, it shall become a part of the
25 contract but shall be subject to annual review and

1 modification by the commission.

2 (2) The commission may not approve any reclamation
3 plan unless the plan provides that:

4 (a) the land will be reclaimed for one or more
5 specified uses, including but not limited to: forest,
6 pasture, orchard, cropland, residence, recreation, industry,
7 habitat (including food, cover or water) for wildlife or
8 other uses;

9 (b) to the extent reasonable and practicable, the
10 operator shall establish vegetative cover commensurate with
11 the proposed land use;

12 (c) where operations result in a need to prevent acid
13 drainage or sedimentation, on or in adjoining lands or
14 streams, there shall be provisions for the construction of
15 earth dams or other reasonable devices to control water
16 drainage, provided the formation of such impoundments or
17 devices will not interfere with other landowners rights or
18 contribute to water pollution;

19 (d) to accomplish practical utilization of soil
20 materials, such material will be utilized for placement on
21 affected areas if required by the reclamation plan after
22 completion or termination of that particular phase of the
23 mining operations at a depth sufficient for plant growth on
24 slopes of 3:1 or less. Grading specifications shall be
25 commensurate with the topography sought and land use

1 designated;

2 (e) metal and other waste shall be removed or buried;

3 (f) all access, haul and other support roads shall be
4 located, constructed and maintained in such a manner as to
5 control and minimize channeling and other erosion;

6 (g) the operator shall submit annually to the
7 commission a progress report;

8 (h) all operations shall be conducted so as to avoid
9 range and forest fires and spontaneous combustion. Open
10 burning of carbonaceous materials shall be in accordance
11 with suitable practices for fire prevention and control;

12 (i) archaeological and historical values in areas to
13 be mined shall be given appropriate protection;

14 (j) except for rock faces, bench faces and excavations
15 used for water impoundments, each surface area of the mined
16 premises which will be disturbed shall be revegetated when
17 its use for extractive purposes is no longer required.
18 Seeding and planting shall be done in a manner to achieve a
19 permanent suitable vegetative cover for wildlife, livestock
20 and retardation of erosion. All seed will be drilled unless
21 otherwise provided in the plan;

22 (k) reclamation shall be as concurrent with mining
23 operations as feasible, and must be completed within a
24 specified length of time.

25 (3) If reclamation according to the plan has not been

1 completed in the time specified, the commission shall after
 2 thirty (30) days written notice order the operator to cease
 3 mining, and, if the operator does not cease, shall institute
 4 an action to enjoin further operation and may sue for
 5 damages for breach of contract, for payment of the
 6 performance bond, or for both.

7 (4) (a) At any time during the period of reclamation
 8 the operator may for good reason submit to the commission a
 9 new reclamation plan or amendment to the existing plan
 10 including extensions of time.

11 (b) The commission may approve the proposed new
 12 reclamation plan, or amendments to the existing plan if:

13 (i) the operator has in good faith carried on
 14 reclamation according to the existing plan, and

15 (ii) the proposed new plan, or amendments to the
 16 existing plan, will result in reclamation as desirable or
 17 more so than the reclamation proposed under the existing
 18 plan, or

19 (iii) it is highly improbable reclamation will be
 20 successful unless the existing plan is replaced or amended.
 21 When accepted, the proposed new reclamation plan or the
 22 proposed amendments to the existing plan becomes a part of
 23 the contract.

24 (5) The operator shall provide a performance bond, or
 25 an alternative acceptable to the commission, in an amount

1 commensurate with the estimated cost of reclamation, but in
 2 no case shall the bond be less than two hundred dollars
 3 (\$200) per acre. The estimated cost of reclamation shall be
 4 set forth in the reclamation plan.

5 (6) The contract, reclamation plan and amendments
 6 accepted by the commission shall be a public record and open
 7 to inspection.

8 (7) The contract shall become effective when signed by
 9 the commission and the operator, and shall remain in force
 10 until terminated by mutual consent or by the commission upon
 11 six (6) months notice."

12 Section 5. Section 50-1513, R.C.M. 1947, is amended to
 13 read as follows:

14 ~~"50-1513. Operation without contract as~~
 15 ~~misdeanor--penalty Penalty for violation. Anyone--required~~
 16 ~~by--this--act--to--have--a--contract--and--who--engages--in--open--cut~~
 17 ~~mining--without--previously--securing--a--contract--to--do--so--as~~
 18 ~~prescribed--by--this--act--is--guilty--of--a--misdemeanor--and--upon~~
 19 ~~conviction--thereof--shall--be--fined--not--less--than--five~~
 20 ~~hundred--dollars--(\$500)--and--not--more--than--one--thousand~~
 21 ~~dollars--(\$1,000).--Each--day--of--operation--without--a--contract~~
 22 ~~required--by--this--act--shall--be--deemed--a--separate--violation.~~

23 (1) A person who violates any of the provisions of
 24 this chapter or rules adopted hereunder shall pay a civil
 25 penalty of not less than \$100 or more than \$1,000 for the

1 violations and an additional civil penalty of not less than
2 \$100 or more than \$1,000 for each day during which a
3 violation continues and may be enjoined from continuing such
4 violations as provided in this section. These penalties are
5 recoverable in an action brought in the name of the state of
6 Montana by the attorney general in the district court of the
7 first judicial district of this state, in and for the county
8 of Lewis and Clark, or in the district court having
9 jurisdiction of the defendant.

