

HOUSE BILL NO. 6

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Natural Resources.
January 15, 1985	Committee recommend bill do pass as amended. Report adopted.
January 16, 1985	Bill printed and placed on members' desks.
January 17, 1985	Second reading, do pass. Considered correctly engrossed.
January 19, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 22, 1985	Introduced and referred to Committee on Natural Resources.
January 31, 1985	Committee recommend bill be concurring in. Report adopted.
February 2, 1985	Second reading, concurred in.
February 5, 1985	Third reading, concurred in. Ayes, 45; Noes, 0. Returned to House.

IN THE HOUSE

February 6, 1985	Received from Senate. Sent to enrolling. Reported correctly enrolled.
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1 HOUSE BILL NO. 6

2 AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO
3 MINING AND TO WATER RIGHTS AND USE; AMENDING SECTIONS
4 82-4-254, 85-2-123, 85-8-624, AND 90-6-307, MCA, AND SECTION
5 3, CHAPTER 706, LAWS OF 1983; AND PROVIDING AN IMMEDIATE
6 EFFECTIVE DATE FOR SECTION 2.

7 Section 1. 82-4-254. This amendment carries out the
8 obvious intent of the 1983 Legislature, which amended this
9 section by inserting subsection (2). That intent was to
10 provide that a minor violation civil penalty may be waived
11 upon a department determination that the violation is not of
12 potential harm and does not impair the administration of The
13 Montana Strip and Underground Mine Reclamation Act.

14 Section 2. Section 3, Ch. 706, L. 1983. The intent of
15 the 1983 Legislature was to suspend the operation of
16 85-1-121 until July 1, 1985. Section 7 of Ch. 706 provides
17 that "[t]his act terminates July 1, 1985." As long as the
18 act terminates on that date, 85-1-121 is revived on that
19 date whether it is "suspended" or "repealed". However,
20 technically speaking, the proper drafting technique is to
21 suspend. To "repeal" implies the possibility that the
22 repealed law is not revived when the act that repealed the
23 law terminates. To ensure that the amendment is in place
24 prior to the July 1, 1985, revival date, it is made
25 effective on passage and approval (see section 6 of the
26 bill).

27 Section 3. 85-2-123. Section 85-2-241 is a specific
28 exception to the 85-2-123 provision that collected fees and
29 penalties be deposited in the water right appropriation
30 account. Therefore, 85-2-123 should specifically provide
31 that the fees and penalties are deposited except as provided
32 in 85-2-124 and 85-2-241.

33 Section 4. 85-8-624. Subsections (3)(a), (c), and (d)
34 require an election notice as provided in "85-8-303" and
35 specifically refer to "85-8-303".

36 Section 85-8-303 was repealed by section 15, Ch. 27, L.
37 1981. It provided that 40 days' notice of an election of
38 drainage district commissioners be given by the secretary of
39 the board of commissioners and that the notice be given by
40 mail to all landowners in the district stating the time and
41 place of the election.

42 Inadvertently, when 85-8-303 was repealed, nothing was
43 substituted for the references to that section in
44 85-8-624(3)(a), (c), and (d). The problem thus arises as to

1 the type of notice to give for an 85-8-624 election to
2 authorize assessments on improvements.

3 When Ch. 27, L. 1981, repealed 85-8-303, it provided,
4 in section 8 (codified in 13-1-401), a new method for giving
5 notice of election of drainage district commissioners.
6 Section 4 of this Code Commissioner Bill amends 85-8-624 to
7 substitute that new method for the repealed method. The end
8 result is that, as was the case before 85-8-303 was
9 repealed, notice of an 85-8-624 election will be the same
10 type of notice as must be given for election of
11 commissioners. Since, prior to repeal of 85-8-303, the
12 Legislature wanted the same type of notice for the two
13 elections, the assumption behind this Code Commissioner Bill
14 amendment is that the Legislature still wants the two
15 elections to have the same type of notice.

