

HOUSE BILL NO. 842

Introduced: 02/15/83

Referred to Committee on Natural Resources: 02/15/83

Hearing: 2/21/83

Died in Committee

1 House BILL NO. 842  
 2 INTRODUCED BY J. Jensen, Beau Moran, Kelly  
 3 Saunders, Smith, Kelly  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 HARD-ROCK MINING LAWS; AMENDING SECTIONS 82-4-302, 82-4-303,  
 6 82-4-336, 82-4-338, AND 82-4-341, MCA."  
 7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 Section 1. Section 82-4-302, MCA, is amended to read:  
 10 "82-4-302. Purpose. (1) The purposes of this part are  
 11 to provide:  
 12 (a) that the usefulness, productivity, and scenic  
 13 values of all lands and surface waters involved in mining  
 14 and mining exploration within the boundaries and lawful  
 15 jurisdiction of the state will receive the greatest  
 16 reasonable degree of protection and reclamation to  
 17 beneficial use;  
 18 (b) authority for cooperation between private and  
 19 governmental entities in carrying this part into effect;  
 20 (c) for the recognition of the recreational and  
 21 aesthetic values of land as a benefit to the state of  
 22 Montana; and  
 23 (d) priorities and values to the aesthetics of our  
 24 landscape, waters, and ground cover.  
 25 (2) ~~Although--both--the--need--for--and--the--practicability~~

1 of--reclamation--will--control--the--type--and--degree--of  
 2 reclamation--in--any--specific--instance--the The basic  
 3 objective will be of reclamation is to establish, on a  
 4 continuing basis, the vegetative cover, soil stability,  
 5 water condition conditions, and safety condition conditions  
 6 appropriate to any proposed subsequent use of the area and  
 7 that are compatible to the surrounding environment."

8 Section 2. Section 82-4-303, MCA, is amended to read:  
 9 "82-4-303. Definitions. As used in this part, unless  
 10 the context indicates otherwise, the following definitions  
 11 apply:

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

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

18 (3) "Department" means the department of state lands.

19 (4) "Disturbed land" means that area of land or  
 20 surface water disturbed, beginning at the date of the  
 21 issuance of the permit, and it comprises that area from  
 22 which the overburden or minerals have been removed and  
 23 tailings ponds, waste dumps, roads, conveyor systems, leach  
 24 dumps, and all similar excavations or covering resulting  
 25 from the operation and which have not been previously

1 reclaimed under the reclamation plan.

2 (5) "Exploration" means all activities conducted on or  
3 beneath the surface of lands resulting in material  
4 disturbance of the surface for the purpose of determining  
5 the presence, location, extent, depth, grade, and economic  
6 viability of mineralization in those lands, if any, other  
7 than mining for production and economic exploitation, as  
8 well as all roads made for the purpose of facilitating  
9 exploration, except as noted in 82-4-305 and 82-4-310.

10 (6) "Mineral" means any ore, rock, or substance, other  
11 than oil, gas, bentonite, clay, coal, sand, gravel,  
12 phosphate rock, or uranium, taken from below the surface or  
13 from the surface of the earth for the purpose of milling,  
14 concentration, refinement, smelting, manufacturing, or other  
15 subsequent use or processing or for stockpiling for future  
16 use, refinement, or smelting.

17 (7) "Mining" commences at such time as the operator:

18 ~~(a) first strips overburden to expose an identified~~  
19 ~~ore deposit for the purpose of removing commercial~~  
20 ~~quantities of ore;~~

21 (b) first mines ores or minerals in commercial  
22 quantities for sale, beneficiation, refining, or other  
23 processing or disposition; or

24 (c) first takes bulk samples for metallurgical testing  
25 in excess of aggregate of 10,000 short tons.

1 (8) "Person" means any person, corporation, firm,  
2 association, partnership, or other legal entity engaged in  
3 exploration for or development or mining of minerals on or  
4 below the surface of the earth.