10 (2) The attorney general shall MAY, upon the request
11 of the department, sue for the recovery of the penalties
12 provided for in this section and bring an action for a
13 restraining order or a temporary or permanent injunction
14 against an operator or other person violating ~~or threatening~~
15 ~~to violate~~ an order adopted under this chapter."

16 Section 6. Effective date. This act is effective on
17 its passage and approval.

-End-

1 HOUSE BILL NO. 588
 2 INTRODUCED BY HARPER
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE THE
 5 ENFORCEMENT OF THE OPENCUT MINING ACT IN THE ATTORNEY
 6 GENERAL'S OFFICE; TO PROVIDE FOR THE ALLOCATION OF FINES,
 7 FEES, AND PENALTIES; TO AMEND THE TIME FRAMES FOR
 8 APPLICATION REVIEW AND PREPARATION OF ENVIRONMENTAL IMPACT
 9 STATEMENTS; TO PROVIDE FOR BONDING AT THE ESTIMATED COST OF
 10 RECLAMATION; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE;
 11 AMENDING SECTIONS 50-1504, 50-1509, 50-1510, AND 50-1513,
 12 R.C.M. 1947."

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

15 Section 1. There is a new R.C.M. section numbered
 16 50-1511.1 that reads as follows:

17 50-1511.1 Opencut mining account. All fees, fines,
 18 penalties, and other money available or paid to the
 19 department under the provisions of this chapter shall be
 20 deposited in the agency fund and credited to an account to
 21 be designated as the opencut mining and reclamation account.
 22 This account shall be available to the department by
 23 appropriation and shall be expended for the administration
 24 and enforcement of this chapter and for the reclamation and

1 revegetation of land and the rehabilitation of water
 2 affected by any mining operations. Any unencumbered and
 3 unexpended balance of this account remaining at the end of
 4 the fiscal year does not lapse but shall be carried forward
 5 for the purposes of this chapter until expended or until
 6 appropriated by subsequent legislative action.

7 Section 2. Section 50-1504, R.C.M. 1947, is amended to
 8 read as follows:

9 "50-1504. Definitions. When used in this act, unless a
 10 different meaning clearly appears from the context, the
 11 following definitions apply:

12 (1) "Contract" means a mined land reclamation contract
 13 prepared by the commission to meet the requirements of this
 14 act.

15 (2) "Open cut mining" means the mining of bentonite,
 16 clay, scoria, phosphate rock, sand or gravel by removing the
 17 overburden lying upon natural deposits thereof, and mining
 18 directly from the natural deposits thereby exposed,
 19 including the removal of overburden for the purpose of
 20 determining the location, quality or quantity of any natural
 21 deposit of bentonite, clay, scoria, phosphate rock, sand or
 22 gravel.

23 (3) "Reclamation" means the reconditioning of the area
 24 of land affected by open cut mining operations to make the
 25 area suitable for productive use including but not limited

1 to, forestry, agriculture, grazing, wildlife, recreation,
2 residential and industrial sites.

3 (4) "Overburden" means all of the earth and other
4 materials which lie above a natural deposit of bentonite,
5 clay, scoria, phosphate rock, sand or gravel. "Spoil" is the
6 overburden disturbed from its natural state in the process
7 of open cut mining.

8 (5) "Operator" means any person engaged in and
9 controlling an open cut mining operation.

10 (6) "Affected land" means the area of land from which
11 overburden is to be or has been removed and upon which the
12 overburden is to be or has been deposited.

13 (7) "Commission" means the state board of land
14 commissioners.

15 (8) "Person" means any natural person, or any firm,
16 association, partnership, cooperative, corporation or any
17 department, agency or instrumentality of the state or any
18 governmental subdivision, or any other entity whatsoever.

19 (9) "Landowner" means the owner of land directly or
20 indirectly affected by an open cut mining operation.

21 (10) "Public notice" means notice given by publication
22 in a newspaper in the general area where the affected land
23 is located. Such notice shall be given once a week for three
24 (3) successive weeks.