16 Section 5. 90-6-307. The subsection (10) reference to
17 "impact fund" is changed to "impact account" to conform the
18 name to 90-6-304, which establishes an "account".

19 Section 6. Effective date. See explanation for section
20 2.

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY LAWS RELATING TO MINING AND TO WATER RIGHTS AND USE;
 7 AMENDING SECTIONS 82-4-254, 85-2-123, 85-8-624, AND
 8 90-6-307, MCA, AND SECTION 3, CHAPTER 706, LAWS OF 1983; AND
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SECTION 2."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 82-4-254, MCA, is amended to read:
 13 "82-4-254. Violation -- penalty -- waiver. (1) Except
 14 as provided in subsection (2), a person or operator who
 15 violates any of the provisions of this part, rules or orders
 16 adopted under this part, or term or condition of a permit
 17 and any director, officer, or agent of a corporation who
 18 willfully authorizes, orders, or carries out a violation
 19 shall pay a civil penalty of not less than \$100 or more than
 20 \$5,000 for the violation and an additional civil penalty of
 21 not less than \$100 or more than \$5,000 for each day during
 22 which a violation continues and may be enjoined from
 23 continuing such violations as hereinafter provided in this
 24 section. Any person or operator who fails to correct a
 25 violation within the period permitted by law, rule of the

1 board or department, or order of the commissioner shall be
 2 assessed a penalty of not less than \$750 for each day during
 3 which such failure or violation continues. The period
 4 permitted for correction of a violation shall not, in the
 5 case of any review proceeding under 82-4-251(6), end until
 6 entry of a final order suspending the abatement requirements
 7 or until entry of an order of court ordering suspension of
 8 the abatement requirements.

9 (2) The department may waive the civil penalty for a
 10 minor violation of this part, a rule or order adopted under
 11 this part, or a term or condition of a permit if the
 12 department determines such violation is not of potential
 13 harm to public health, public safety, or the environment or
 14 impairs and does not impair the administration of this part.
 15 The board of land commissioners shall adopt rules to
 16 implement and administer a procedure for waiver of a penalty
 17 under this subsection.

18 (3) The department shall notify the person or operator
 19 of the violation. The person or operator shall by filing a
 20 written request within 20 days of receipt of the notice of
 21 violation be entitled to a hearing on the issues of whether
 22 the alleged violation has occurred and whether the penalty
 23 proposed to be assessed is proper. The department shall
 24 issue a statement of proposed penalty no more than 10 days
 25 after notice of violation. After the hearing or after the

1 time for requesting a hearing has expired, the board shall
 2 make findings of fact and shall issue a written decision as
 3 to the occurrence of the violation and the amount of penalty
 4 warranted and shall order the payment of a penalty in that
 5 amount. The person or operator shall remit the amount of the
 6 penalty within 30 days of the order. If the person or
 7 operator wishes to obtain judicial review of the assessment,
 8 he shall submit with the penalty a statement that the
 9 penalty is being paid under protest and the department shall
 10 hold the payment in escrow until judicial review is
 11 complete. Any person or operator who fails to request and
 12 submit testimony at the hearing provided for in this
 13 subsection or who fails to pay the assessed penalty under
 14 protest within 30 days of the order assessing the penalty
 15 forfeits his right to seek judicial review of the violation
 16 or penalty determinations. These penalties are recoverable
 17 in any action brought in the name of the state of Montana by
 18 the attorney general in the district court of the first
 19 judicial district of this state, in and for the county of
 20 Lewis and Clark, or the district having jurisdiction over
 21 the defendant.