5 (9) "Reclamation plan" means the operator's written  
6 proposal, as required and approved by the board, for  
7 reclamation of the land that will be disturbed, which  
8 proposal shall include, to the extent practical at the time  
9 of application for an operating permit:

10 (a) a statement of the proposed subsequent use of the  
11 land after reclamation;

12 (b) plans for surface gradient restoration to a  
13 surface suitable for the proposed subsequent use of the land  
14 after reclamation is completed and the proposed method of  
15 accomplishment;

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

18 (d) procedures proposed to avoid foreseeable  
19 situations of public nuisance, endangerment of public  
20 safety, damage to human life or property, or unnecessary  
21 damage to flora and fauna in or adjacent to the area;

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

23 (f) the method of diverting surface waters around the  
24 disturbed areas where necessary to prevent pollution of  
25 those waters or unnecessary erosion;

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

3 (h) such maps and other supporting documents as may be  
4 reasonably required by the department; and

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

7 (10) (a) "Small miner" means a person, firm, or  
8 corporation that engages in the business of mining, that  
9 does not remove from the earth during any calendar year  
10 material in excess of 36,500 tons in the aggregate, that  
11 holds no operating permit under 82-4-335, and that conducts:

12 (i) operations resulting in not more than 5 acres of  
13 the earth's surface being disturbed and unreclaimed; or

14 (ii) two operations which disturb and leave unreclaimed  
15 less than 5 acres per operation if the respective mining  
16 properties are:

17 (A) the only operations engaged in by the person,  
18 firm, or corporation;

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

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

22 (b) For the purpose of this definition only, the  
23 department shall, in computing the area covered by the  
24 operation, exclude access or haulage roads that are required  
25 by a local, state, or federal agency having jurisdiction

1 over that road to be constructed to certain specifications  
2 if that public agency notifies the department in writing  
3 that it desires to have the road remain in use and will  
4 maintain it after mining or exploration ceases.

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

17 (12) "Underground mining" means all methods of mining  
18 other than surface mining.

19 (13) "Unit of surface-mined area" means that area of  
20 land and surface water included within an operating permit  
21 actually disturbed by surface mining during each 12-month  
22 period of time, beginning at the date of the issuance of the  
23 permit, and it comprises and includes the area from which  
24 overburden or minerals have been removed, the area covered  
25 by mining debris, and all additional areas used in surface

1 mining or underground mining operations which by virtue of  
2 such use are thereafter susceptible to erosion in excess of  
3 the surrounding undisturbed portions of land.

4 (14) "Vegetative cover" means the type of vegetation,  
5 grass, shrubs, trees, or any other form of natural cover  
6 considered suitable at time of reclamation, compatible with  
7 the surrounding environment, and capable of  
8 self-regeneration under natural climatic conditions at the  
9 site of disturbance."

10 Section 3. Section 82-4-336, MCA, is amended to read:

11 "82-4-336. Reclamation plan and specific reclamation  
12 requirements. (1) The reclamation plan shall provide that  
13 reclamation activities, particularly those relating to  
14 control of erosion, to the extent feasible, shall be  
15 conducted simultaneously with mining and in any case shall  
16 be initiated promptly after completion or abandonment of  
17 mining on those portions of the mine complex that will not  
18 be subject to further disturbance by the mining operation.  
19 In the absence of an order by the board providing a longer  
20 period, the plan shall provide that reclamation activities  
21 shall be completed not more than 2 years after completion or  
22 abandonment of mining on that portion of mine complex.

23 (2) In the absence of emergency or suddenly threatened  
24 or existing catastrophe, an operator may not depart from an  
25 approved plan without previously obtaining from the

1 department written approval of his proposed change. The  
2 department must be notified immediately of an emergency or  
3 threatened or existing catastrophe.

4 (3) Provision shall be made to avoid accumulation of  
5 stagnant water in the mined area which may serve as a host  
6 or breeding ground for mosquitoes or other disease-bearing  
7 or noxious insect life.

8 (4) All final grading shall be made with nonnoxious,  
9 nonflammable, noncombustible solids unless approval has been  
10 granted by the board for a supervised sanitary fill.

11 (5) Where mining has left an open pit exceeding 2  
12 acres of surface area and the composition of the floor or  
13 walls of the pit are likely to cause formation of acid,  
14 toxic, or otherwise pollutive solutions (hereinafter  
15 "objectionable effluents") on exposure to moisture, the  
16 reclamation plan shall include provisions which adequately  
17 provide for:

18 (a) insulation of all faces from moisture or water  
19 contact by covering to a depth of 2 feet or more with  
20 material or fill not susceptible itself to generation of  
21 objectionable effluents or excessive erosion;

22 (b) processing of any objectionable effluents in the  
23 pit before their being allowed to flow or be pumped out of  
24 it to reduce toxic or other objectionable ratios to a level  
25 considered safe to humans and the environment by the board;

1 (c) drainage of any objectionable effluents to  
2 settling or treatment basins when the objectionable  
3 effluents must be reduced to levels considered safe by the  
4 board before release from the settling basin; or

5 (d) absorption or evaporation of objectionable  
6 effluents in the open pit itself; and

7 (e) prevention of entrance into the open pit by  
8 persons or livestock lawfully upon adjacent lands by  
9 fencing, warning signs, and such other devices as may  
10 reasonably be required by the board.