25 (11) "Soils materials" are those horizons containing

1 topsoil or other soils leached free of deleterious salts and
2 capable of sustaining plant growth and recognized as such by
3 standard authorities.

4 (12) "Refuse" means all waste material directly
5 connected with the open cut mining operations.

6 (13) "Final cut" means the last pit created in an open
7 cut mined area.

8 (14) "High wall" means that side of the pit adjacent to
9 unmined land.

10 (15) "Reclamation plan" means the description of
11 current land use, topographical data, water data, soils
12 data, leased areas, intended mine areas and description of
13 proposed reclamation of the land with appropriate maps.

14 (16) "Progress report" means a report showing the land
15 which the operator has affected by open cut mining during
16 the year. Such report shall show the number of acres of
17 affected land and all reclamation accomplished.

18 (17) "Department" means the department of state lands
19 provided for the title 24A, chapter 11."

20 Section 3. Section 50-1509, R.C.M. 1947, is amended to
21 read as follows:

22 "50-1509. Terms of bond required -- deposit in lieu of
23 bond -- substitution of bond -- forfeiture -- release.

24 (1) Any bond required to be filed in this act by the
25 operator shall be in such form as the commission prescribes,

1 payable to the state of Montana, and conditioned upon the
 2 operator's full compliance with all requirements of this act
 3 and all rules and regulations of the commission. Such bond
 4 shall be signed by the landowner or operator, as
 5 appropriate, as principal, and by a good and sufficient
 6 corporate surety, licensed to do business in the state or
 7 Montana, as surety. The penalty of such bond shall be in an
 8 amount not to exceed the costs of restoration required by
 9 this act as determined by the commission, but ~~shall~~ may not
 10 be less than ~~two-hundred-dollars-(\$200)-nor-more-than-one~~
 11 ~~thousand-dollars-(\$1,000)~~ per acre.

12 (2) In lieu of such bond, the operator may deposit
 13 cash and government securities or a bond with property
 14 sureties with the commission in an amount equal to that of
 15 the required bond on conditions as above prescribed. In the
 16 discretion of the commission, surety bond requirements may
 17 be fulfilled by the operator's posting a bond with land and
 18 improvements and facilities thereon as security, in which
 19 event no surety shall be required. The penalty of the bond
 20 or amount of cash and securities shall be increased or
 21 reduced from time to time as provided in this act. Such bond
 22 or security shall be and remain in effect until the mined
 23 acreages have been reclaimed, as provided under the
 24 contract, and approved and released by the commission, and
 25 shall from time to time cover only actual mined acreages and

1 may be increased or reduced to cover only such acreages as
 2 remained unreclaimed.

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

13 (4) The commission shall cause to be reclaimed any
 14 affected land with respect to which a bond has been
 15 forfeited.

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

22 Section 4. Section 50-1510, R.C.M. 1947, is amended to
 23 read as follows:

24 "50-1510. Contract requirements -- performance bond --
 25 effective period of contract. The contract shall meet the

1 following requirements:

2 (1) (a) The operator shall submit a reclamation plan
3 to the commission before commencing any open cut mining, and
4 may not commence mining before it receives approval from the
5 commission. The operator may request and receive a meeting
6 with the commission prior to submission of the plan. ~~If the~~
7 ~~commission does not notify the operator that it has approved~~
8 ~~or disapproved a plan within thirty (30) days after the~~
9 ~~commission has received the plan, the commission shall be~~
10 ~~deemed to have approved the plan. The commission, however,~~
11 ~~may for sufficient cause extend its period of consideration~~
12 ~~for an additional thirty (30) days if it notifies the~~
13 ~~operator prior to the end of the original thirty (30) day~~
14 ~~period.~~

15 (b) Prior to issuance of a contract, the department
16 shall inspect the site. Within 60 days of receipt of a
17 complete application, the department shall determine whether
18 a draft environmental impact statement is required under the
19 Montana Environmental Policy Act. AND IF AN IMPACT
20 statement is not required, the commission shall, within 120
21 days of receipt of the complete application, WITHIN 60 DAYS
22 OF RECEIPT OF THE COMPLETE APPLICATION, approve the contract
23 or inform the applicant of the deficiencies in the
24 application. If the site is not accessible due to extended
25 adverse weather conditions, the department may extend the

1 time period to allow inspection of the site and reasonable
2 review. The department must serve written notice of
3 extension upon the applicant in person or by certified mail
4 and any such extension is subject to appeal to the
5 commission in accordance with the Montana Administrative
6 Procedure Act. If an impact statement is required, the
7 commission must either approve or disapprove the contract
8 within 365 days of receipt of a complete application.