22 (4) The attorney general shall, upon request of the
 23 commissioner, sue for the recovery of the penalties provided
 24 for in this section and bring an action for a restraining
 25 order or temporary or permanent injunction against an

1 operator or other person who:

2 (a) violates, threatens to violate, or fails or
 3 refuses to comply with any order or decision issued under
 4 this part;

5 (b) interferes with, hinders, or delays the department
 6 in carrying out the provisions of the this part;

7 (c) refuses to admit an authorized representative of
 8 the department to the permit area;

9 (d) refuses to permit inspection of the permit area by
 10 an authorized representative of the department;

11 (e) refuses to furnish any information or report
 12 requested by the department in furtherance of the provisions
 13 of this part;

14 (f) refuses to permit access to and copying of such
 15 records as the department determines to be necessary in
 16 carrying out the provisions of this part.

17 (5) Any relief granted by a court under subsection
 18 (4)(a) continues in effect until the completion or final
 19 termination of all proceedings for review of such under this
 20 part unless, prior thereto, the district court granting the
 21 relief sets it aside or modifies it.

22 (6) A person who violates any of the provisions of
 23 this part or any determination or order adopted under this
 24 part or who willfully violates any permit condition issued
 25 under this part is guilty of a misdemeanor and shall be

1 fined not less than \$500 and not more than \$10,000 or
 2 imprisoned for not more than 1 year, or both. Each day on
 3 which the violation occurs constitutes a separate offense.

4 (7) Any person who knowingly makes any false
 5 statement, representation, or certification or knowingly
 6 fails to make any statement, representation, or
 7 certification in any application, record, report, plan, or
 8 other document filed or required to be maintained pursuant
 9 to this part shall upon conviction be punished by a fine of
 10 not more than \$10,000 or by imprisonment for not more than 1
 11 year, or both.

12 (8) Any person who except as permitted by law
 13 willfully resists, prevents, impedes, or interferes with the
 14 department or its agents in the performance of duties
 15 pursuant to this part shall be punished by a fine of not
 16 more than \$5,000 or by imprisonment for not more than 1
 17 year, or both.

18 (9) No employee of the department performing any
 19 function or duty under this part shall have a direct or
 20 indirect financial interest in any strip- or
 21 underground-coal-mining operation. Whoever knowingly
 22 violates the provisions of this subsection shall upon
 23 conviction be punished by a fine of not more than \$2,500 or
 24 by imprisonment of not more than 1 year, or both."

25 Section 2. Section 3, Chapter 706, Laws of 1983, is

1 amended to read:

2 "Section 3. Repeater Suspension. Section 85-1-121,
 3 MCA, is repeated suspended."

4 Section 3. Section 85-2-123, MCA, is amended to read:

5 "85-2-123. Deposit of fees and penalties. Except as
 6 provided in 85-2-124 and 85-2-241, all fees and penalties
 7 collected under this chapter shall be deposited in the water
 8 right appropriation account established in 85-2-318. All
 9 penalties or fines imposed by any court for a violation of
 10 this chapter shall be deposited in the general fund of the
 11 county where the court presides and shall be disposed of in
 12 the same manner as any other penalty or fine."

13 Section 4. Section 85-8-624, MCA, is amended to read:

14 "85-8-624. Assessments on improvements -- taxpayers'
 15 approval, limitations, and election procedures. (1) It shall
 16 require a vote of the persons on the assessment rolls in any
 17 existing district to make Chapter 409, Laws of 1973,
 18 applicable to such districts.

19 (2) Nothing in Chapter 409, Laws of 1973, confers upon
 20 districts created for drainage purposes only the authority
 21 to levy assessments on benefits to improvements.

22 (3) The election provided for by subsection (1) shall
 23 be governed by the following rules:

24 (a) Notice of the election shall be as provided in
 25 85-8-303 13-1-401(3).

1 (b) The manner of conducting the election shall be as
 2 provided in 85-8-304 and as nearly as practicable in
 3 accordance with the provisions of the general election laws
 4 of the state, except that no registration may be required.