11 (6) Provisions for vegetative cover shall be required  
12 in the reclamation plan if appropriate to the future use of  
13 the land as specified in the reclamation plan.

14 (7) The reclamation plan shall provide for the  
15 reclamation of all disturbed land. Proposed reclamation need  
16 not reclaim the areas to a better condition or different use  
17 than that which existed prior to development or mining. It  
18 ~~shall restore all disturbed land, other than land on which a~~  
19 ~~pit as described in 82-4-336(5) is located, to as good a~~  
20 ~~condition as existed before exploration or mining.~~

21 ~~(8) Any vegetative cover required in the reclamation~~  
22 ~~plan shall be at least equal in extent to that which existed~~  
23 ~~before commencement of exploration or mining.~~

24 (8)(9) A reclamation plan shall be approved by the  
25 board if it adequately provides for the accomplishment of

1 the activities specified in this section."

2 Section 4. Section 82-4-338, MCA, is amended to read:

3 "82-4-338. Performance bond. (1) The applicant shall  
4 file with the department a bond payable to the state of  
5 Montana with surety satisfactory to the department in the  
6 penal sum to be determined by the department of not less  
7 than \$200 or more than \$2,500 for each acre or fraction  
8 thereof of the disturbed area, conditioned upon the faithful  
9 performance of the requirements of this part and the rules  
10 of the board. In lieu of such bond, the applicant may file  
11 with the board a cash deposit, an assignment of a  
12 certificate of deposit, or other surety acceptable to the  
13 board. Regardless of the above limits, the bond shall not be  
14 less than the estimated cost to the state to complete the  
15 reclamation of the disturbed land. A public or governmental  
16 agency shall not be required to post a bond under the  
17 provisions of this part. A blanket performance bond covering  
18 two or more operations may be accepted by the board. Such  
19 blanket bond shall adequately secure the estimated total  
20 number of acres of disturbed land. When determined by the  
21 department that the set bonding level of a permit or license  
22 does not represent the present costs of reclamation, the  
23 department may modify the bonding requirements of that  
24 permit or license.

25 (2) No bond filed in accordance with the provisions of

1 this part shall be released by the department until the  
 2 provisions of this part, the rules adopted pursuant thereto,  
 3 and ~~this the~~ reclamation plan have been fulfilled ~~and until~~  
 4 ~~a suitable, permanent, noxious-weed-free vegetative cover~~  
 5 ~~has been established for those areas on which a vegetative~~  
 6 ~~cover has been required. For purposes of this section and~~  
 7 ~~82-4-341, "noxious weed" has the meaning provided in~~  
 8 ~~7-22-2101."~~

9 Section 5. Section 82-4-341, MCA, is amended to read:

10 "82-4-341. Compliance with reclamation plan --  
 11 reclamation by board. (1) Following receipt of the  
 12 permittee's report and at any other reasonable time the  
 13 board may elect, the board shall cause the permit area to be  
 14 inspected to determine if the permittee has complied with  
 15 the reclamation plan and the board's rules.

16 (2) The permittee shall proceed with reclamation as  
 17 scheduled in his approved reclamation plan. Following  
 18 written notice by the board noting deficiencies, the  
 19 permittee shall commence action within 30 days to rectify  
 20 these deficiencies and shall diligently proceed until the  
 21 deficiencies are corrected, provided that deficiencies that  
 22 also violate other laws that require earlier rectification  
 23 shall be corrected in accordance with the applicable time  
 24 provisions of such laws. The board may extend performance  
 25 periods referred to in this section and in 82-4-336 for

1 delays clearly beyond the permittee's control, but only when  
 2 the permittee is, in the opinion of the board, making every  
 3 reasonable effort to comply.