9 (c) The commission shall submit all reclamation plans
10 or amendments to the reclamation plan to the landowner for
11 his recommendations and shall consider those recommendations
12 in deciding whether to approve or disapprove any plan or
13 amendments. The commission may seek technical help from any
14 state or federal agency. The commission must submit the plan
15 immediately to the director, university of Montana state
16 wide archaeological survey for evaluation of possible
17 archaeological or historical values in the area to be mined.
18 The commission may approve a reclamation plan only if the
19 commission has found that the plan provides for the best
20 possible reclamation procedures available under the
21 circumstances at the time, so that after mining operations
22 are completed the affected land shall be reclaimed to a
23 productive use. Once the reclamation plan has been accepted
24 in writing by the commission, it shall become a part of the
25 contract but shall be subject to annual review and

1 modification by the commission.

2 (2) The commission may not approve any reclamation
3 plan unless the plan provides that:

4 (a) the land will be reclaimed for one or more
5 specified uses, including but not limited to: forest,
6 pasture, orchard, cropland, residence, recreation, industry,
7 habitat (including food, cover or water) for wildlife or
8 other uses;

9 (b) to the extent reasonable and practicable, the
10 operator shall establish vegetative cover commensurate with
11 the proposed land use;

12 (c) where operations result in a need to prevent acid
13 drainage or sedimentation, on or in adjoining lands or
14 streams, there shall be provisions for the construction of
15 earth dams or other reasonable devices to control water
16 drainage, provided the formation of such impoundments or
17 devices will not interfere with other landowners rights or
18 contribute to water pollution;

19 (d) to accomplish practical utilization of soil
20 materials, such material will be utilized for placement on
21 affected areas if required by the reclamation plan after
22 completion or termination of that particular phase of the
23 mining operations at a depth sufficient for plant growth on
24 slopes of 3:1 or less. Grading specifications shall be
25 commensurate with the topography sought and land use

1 designated;

2 (e) metal and other waste shall be removed or buried;

3 (f) all access, haul and other support roads shall be
4 located, constructed and maintained in such a manner as to
5 control and minimize channeling and other erosion;

6 (g) the operator shall submit annually to the
7 commission a progress report;

8 (h) all operations shall be conducted so as to avoid
9 range and forest fires and spontaneous combustion. Open
10 burning of carbonaceous materials shall be in accordance
11 with suitable practices for fire prevention and control;

12 (i) archaeological and historical values in areas to
13 be mined shall be given appropriate protection;

14 (j) except for rock faces, bench faces and excavations
15 used for water impoundments, each surface area of the mined
16 premises which will be disturbed shall be revegetated when
17 its use for extractive purposes is no longer required.
18 Seeding and planting shall be done in a manner to achieve a
19 permanent suitable vegetative cover for wildlife, livestock
20 and retardation of erosion. All seed will be drilled unless
21 otherwise provided in the plan;

22 (k) reclamation shall be as concurrent with mininn
23 operations as feasible, and must be completed within a
24 specified length of time.

25 (3) If reclamation according to the plan has not been

1 completed in the time specified, the commission shall after
 2 thirty (30) days written notice order the operator to cease
 3 mining, and, if the operator does not cease, shall institute
 4 an action to enjoin further operation and may sue for
 5 damages for breach of contract, for payment of the
 6 performance bond, or for both.

7 (4) (a) At any time during the period of reclamation
 8 the operator may for good reason submit to the commission a
 9 new reclamation plan or amendment to the existing plan
 10 including extensions of time.

11 (b) The commission may approve the proposed new
 12 reclamation plan, or amendments to the existing plan if:

13 (i) the operator has in good faith carried on
 14 reclamation according to the existing plan, and

15 (ii) the proposed new plan, or amendments to the
 16 existing plan, will result in reclamation as desirable or
 17 more so than the reclamation proposed under the existing
 18 plan, or

19 (iii) it is highly improbable reclamation will be
 20 successful unless the existing plan is replaced or amended.
 21 When accepted, the proposed new reclamation plan or the
 22 proposed amendments to the existing plan becomes a part of
 23 the contract.

24 (5) The operator shall provide a performance bond, or
 25 an alternative acceptable to the commission, in an amount

1 commensurate with the estimated cost of reclamation, but in
 2 no case shall the bond be less than two hundred dollars
 3 (\$200) per acre. The estimated cost of reclamation shall be
 4 set forth in the reclamation plan.

5 (6) The contract, reclamation plan and amendments
 6 accepted by the commission shall be a public record and open
 7 to inspection.

8 (7) The contract shall become effective when signed by
 9 the commission and the operator, and shall remain in force
 10 until terminated by mutual consent or by the commission upon
 11 six (6) months notice."