5 (c) The qualifications of electors shall be as
 6 provided in 85-8-305, except that, in addition to persons
 7 holding title or evidence of title to lands within the
 8 district, any person as therein defined who does not own
 9 land within the district but has been assessed or will have
 10 his improvements assessed under Chapter 409, Laws of 1973,
 11 or who will be assessed for benefits received shall be
 12 entitled to one vote. Commissioners shall prepare a list of
 13 such persons and the election administrator or deputy
 14 election administrator shall give them notice as provided in
 15 85-8-303 13-1-401(3).

16 (d) The commissioners of any district in existence
 17 prior to March 21, 1973, who wish to hold an election to
 18 determine if the district shall be governed by Chapter 409,
 19 Laws of 1973, shall at any regular or special meeting adopt
 20 a resolution calling for an election to determine whether or
 21 not the voters of said district wish to be governed by
 22 Chapter 409, Laws of 1973. The resolution shall contain a
 23 short summary of the changes made by Chapter 409, Laws of
 24 1973, and ~~shall include~~ the summary ~~as--part--of~~ must be
 25 included in the notice provided for by ~~85-8-303~~ 13-1-401(3).

1 In addition, the commission shall provide copies of Chapter
 2 409, Laws of 1973, to any person interested in obtaining a
 3 copy of the same and the notice to the persons in the
 4 district calling the election shall describe where and how
 5 copies may be obtained. The commissioners may authorize a
 6 reasonable charge for providing said copies, not to exceed
 7 20 cents per page.

8 (e) The ballot shall include the summary as provided
 9 for in the preceding subsection and the form of the ballot
 10 shall conform as closely as possible to that provided for in
 11 Title 13, chapter 27.

12 (f) A simple majority of those who cast valid ballots
 13 shall determine the outcome of the election."

14 Section 5. Section 90-6-307, MCA, is amended to read:
 15 "90-6-307. Impact plan to be submitted. (1) After an
 16 application for a permit for a large-scale mineral
 17 development is made under 82-4-335, the person seeking the
 18 permit shall submit to the affected counties and the board
 19 an impact plan describing the economic impact the
 20 large-scale mineral development will have on local
 21 government units and shall file proof of such submission to
 22 the counties with the board. Whenever an environmental
 23 impact statement on the permit application is prepared under
 24 75-1-201, the lead agency shall cooperate to the fullest
 25 extent practicable with the affected local government units

1 to eliminate duplication of effort in data collection. The
 2 governing bodies of the affected counties shall publish
 3 notice of the submission of an impact plan at least once in
 4 a newspaper of general circulation in the county. The
 5 impact plan shall include:

6 (a) a timetable for development, including the opening
 7 date of the development and the estimated closing date;

8 (b) the estimated number of persons coming into the
 9 impacted area as a result of the development;

10 (c) the increased capital and operating cost to local
 11 government units for providing services, including but not
 12 limited to police and fire protection, sewage, water
 13 treatment, schools, road construction and upkeep, education,
 14 and medical care, which can be expected as a result of the
 15 development;

16 (d) the financial or other assistance the developer
 17 will give to local government units to meet the increased
 18 need for services.

19 (2) In the impact plan, the developer shall commit
 20 itself to pay all of the increased capital and net operating
 21 cost to local government units that will be a result of the
 22 development, either from tax prepayments, as provided in
 23 90-6-309, special industrial educational impact bonds, as
 24 provided in 90-6-310, or other funds obtained from the
 25 developer, and shall provide a time schedule within which it

1 will do so.

2 (3) Upon request of the governing body of an affected
 3 unit of local government, the mineral developer, prior to
 4 commencement of the 90-day review period, shall provide
 5 financial or other assistance as necessary to prepare for
 6 and evaluate the impact plan. The governing body of the
 7 affected county must contract with the developer to obtain
 8 the requested financial assistance for each unit of local
 9 government within the county. Any disbursements to a unit of
 10 local government under this subsection shall be credited
 11 against future tax liabilities, if any.