4 (3) ~~Within 30 days after~~ After notification by the  
 5 permittee and when, in the judgment of the board,  
 6 reclamation of a unit of disturbed land area is properly  
 7 completed, the permittee shall be notified in writing and  
 8 his bond on said area shall be released or decreased  
 9 proportionately to the acreage included within the bond  
 10 coverage. ~~Before the board makes this determination, the~~  
 11 ~~department must inspect the area and, upon request of an~~  
 12 ~~interested party, provide a public hearing. However, the~~  
 13 ~~bond may not be released within 3 years from the date of~~  
 14 ~~commencement of reclamation.~~

15 (4) If reclamation of disturbed land is not pursued in  
 16 accordance with the reclamation plan and the permittee has  
 17 not commenced action to rectify deficiencies within 30 days  
 18 after notification by the board or if reclamation is not  
 19 properly completed in conformance with the reclamation plan  
 20 within 2 years after completion or abandonment of operation  
 21 on any fraction of the permit area or such longer period as  
 22 may have been authorized hereunder or if, after default by  
 23 the permittee, the surety either refuses or fails to perform  
 24 the work to the satisfaction of the board within the time  
 25 required therefor, the board may, with the staff, equipment,

1 and material under its control or by contract with others,  
 2 take such actions as are necessary for required reclamation  
 3 of the disturbed lands. Such work shall be let on the basis  
 4 of competitive bidding. The board shall keep a record of all  
 5 necessary expenses incurred in carrying out the work or  
 6 activity authorized under this section, including a  
 7 reasonable charge for the services performed by the state's  
 8 personnel and the state's equipment and materials utilized.

9 (5) The board shall notify the permittee and his  
 10 surety by order. The order shall state the amount of  
 11 necessary expenses incurred by the board in reclaiming the  
 12 disturbed land and a notice that the amount is due and  
 13 payable to the board by the permittee and the surety. If the  
 14 amount specified in the order is not paid within 30 days  
 15 after receipt of the notice, the attorney general, upon  
 16 request of the board, shall bring an action on behalf of the  
 17 state in district court. The surety shall be liable to the  
 18 state to the extent of the bond. The permittee shall be  
 19 liable for the remainder of the cost.

20 (6) In addition to the other liabilities imposed by  
 21 this part, failure to commence action to remedy specific  
 22 deficiencies in reclamation within 30 days after  
 23 notification by the board or failure to satisfactorily  
 24 complete reclamation work on any segment of the permit area  
 25 within 2 years, or such longer period as the board may

1 permit on permittee's application therefor or on the board's  
 2 own motion, after completion or abandonment of operations on  
 3 any segment of the permit area shall constitute sufficient  
 4 grounds for cancellation of a permit or license and refusal  
 5 to issue another permit or license to the applicant  
 6 provided, however, that such action shall not be effected  
 7 while an appeal is pending from any ruling requiring the  
 8 same."

9 ~~NEW SECTION.~~ Section 6. Mandamus to compel  
 10 enforcement. (1) A resident of this state with knowledge  
 11 that a requirement of this part or a rule adopted under this  
 12 part is not being enforced by a public officer or employee  
 13 whose duty it is to enforce the requirement or rule may  
 14 bring the failure to the attention of the public officer or  
 15 employee by a written statement under oath that states the  
 16 specific facts of the failure. Knowingly making false  
 17 statements or charges in the affidavit is false swearing  
 18 punishable as provided in 45-7-202.

19 (2) If the public officer or employee neglects or  
 20 refuses for an unreasonable time after receipt of the  
 21 statement to enforce the requirement or rule, the resident  
 22 may bring an action of mandamus in the district court of the  
 23 first judicial district or in the district court of the  
 24 county in which the land is located. If the court finds  
 25 that a requirement of this part or a rule adopted under this



1 part is not being enforced, it shall order the public  
2 officer or employee to perform his duties. If he fails to  
3 do so, the public officer or employee must be held in  
4 contempt of court and is subject to the penalties provided  
5 by law.

6 (3) Any person having an interest that is or may be  
7 adversely affected may commence a civil action on his own  
8 behalf to compel compliance with this part against any  
9 person for the violation of this part or any rule, order, or  
10 permit issued under it. However, no such action may  
11 commence:

12 (a) prior to 60 days after the plaintiff has given  
13 notice in writing to the department and to the alleged  
14 violator; or

15 (b) if the department has commenced and is diligently  
16 prosecuting a civil action to require compliance with the  
17 provisions of this part or any rule, order, or permit issued  
18 under it. Any person may intervene as a matter of right in  
19 any such civil action.