12 Section 5. Section 50-1513, R.C.M. 1947, is amended to
 13 read as follows:

14 ~~"50-1513. Operation-----without-----contract-----as~~
 15 ~~misdemeanor--penalty Penalty for violation. Anyone required~~
 16 ~~by this act to have a contract and who engages in open cut~~
 17 ~~mining without previously securing a contract to do so as~~
 18 ~~prescribed by this act is guilty of a misdemeanor and upon~~
 19 ~~conviction thereof shall be fined not less than five~~
 20 ~~hundred dollars (\$500) and not more than one thousand~~
 21 ~~dollars (\$1,000). Each day of operation without a contract~~
 22 ~~required by this act shall be deemed a separate violation.~~

23 (1) A person who violates any of the provisions of
 24 this chapter or rules adopted hereunder shall pay a civil
 25 penalty of not less than \$100 or more than \$1,000 for the

1 violations and an additional civil penalty of not less than
2 \$100 or more than \$1,000 for each day during which a
3 violation continues and may be enjoined from continuing such
4 violations as provided in this section. These penalties are
5 recoverable in an action brought in the name of the state of
6 Montana by the attorney general in the district court of the
7 first judicial district of this state, in and for the county
8 of Lewis and Clark, or in the district court having
9 jurisdiction of the defendant.

10 (2) The attorney general shall MAY, upon the request
11 of the department, sue for the recovery of the penalties
12 provided for in this section and bring an action for a
13 restraining order or a temporary or permanent injunction
14 against an operator or other person violating or threatening
15 to violate an order adopted under this chapter."

16 Section 6. Effective date. This act is effective on
17 its passage and approval.

-End-

March 25, 1977

STANDING COMMITTEE REPORT
Senate Committee on Natural Resources

That House Bill No. 588 be amended as follows:

1. Amend page 7, section 4, line 15 through line 8, page 8.

Following: "(b)"

Strike: line 15 through line 8, page 8 in their entirety.

Insert: "Within 30 days of receipt of a complete application the department shall inspect the site and shall inform the applicant of any deficiencies in the application and, if none are shown, immediately issue a contract. If deficiencies are shown, a contract shall be issued upon the correction of the deficiencies. If the site is not accessible due to adverse weather conditions, the department may extend the time period, by not more than 180 days, to allow inspection of the site and reasonable review. All actions of the department are subject to appeal in accordance with the Montana Administrative Procedure Act."

2. Amend page 12, section 5, line 23.

Following: line 22

Strike: "(1)"

3. Amend page 13, section 5, lines 6 through 8.

Following: "general"

Strike: "in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or"

4. Amend page 13, section 5, lines 10 through 15.

Following: line 9

Strike: line 10 through line 15 in their entirety.

1 HOUSE BILL NO. 588

2 INTRODUCED BY HARPER

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE THE
5 ENFORCEMENT OF THE OPENCUT MINING ACT IN THE ATTORNEY
6 GENERAL'S OFFICE; TO PROVIDE FOR THE ALLOCATION OF FINES,
7 FEES, AND PENALTIES; TO AMEND THE TIME FRAMES FOR
8 APPLICATION REVIEW AND PREPARATION OF ENVIRONMENTAL IMPACT
9 STATEMENTS; TO PROVIDE FOR BONDING AT THE ESTIMATED COST OF
10 RECLAMATION; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE;
11 AMENDING SECTIONS 50-1504, 50-1509, 50-1510, AND 50-1513,
12 R.C.M. 1947."

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

15 Section 1. There is a new R.C.M. section numbered
16 50-1511.1 that reads as follows:

17 50-1511.1 Opencut mining account. All fees, fines,
18 penalties, and other money available or paid to the
19 department under the provisions of this chapter shall be
20 deposited in the agency fund and credited to an account to
21 be designated as the opencut mining and reclamation account.
22 This account shall be available to the department by
23 appropriation and shall be expended for the administration
24 and enforcement of this chapter and for the reclamation and

1 revegetation of land and the rehabilitation of water
2 affected by any mining operations. Any unencumbered and
3 unexpended balance of this account remaining at the end of
4 the fiscal year does not lapse but shall be carried forward
5 for the purposes of this chapter until expended or until
6 appropriated by subsequent legislative action.

7 Section 2. Section 50-1504, R.C.M. 1947, is amended to
8 read as follows:

9 "50-1504. Definitions. When used in this act, unless a
10 different meaning clearly appears from the context, the
11 following definitions apply:

12 (1) "Contract" means a mined land reclamation contract
13 prepared by the commission to meet the requirements of this
14 act.

15 (2) "Open cut mining" means the mining of bentonite,
16 clay, scoria, phosphate rock, sand or gravel by removing the
17 overburden lying upon natural deposits thereof, and mining
18 directly from the natural deposits thereby exposed,
19 including the removal of overburden for the purpose of
20 determining the location, quality or quantity of any natural
21 deposit of bentonite, clay, scoria, phosphate rock, sand or
22 gravel.