12 (4) An affected local government unit shall, within 90
 13 days after receipt of the impact plan from the developer,
 14 notify the board in writing if that local government unit
 15 objects to the impact plan, specifying the reasons why the
 16 impact plan is objected to. During the 90-day period, an
 17 affected local governmental unit may petition for one 30-day
 18 extension by submitting a written request to the board
 19 stating the need and justification for the extension. The
 20 board shall grant the extension unless it finds there is no
 21 reasonable basis for the request. If no objection is
 22 received within the 90-day period or any extension thereof,
 23 the impact plan shall be approved by the board.

24 (5) If objections are received from a local government
 25 unit, the board shall, within 10 days, notify the developer

1 and forward a copy of the local government unit's objections
 2 to the developer. If within 30 days the local government
 3 unit and the developer cannot resolve the objection, the
 4 board shall conduct a hearing on the validity of the
 5 objections, which shall be held in the affected county or,
 6 if objections are received from local government units in
 7 more than one county, shall be held in the county which, in
 8 the board's judgment, is more greatly affected. The
 9 provisions of the Montana Administrative Procedure Act shall
 10 apply to the conduct of the hearing. The impact plan filed
 11 by the developer shall carry no presumption of correctness
 12 at the hearing.

13 (6) Following the hearing, the board shall, within 60
 14 days, make findings as to those portions of the impact plan
 15 which were objected to and, if appropriate, amend the impact
 16 plan accordingly. The findings and impact plan, as amended,
 17 shall be served by the board upon all parties. Any local
 18 government unit or the developer, if aggrieved by the
 19 decision of the board, is entitled to judicial review, as
 20 provided by Title 2, chapter 4, part 7, in the district
 21 court in and for the judicial district in which the hearing
 22 was held.

23 (7) The developer shall, within 30 days of receipt of
 24 the approved impact plan, provide the board with a written
 25 guaranty that the developer will make all the payments to

1 the board required in the approved impact plan and according
 2 to the time schedule contained in the approved impact plan.

3 (8) The board shall deposit all payments received from
 4 the developer into the hard-rock mining impact account
 5 established by 90-6-304.

6 (9) The board shall notify the department of state
 7 lands of its receipt of the written guaranty of payment, of
 8 each required payment, and of any failure of the developer
 9 to comply with this section.

10 (10) Upon receipt of evidence that an affected local
 11 government unit identified in the approved impact plan is
 12 providing or is preparing to provide an additional service
 13 or facility provided for in the approved impact plan, the
 14 board shall pay to that local government unit, in one sum or
 15 in parts, the money from the hard-rock mining impact fund
 16 account identified in the plan as the increased cost to the
 17 local government unit of providing that public service or
 18 facility.

19 (11) If it is determined that an objection filed by an
 20 affected local government unit under subsection (4) is valid
 21 and it results in some remedial order by the board or court
 22 of competent jurisdiction, the local government unit shall
 23 be awarded and the developer shall pay reasonable costs and
 24 attorney fees associated with any administrative or judicial
 25 appeals filed under this section. Any attorney fees and

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1 costs awarded shall be in addition to any amounts paid by
2 the developer under this part."

3 NEW SECTION. Section 6. Effective date. Section 2 is
4 effective on passage and approval.

-End-

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2 AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO
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19 function or duty under this part shall have a direct or
20 indirect financial interest in any strip- or
21 underground-coal-mining operation. Whoever knowingly
22 violates the provisions of this subsection shall upon
23 conviction be punished by a fine of not more than \$2,500 or
24 by imprisonment of not more than 1 year, or both."