20 (4) Nothing in this section restricts any right that  
21 any person may have under any statute or common law to seek  
22 enforcement of this part or the rules adopted under it or to  
23 seek any other relief.

24 NEW SECTION. Section 7. Action for damages to water  
25 supply — replacement. (1) An owner of an interest in real

1 property who obtains all or part of his supply of water for  
2 beneficial use, as defined in 85-2-102, from an underground  
3 source other than a subterranean stream having a permanent,  
4 distinct, and known channel may sue any operator engaged in  
5 a mining or exploration operation to recover damages for  
6 loss in quality or quantity of the water supply resulting  
7 from mining or exploration. Such owner is not required to  
8 exhaust this administrative remedy under subsection (2)  
9 prior to filing suit.

10 (2) (a) An owner described in subsection (1) may file  
11 a complaint, detailing the loss in quality or quantity of  
12 water, with the department. The burden of proof to show  
13 that the water supply was not damaged rests with the  
14 operator. Upon receipt of this complaint the department  
15 shall:

16 (i) investigate the complaint, using all available  
17 information, including monitoring data gathered at the  
18 exploration or mine site;

19 (ii) require the defendant to install monitoring wells  
20 or other practices that may be needed to determine the cause  
21 of water loss, if there is a loss, in terms of quantity and  
22 quality;

23 (iii) within 90 days, issue a written finding  
24 specifying the cause of the water loss, if there is a loss,  
25 in terms of quantity and quality;

1 (iv) if it determines that the loss is caused by an  
2 exploration or mining operation, order the defendant, in  
3 compliance with Title 85, chapter 2, parts 1 through 4, to  
4 replace the water immediately on a temporary basis to  
5 provide the needed water and within a reasonable time  
6 replace the water in like quality, quantity, and duration  
7 and, if the water is not so replaced, order the suspension  
8 of the defendant's exploration or operating permit until  
9 such time as the defendant provides substitute water.

10 (b) If the department determines that there is a great  
11 potential that surface or subsurface water quality and  
12 quantity may be adversely affected by a mining or  
13 exploration operation, the operator shall install a water  
14 quality monitoring program, water quantity monitoring  
15 program, or both, which must be approved by the department  
16 prior to the commencement of exploration or mining.

17 NEW SECTION. Section 8. Codification instruction.  
18 Sections 6 and 7 are intended to be codified as an integral  
19 part of Title 82, chapter 4, part 3, and the provisions of  
20 Title 82, chapter 4, part 3, apply to sections 6 and 7.

21 NEW SECTION. Section 9. Severability. If a part of  
22 this act is invalid, all valid parts that are severable from  
23 the invalid part remain in effect. If a part of this act is  
24 invalid in one or more of its applications, the part remains  
25 in effect in all valid applications that are severable from

1 the invalid applications.

-End-

## STATE OF MONTANA

REQUEST NO. 445-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 17, 19 83, there is hereby submitted a Fiscal Note for House Bill 842 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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:

House Bill 842 generally revises the hard rock mining law.

ASSUMPTIONS:

- 1) The only fiscal impact created by this bill will be the need for a hydrologist to conduct the investigations and write the reports mandated by Section 7. This hydrologist would be on a contract on an as needed basis.
- 2) There will be three complaints per year and each complaint will require 15 days to investigate and write a report. This assumes the data is available. If the data is not available the time required would be greatly expanded to take perhaps a year.
- 3) A contract hydrologist will cost \$250/day for services plus expenses.

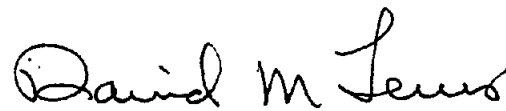
FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Personal Contract Services		
Under Current Law	-0-	-0-
Under Proposed Law	11,250	11,250
Increase Expenditures	<u>\$11,250</u>	<u>\$11,250</u>

TECHNICAL NOTE:

The 90 day limit mandated by sub-section 2(a)(iii) of Section 7 may not be sufficient time to gather the data necessary to prepare an adequate report if that data is not already available.

FISCAL NOTE 16: W/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-20-83