23 (3) "Reclamation" means the reconditioning of the area
24 of land affected by open cut mining operations to make the
25 area suitable for productive use including but not limited

REFERENCE BILL

1 to, forestry, agriculture, grazing, wildlife, recreation,
2 residential and industrial sites.

3 (4) "Overburden" means all of the earth and other
4 materials which lie above a natural deposit of bentonite,
5 clay, scoria, phosphate rock, sand or gravel. "Spoil" is the
6 overburden disturbed from its natural state in the process
7 of open cut mining.

8 (5) "Operator" means any person engaged in and
9 controlling an open cut mining operation.

10 (6) "Affected land" means the area of land from which
11 overburden is to be or has been removed and upon which the
12 overburden is to be or has been deposited.

13 (7) "Commission" means the state board of land
14 commissioners.

15 (8) "Person" means any natural person, or any firm,
16 association, partnership, cooperative, corporation or any
17 department, agency or instrumentality of the state or any
18 governmental subdivision, or any other entity whatsoever.

19 (9) "Landowner" means the owner of land directly or
20 indirectly affected by an open cut mining operation.

21 (10) "Public notice" means notice given by publication
22 in a newspaper in the general area where the affected land
23 is located. Such notice shall be given once a week for three
24 (3) successive weeks.

25 (11) "Soils materials" are those horizons containing

1 topsoil or other soils leached free of deleterious salts and
2 capable of sustaining plant growth and recognized as such by
3 standard authorities.

4 (12) "Refuse" means all waste material directly
5 connected with the open cut mining operations.

6 (13) "Final cut" means the last pit created in an open
7 cut mined area.

8 (14) "High wall" means that side of the pit adjacent to
9 unmined land.

10 (15) "Reclamation plan" means the description of
11 current land use, topographical data, water data, soils
12 data, leased areas, intended mine areas and description of
13 proposed reclamation of the land with appropriate maps.

14 (16) "Progress report" means a report showing the land
15 which the operator has affected by open cut mining during
16 the year. Such report shall show the number of acres of
17 affected land and all reclamation accomplished.

18 (17) "Department" means the department of state lands
19 provided for the Title 82A, chapter 11."

20 Section 3. Section 50-1509, R.C.M. 1947, is amended to
21 read as follows:

22 "50-1509. Terms of bond required -- deposit in lieu of
23 bond -- substitution of bond -- forfeiture -- release.

24 (1) Any bond required to be filed in this act by the
25 operator shall be in such form as the commission prescribes,

1 payable to the state of Montana, and conditioned upon the
 2 operator's full compliance with all requirements of this act
 3 and all rules and regulations of the commission. Such bond
 4 shall be signed by the landowner or operator, as
 5 appropriate, as principal, and by a good and sufficient
 6 corporate surety, licensed to do business in the state of
 7 Montana, as surety. The penalty of such bond shall be in an
 8 amount not to exceed the costs of restoration required by
 9 this act as determined by the commission, but ~~shall~~ may not
 10 be less than ~~two-hundred-dollars-(\$200)-nor-more-than-one~~
 11 ~~thousand-dollars-(\$1,000)~~ per acre.

12 (2) In lieu of such bond, the operator may deposit
 13 cash and government securities or a bond with property
 14 sureties with the commission in an amount equal to that of
 15 the required bond on conditions as above prescribed. In the
 16 discretion of the commission, surety bond requirements may
 17 be fulfilled by the operator's posting a bond with land and
 18 improvements and facilities thereon as security, in which
 19 event no surety shall be required. The penalty of the bond
 20 or amount of cash and securities shall be increased or
 21 reduced from time to time as provided in this act. Such bond
 22 or security shall be and remain in effect until the mined
 23 acreages have been reclaimed, as provided under the
 24 contract, and approved and released by the commission, and
 25 shall from time to time cover only actual mined acreages and

1 may be increased or reduced to cover only such acreages as
 2 remained unreclaimed.

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

13 (4) The commission shall cause to be reclaimed any
 14 affected land with respect to which a bond has been
 15 forfeited.