25 ~~Section 2, Section 3, Chapter 706, Laws of 1983, is~~

1 ~~amended to read:~~

2 ~~"Section 3, Repealer Suspension, Section 85-1-121,~~
3 ~~MCA, is repealed suspended."~~

4 Section 2. Section 85-2-123, MCA, is amended to read:
5 "85-2-123. Deposit of fees and penalties. Except as
6 provided in 85-2-124 and 85-2-241, all fees and penalties
7 collected under this chapter shall be deposited in the water
8 right appropriation account established in 85-2-318. All
9 penalties or fines imposed by any court for a violation of
10 this chapter shall be deposited in the general fund of the
11 county where the court presides and shall be disposed of in
12 the same manner as any other penalty or fine."

13 Section 3. Section 85-8-624, MCA, is amended to read:
14 "85-8-624. Assessments on improvements -- taxpayers'
15 approval, limitations, and election procedures. (1) It shall
16 require a vote of the persons on the assessment rolls in any
17 existing district to make Chapter 409, Laws of 1973,
18 applicable to such districts.

19 (2) Nothing in Chapter 409, Laws of 1973, confers upon
20 districts created for drainage purposes only the authority
21 to levy assessments on benefits to improvements.

22 (3) The election provided for by subsection (1) shall
23 be governed by the following rules:

24 (a) Notice of the election shall be as provided in
25 ~~85-8-303~~ 13-1-401(3).

1 (b) The manner of conducting the election shall be as
 2 provided in 85-8-304 and as nearly as practicable in
 3 accordance with the provisions of the general election laws
 4 of the state, except that no registration may be required.

5 (c) The qualifications of electors shall be as
 6 provided in 85-8-305, except that, in addition to persons
 7 holding title or evidence of title to lands within the
 8 district, any person as therein defined who does not own
 9 land within the district but has been assessed or will have
 10 his improvements assessed under Chapter 409, Laws of 1973,
 11 or who will be assessed for benefits received shall be
 12 entitled to one vote. Commissioners shall prepare a list of
 13 such persons and the election administrator or deputy
 14 election administrator shall give them notice as provided in
 15 85-8-303 13-1-401(3).

16 (d) The commissioners of any district in existence
 17 prior to March 21, 1973, who wish to hold an election to
 18 determine if the district shall be governed by Chapter 409,
 19 Laws of 1973, shall at any regular or special meeting adopt
 20 a resolution calling for an election to determine whether or
 21 not the voters of said district wish to be governed by
 22 Chapter 409, Laws of 1973. The resolution shall contain a
 23 short summary of the changes made by Chapter 409, Laws of
 24 1973, and ~~shall include~~ the summary as--part--of must be
 25 included in the notice provided for by 85-8-303 13-1-401(3).

1 In addition, the commission shall provide copies of Chapter
 2 409, Laws of 1973, to any person interested in obtaining a
 3 copy of the same and the notice to the persons in the
 4 district calling the election shall describe where and how
 5 copies may be obtained. The commissioners may authorize a
 6 reasonable charge for providing said copies, not to exceed
 7 20 cents per page.

8 (e) The ballot shall include the summary as provided
 9 for in the preceding subsection and the form of the ballot
 10 shall conform as closely as possible to that provided for in
 11 Title 13, chapter 27.

12 (f) A simple majority of those who cast valid ballots
 13 shall determine the outcome of the election."

14 Section 4. Section 90-6-307, MCA, is amended to read:
 15 "90-6-307. Impact plan to be submitted. (1) After an
 16 application for a permit for a large-scale mineral
 17 development is made under 82-4-335, the person seeking the
 18 permit shall submit to the affected counties and the board
 19 an impact plan describing the economic impact the
 20 large-scale mineral development will have on local
 21 government units and shall file proof of such submission to
 22 the counties with the board. Whenever an environmental
 23 impact statement on the permit application is prepared under
 24 75-1-201, the lead agency shall cooperate to the fullest
 25 extent practicable with the affected local government units

1 to eliminate duplication of effort in data collection. The
 2 governing bodies of the affected counties shall publish
 3 notice of the submission of an impact plan at least once in
 4 a newspaper of general circulation in the county. The
 5 impact plan shall include:

6 (a) a timetable for development, including the opening
 7 date of the development and the estimated closing date;

8 (b) the estimated number of persons coming into the
 9 impacted area as a result of the development;

10 (c) the increased capital and operating cost to local
 11 government units for providing services, including but not
 12 limited to police and fire protection, sewage, water
 13 treatment, schools, road construction and upkeep, education,
 14 and medical care, which can be expected as a result of the
 15 development;

16 (d) the financial or other assistance the developer
 17 will give to local government units to meet the increased
 18 need for services.

