

*Coal Mining*

*Killed in  
S.C.R.C.  
2/22/77*

*Senate* BILL NO. *317*

INTRODUCED BY *Jerguson*  
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT MINING FOR COAL AND URANIUM ON LANDS CONSTITUTING ALLUVIAL VALLEY FLOORS; AMENDING SECTIONS 50-1036 AND 50-1042, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 50-1036, R.C.M. 1947, is amended to read as follows:

"50-1036. Definitions. Unless the context requires otherwise in this act:

(1) "mineral" means coal and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any

other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

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

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine or underground mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural

1 mineral deposit;

2 (7) "operator" means a person engaged in strip mining  
3 or underground mining who removes or intends to remove more  
4 than ten thousand (10,000) cubic yards of mineral or  
5 overburden;

6 (8) "person" means a person, partnership, corporation,  
7 association, or other legal entity, or any political  
8 subdivision, or agency of the state;

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

15 (10) "topsoil" means the unconsolidated mineral matter  
16 naturally present on the surface of the earth that has been  
17 subjected to and influenced by genetic and environmental  
18 factors of parent material, climate, macro- and  
19 micro-organisms, and topography, all acting over a period of  
20 time, and that is necessary for the growth and regeneration  
21 of vegetation on the surface of the earth;

22 (11) "department" means the department of state lands  
23 provided for in Title 82A, chapter 11;

24 (12) "commissioner" means the commissioner of state  
25 lands provided for in section 82A-1104;

1 (13) "board" means the board of land commissioners  
2 provided for in article X, section 4 of the constitution of  
3 this state;

4 (14) "reclamation" means backfilling, subsidence  
5 stabilization, water control, grading, highwall reduction,  
6 topsoiling, planting, revegetation, and other work to  
7 restore an area of land affected by strip mining or  
8 underground mining under a plan approved by the department;

9 (15) "degree" means from the horizontal, and in each  
10 case is subject to a tolerance of five percent (5%) error;

11 (16) "contour strip mining" means that strip mining  
12 method commonly carried out in areas of rough and hilly  
13 topography in which the coal or mineral seam outcrops along  
14 the side of the slope and entrance is made to the seam by  
15 excavating a bench or table cut at and along the site of the  
16 seam outcropping with the excavated overburden commonly  
17 being cast down the slope below the mineral seam and the  
18 operating bench;

19 (17) "bench" means the ledge, shelf, table, or terraces  
20 formed in the contour method of strip mining;

21 (18) "fill bench" means that portion of a bench or  
22 table which is formed by depositing overburden beyond or  
23 down slope from the cut section as formed in the contour  
24 method of strip mining;

25 (19) "abandoned" means an operation where no mineral is

1 being produced and where the department determines that the  
2 operation will not continue or resume;

3 (20) "underground mining" means any part of the process  
4 followed in the production of a mineral such that vertical  
5 or horizontal shafts, slopes, drifts, or incline planes  
6 connected with excavations penetrating the mineral stratum  
7 or strata are utilized;

8 (21) "aquifer" means any geologic formation or natural  
9 zone beneath the earth's surface that contains or stores  
10 water and transmits it from one point to another in  
11 quantities which permit or have the potential to permit  
12 economic development as a water source;

13 (22) "subsidence" means a vertically downward movement  
14 of overburden materials resulting from the actual mining of  
15 an underlying mineral deposit or associated underground  
16 excavations;

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

25 (24) "surface owner" means a person (a) who holds legal

1 or equitable title to the land surface; and (b) whose  
2 principal place of residence is on the land; or who  
3 personally conducts farming or ranching operations upon a  
4 farm or ranch unit to be directly affected by strip mining  
5 operations; or who receives directly a significant portion  
6 of his income, if any, from such farming or ranching  
7 operations; (c) or the state of Montana where the state owns  
8 the surface;

9 (25) "waiver" means any document which demonstrates the  
10 clear intention to release rights in the surface estate for  
11 the purpose of permitting the extraction of subsurface  
12 minerals by strip mining methods.