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

22 Section 4. Section 50-1510, R.C.M. 1947, is amended to
 23 read as follows:

24 "50-1510. Contract requirements -- performance bond --
 25 effective period of contract. The contract shall meet the

1 following requirements:

2 (1) (a) The operator shall submit a reclamation plan
3 to the commission before commencing any open cut mining, and
4 may not commence mining before it receives approval from the
5 commission. The operator may request and receive a meeting
6 with the commission prior to submission of the plan. ~~If the~~
7 ~~commission does not notify the operator that it has approved~~
8 ~~or disapproved a plan within thirty (30) days after the~~
9 ~~commission has received the plan, the commission shall be~~
10 ~~deemed to have approved the plan. The commission, however,~~
11 ~~may for sufficient cause extend its period of consideration~~
12 ~~for an additional thirty (30) days if it notifies the~~
13 ~~operator prior to the end of the original thirty (30) day~~
14 ~~period.~~

15 (b) ~~Prior to issuance of a contract, the department~~
16 ~~shall inspect the site within 60 days of receipt of a~~
17 ~~complete application, the department shall determine whether~~
18 ~~a draft environmental impact statement is required under the~~
19 ~~Montana Environmental Policy Act, if AND IF an impact~~
20 ~~statement is not required, the commission shall, within 120~~
21 ~~days of receipt of the complete application, WITHIN 60 DAYS~~
22 ~~OF RECEIPT OF THE COMPLETE APPLICATION, approve the contract~~
23 ~~or inform the applicant of the deficiencies in the~~
24 ~~application, if the site is not accessible due to extended~~
25 ~~adverse weather conditions, the department may extend the~~

1 ~~time period to allow inspection of the site and reasonable~~
2 ~~review. The department must serve written notice of~~
3 ~~extension upon the applicant in person or by certified mail~~
4 ~~and any such extension is subject to appeal to the~~
5 ~~commission in accordance with the Montana Administrative~~
6 ~~Procedure Act, if an impact statement is required, the~~
7 ~~commission must either approve or disapprove the contract~~
8 ~~within 365 days of receipt of a complete application. WITHIN~~
9 ~~30 DAYS OF RECEIPT OF A COMPLETE APPLICATION THE DEPARTMENT~~
10 ~~SHALL INSPECT THE SITE AND SHALL INFORM THE APPLICANT OF ANY~~
11 ~~DEFICIENCIES IN THE APPLICATION AND, IF NONE ARE SHOWN,~~
12 ~~IMMEDIATELY ISSUE A CONTRACT. IF DEFICIENCIES ARE SHOWN, A~~
13 ~~CONTRACT SHALL BE ISSUED UPON THE CORRECTION OF THE~~
14 ~~DEFICIENCIES. IF THE SITE IS NOT ACCESSIBLE DUE TO ADVERSE~~
15 ~~WEATHER CONDITIONS, THE DEPARTMENT MAY EXTEND THE TIME~~
16 ~~PERIOD, BY NOT MORE THAN 180 DAYS, TO ALLOW THE INSPECTION~~
17 ~~OF THE SITE AND REASONABLE REVIEW. ALL ACTIONS OF THE~~
18 ~~DEPARTMENT ARE SUBJECT TO APPEAL IN ACCORDANCE WITH THE~~
19 ~~MONTANA ADMINISTRATIVE PROCEDURE ACT.~~

20 (c) The commission shall submit all reclamation plans
21 or amendments to the reclamation plan to the landowner for
22 his recommendations and shall consider those recommendations
23 in deciding whether to approve or disapprove any plan or
24 amendments. The commission may seek technical help from any
25 state or federal agency. The commission must submit the plan

1 immediately to the director, university of Montana state
 2 wide archaeological survey for evaluation of possible
 3 archaeological or historical values in the area to be mined.
 4 The commission may approve a reclamation plan only if the
 5 commission has found that the plan provides for the best
 6 possible reclamation procedures available under the
 7 circumstances at the time, so that after mining operations
 8 are completed the affected land shall be reclaimed to a
 9 productive use. Once the reclamation plan has been accepted
 10 in writing by the commission, it shall become a part of the
 11 contract but shall be subject to annual review and
 12 modification by the commission.

13 (2) The commission may not approve any reclamation
 14 plan unless the plan provides that:

15 (a) the land will be reclaimed for one or more
 16 specified uses, including but not limited to: forest,
 17 pasture, orchard, cropland, residence, recreation, industry,
 18 habitat (including food, cover or water) for wildlife or
 19 other uses;

20 (b) to the extent reasonable and practicable, the
 21 operator shall establish vegetative cover commensurate with
 22 the proposed land use;

23 (c) where operations result in a need to prevent acid
 24 drainage or sedimentation, on or in adjoining lands or
 25 streams, there shall be provisions for the construction of

1 earth dams or other reasonable devices to control water
 2 drainage, provided the formation of such impoundments or
 3 devices will not interfere with other landowners rights or
 4 contribute to water pollution;

5 (d) to accomplish practical utilization of soil
 6 materials, such material will be utilized for placement on
 7 affected areas if required by the reclamation plan after
 8 completion or termination of that particular phase of the
 9 mining operations at a depth sufficient for plant growth on
 10 slopes of 3:1 or less. Grading specifications shall be
 11 commensurate with the topography sought and land use
 12 designated;