19 (2) In the impact plan, the developer shall commit
 20 itself to pay all of the increased capital and net operating
 21 cost to local government units that will be a result of the
 22 development, either from tax prepayments, as provided in
 23 90-6-309, special industrial educational impact bonds, as
 24 provided in 90-6-310, or other funds obtained from the
 25 developer, and shall provide a time schedule within which it

1 will do so.

2 (3) Upon request of the governing body of an affected
 3 unit of local government, the mineral developer, prior to
 4 commencement of the 90-day review period, shall provide
 5 financial or other assistance as necessary to prepare for
 6 and evaluate the impact plan. The governing body of the
 7 affected county must contract with the developer to obtain
 8 the requested financial assistance for each unit of local
 9 government within the county. Any disbursements to a unit of
 10 local government under this subsection shall be credited
 11 against future tax liabilities, if any.

12 (4) An affected local government unit shall, within 90
 13 days after receipt of the impact plan from the developer,
 14 notify the board in writing if that local government unit
 15 objects to the impact plan, specifying the reasons why the
 16 impact plan is objected to. During the 90-day period, an
 17 affected local governmental unit may petition for one 30-day
 18 extension by submitting a written request to the board
 19 stating the need and justification for the extension. The
 20 board shall grant the extension unless it finds there is no
 21 reasonable basis for the request. If no objection is
 22 received within the 90-day period or any extension thereof,
 23 the impact plan shall be approved by the board.

24 (5) If objections are received from a local government
 25 unit, the board shall, within 10 days, notify the developer

1 and forward a copy of the local government unit's objections
 2 to the developer. If within 30 days the local government
 3 unit and the developer cannot resolve the objection, the
 4 board shall conduct a hearing on the validity of the
 5 objections, which shall be held in the affected county or,
 6 if objections are received from local government units in
 7 more than one county, shall be held in the county which, in
 8 the board's judgment, is more greatly affected. The
 9 provisions of the Montana Administrative Procedure Act shall
 10 apply to the conduct of the hearing. The impact plan filed
 11 by the developer shall carry no presumption of correctness
 12 at the hearing.

13 (6) Following the hearing, the board shall, within 60
 14 days, make findings as to those portions of the impact plan
 15 which were objected to and, if appropriate, amend the impact
 16 plan accordingly. The findings and impact plan, as amended,
 17 shall be served by the board upon all parties. Any local
 18 government unit or the developer, if aggrieved by the
 19 decision of the board, is entitled to judicial review, as
 20 provided by Title 2, chapter 4, part 7, in the district
 21 court in and for the judicial district in which the hearing
 22 was held.

23 (7) The developer shall, within 30 days of receipt of
 24 the approved impact plan, provide the board with a written
 25 guaranty that the developer will make all the payments to

1 the board required in the approved impact plan and according
 2 to the time schedule contained in the approved impact plan.

3 (8) The board shall deposit all payments received from
 4 the developer into the hard-rock mining impact account
 5 established by 90-6-304.

6 (9) The board shall notify the department of state
 7 lands of its receipt of the written guaranty of payment, of
 8 each required payment, and of any failure of the developer
 9 to comply with this section.

10 (10) Upon receipt of evidence that an affected local
 11 government unit identified in the approved impact plan is
 12 providing or is preparing to provide an additional service
 13 or facility provided for in the approved impact plan, the
 14 board shall pay to that local government unit, in one sum or
 15 in parts, the money from the hard-rock mining impact fund
 16 account identified in the plan as the increased cost to the
 17 local government unit of providing that public service or
 18 facility.