13 (26) "Alluvial valley floors" means the unconsolidated  
14 stream-laid deposits of existing water courses and is  
15 limited to the stream channel and floodplain where current  
16 agricultural activities are based on subirrigation or flood  
17 irrigation. This definition also applies to those portions  
18 of the valley downstream from the uppermost point of the  
19 agricultural operations."

20 Section 2. Section 50-1042, R.C.M. 1947, is amended to  
21 read as follows:

22 "50-1042. Refusal of permit -- grounds. (1) An  
23 application for a prospecting, strip mining or underground  
24 mining permit shall not be approved by the department if  
25 there is found on the basis of the information set forth in

1 the application, an on-site inspection, and an evaluation of  
 2 the operation by the department that the requirements of the  
 3 act or rules will not be observed or that the proposed  
 4 method of operation, backfilling, grading, subsidence  
 5 stabilization, water control, highwall reduction,  
 6 topsoiling, revegetation, or reclamation of the affected  
 7 area cannot be carried out consistent with the purpose of  
 8 this act.

9 (2) The department shall not approve the application  
 10 for a prospecting, strip mining or underground mining  
 11 permit where the area of land described in the application  
 12 includes land having special, exceptional, critical, or  
 13 unique characteristics, or that mining or prospecting on  
 14 that area would adversely affect the use, enjoyment, or  
 15 fundamental character of neighboring land having special,  
 16 exceptional, critical, or unique characteristics. For the  
 17 purposes of this act, land is defined as having such  
 18 characteristics if it possesses special, exceptional,  
 19 critical or unique:

20 (a) biological productivity, the loss of which would  
 21 jeopardize certain species of wildlife or domestic stock; or

22 (b) ecological fragility, in the sense that the land,  
 23 once adversely affected, could not return to its former  
 24 ecological role in the reasonable foreseeable future; or

25 (c) ecological importance, in the sense that the

1 particular land has such a strong influence on the total  
 2 ecosystem of which it is a part that even temporary effects  
 3 felt by it could precipitate a system-wide reaction of  
 4 unpredictable scope or dimensions; or

5 (d) scenic, historic, archeologic, topographic,  
 6 geologic, ethnologic, scientific, cultural, or recreational  
 7 significance. In applying this subsection, particular  
 8 attention should be paid to the inadequate preservation  
 9 previously accorded Plains Indian history and culture.

10 (3) If the department finds that the overburden on any  
 11 part of the area of land described in the application for a  
 12 prospecting, strip mining or underground mining permit is  
 13 such that experience in the state with a similar type of  
 14 operation upon land with similar overburden shows that  
 15 substantial deposition of sediment in streambeds,  
 16 subsidence, landslides, or water pollution cannot feasibly  
 17 be prevented, the department shall delete that part of the  
 18 land described in the application upon which the overburden  
 19 exists.

20 (4) If the department finds that the operation will  
 21 constitute a hazard to a dwelling house, public building,  
 22 school, church, cemetery, commercial or institutional  
 23 building, public road, stream, lake, or other public  
 24 property, the department shall delete those areas from the  
 25 prospecting, strip mining or underground mining permit

1 application before it can be approved.

2 ~~(5) The department may not approve an application for~~  
3 ~~prospecting or strip-mining permits where the area of land~~  
4 ~~described in the application includes alluvial valley~~  
5 ~~floors. This subsection also applies to those areas that 5~~  
6 ~~years prior to operator ownership, lease, or control,~~  
7 ~~constituted alluvial valley floors.\*~~

8 Section 3. Effective date. This act is effective on  
9 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 467-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 317 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:

Senate Bill 317 prohibits coal and uranium mining on lands constituting alluvial valley floors.

ASSUMPTIONS:

1. Coal mining will continue at the present projected rate through the next biennium.
2. Prohibiting mining on alluvial valley floors will mean that mining will take place on other lands.

FISCAL IMPACT:

None.

LONG-RANGE EFFECTS:

In the future, if all other coal lands are depleted, prohibiting mining on alluvial valley floors could significantly affect severance tax collections.

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BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-77