13 (e) metal and other waste shall be removed or buried;

14 (f) all access, haul and other support roads shall be
 15 located, constructed and maintained in such a manner as to
 16 control and minimize channeling and other erosion;

17 (g) the operator shall submit annually to the
 18 commission a progress report;

19 (h) all operations shall be conducted so as to avoid
 20 range and forest fires and spontaneous combustion. Open
 21 burning of carbonaceous materials shall be in accordance
 22 with suitable practices for fire prevention and control;

23 (i) archaeological and historical values in areas to
 24 be mined shall be given appropriate protection;

25 (j) except for rock faces, bench faces and excavations

1 used for water impoundments, each surface area of the mined
 2 premises which will be disturbed shall be revegetated when
 3 its use for extractive purposes is no longer required.
 4 Seeding and planting shall be done in a manner to achieve a
 5 permanent suitable vegetative cover for wildlife, livestock
 6 and retardation of erosion. All seed will be drilled unless
 7 otherwise provided in the plan;

8 (k) reclamation shall be as concurrent with mining
 9 operations as feasible, and must be completed within a
 10 specified length of time.

11 (3) If reclamation according to the plan has not been
 12 completed in the time specified, the commission shall after
 13 thirty (30) days written notice order the operator to cease
 14 mining, and, if the operator does not cease, shall institute
 15 an action to enjoin further operation and may sue for
 16 damages for breach of contract, for payment of the
 17 performance bond, or for both.

18 (4) (a) At any time during the period of reclamation
 19 the operator may for good reason submit to the commission a
 20 new reclamation plan or amendment to the existing plan
 21 including extensions of time.

22 (b) The commission may approve the proposed new
 23 reclamation plan, or amendments to the existing plan if:

24 (i) the operator has in good faith carried on
 25 reclamation according to the existing plan, and

1 (ii) the proposed new plan, or amendments to the
 2 existing plan, will result in reclamation as desirable or
 3 more so than the reclamation proposed under the existing
 4 plan, or

5 (iii) it is highly improbable reclamation will be
 6 successful unless the existing plan is replaced or amended.
 7 When accepted, the proposed new reclamation plan or the
 8 proposed amendments to the existing plan becomes a part of
 9 the contract.

10 (5) The operator shall provide a performance bond, or
 11 a. alternative acceptable to the commission, in an amount
 12 commensurate with the estimated cost of reclamation, but in
 13 no case shall the bond be less than two hundred dollars
 14 (\$200) per acre. The estimated cost of reclamation shall be
 15 set forth in the reclamation plan.

16 (6) The contract, reclamation plan and amendments
 17 accepted by the commission shall be a public record and open
 18 to inspection.

19 (7) The contract shall become effective when signed by
 20 the commission and the operator, and shall remain in force
 21 until terminated by mutual consent or by the commission upon
 22 six (6) months notice."

23 Section 5. Section 50-1513, R.C.M. 1947, is amended to
 24 read as follows:

25 "50-1513. Operation-----without-----contract-----as

1 ~~misdemeanor--penalty~~ Penalty for violation. ~~Anyone--required~~
 2 ~~by--this--act--to--have--a--contract--and--who--engages--in--open--cut~~
 3 ~~mining--without--previously--securing--a--contract--to--do--so--as~~
 4 ~~prescribed--by--this--act--is--guilty--of--a--misdemeanor--and--upon~~
 5 ~~conviction--thereof--shall--be--fined--not--less--than--five~~
 6 ~~hundred--dollars--(\$500)--and--not--more--than--one--thousand~~
 7 ~~dollars--(\$1,000).--Each--day--of--operation--without--a--contract~~
 8 ~~required--by--this--act--shall--be--deemed--a--separate--violation.~~

9 §§ A person who violates any of the provisions of
 10 this chapter or rules adopted hereunder shall pay a civil
 11 penalty of not less than \$100 or more than \$1,000 for the
 12 violations and an additional civil penalty of not less than
 13 \$100 or more than \$1,000 for each day during which a
 14 violation continues and may be enjoined from continuing such
 15 violations as provided in this section. These penalties are
 16 recoverable in an action brought in the name of the state of
 17 Montana by the attorney general in the district court of the
 18 first judicial district of this state in and for the county
 19 of Lewis and Clark or in the district court having
 20 jurisdiction of the defendant.

21 ~~§§ The attorney general shall may upon the request~~
 22 ~~of the department sue for the recovery of the penalties~~
 23 ~~provided for in this section and bring an action for a~~
 24 ~~restraining order or a temporary or permanent injunction~~
 25 ~~against an operator or other person violating or threatening~~

1 ~~to violate an order adopted under this chapter"~~

2 Section 6. Effective date. This act is effective on
 3 its passage and approval.

-End-