19 (11) If it is determined that an objection filed by an
 20 affected local government unit under subsection (4) is valid
 21 and it results in some remedial order by the board or court
 22 of competent jurisdiction, the local government unit shall
 23 be awarded and the developer shall pay reasonable costs and
 24 attorney fees associated with any administrative or judicial
 25 appeals filed under this section. Any attorney fees and

1 costs awarded shall be in addition to any amounts paid by
2 the developer under this part."

3 ~~NEW SECTION--Section-6--Effective-date--Section-2-is~~
4 ~~effective-on-passage-and-approval~~

-End-

1 HOUSE BILL NO. 6

2 AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO
3 MINING AND TO WATER RIGHTS AND USE; AMENDING SECTIONS
4 82-4-254, 85-2-123, 85-8-624, AND 90-6-307, MCA, AND SECTION
5 3, CHAPTER 706, LAWS OF 1983; AND PROVIDING AN IMMEDIATE
6 EFFECTIVE DATE FOR SECTION 2.

7 Section 1. 82-4-254. This amendment carries out the
8 obvious intent of the 1983 Legislature, which amended this
9 section by inserting subsection (2). That intent was to
10 provide that a minor violation civil penalty may be waived
11 upon a department determination that the violation is not of
12 potential harm and does not impair the administration of The
13 Montana Strip and Underground Mine Reclamation Act.

14 Section 2. Section 3, Ch. 706, L. 1983. The intent of
15 the 1983 Legislature was to suspend the operation of
16 85-1-121 until July 1, 1985. Section 7 of Ch. 706 provides
17 that "[t]his act terminates July 1, 1985." As long as the
18 act terminates on that date, 85-1-121 is revived on that
19 date whether it is "suspended" or "repealed". However,
20 technically speaking, the proper drafting technique is to
21 suspend. To "repeal" implies the possibility that the
22 repealed law is not revived when the act that repealed the
23 law terminates. To ensure that the amendment is in place
24 prior to the July 1, 1985, revival date, it is made
25 effective on passage and approval (see section 6 of the
26 bill).

27 Section 3. 85-2-123. Section 85-2-241 is a specific
28 exception to the 85-2-123 provision that collected fees and
29 penalties be deposited in the water right appropriation
30 account. Therefore, 85-2-123 should specifically provide
31 that the fees and penalties are deposited except as provided
32 in 85-2-124 and 85-2-241.

33 Section 4. 85-8-624. Subsections (3)(a), (c), and (d)
34 require an election notice as provided in "85-8-303" and
35 specifically refer to "85-8-303".

36 Section 85-8-303 was repealed by section 15, Ch. 27, L.
37 1981. It provided that 40 days' notice of an election of
38 drainage district commissioners be given by the secretary of
39 the board of commissioners and that the notice be given by
40 mail to all landowners in the district stating the time and
41 place of the election.

42 Inadvertently, when 85-8-303 was repealed, nothing was
43 substituted for the references to that section in
44 85-8-624(3)(a), (c), and (d). The problem thus arises as to

THIRD READING

1 the type of notice to give for an 85-8-624 election to
2 authorize assessments on improvements.

3 When Ch. 27, L. 1981, repealed 85-8-303, it provided,
4 in section 8 (codified in 13-1-401), a new method for giving
5 notice of election of drainage district commissioners.
6 Section 4 of this Code Commissioner Bill amends 85-8-624 to
7 substitute that new method for the repealed method. The end
8 result is that, as was the case before 85-8-303 was
9 repealed, notice of an 85-8-624 election will be the same
10 type of notice as must be given for election of
11 commissioners. Since, prior to repeal of 85-8-303, the
12 Legislature wanted the same type of notice for the two
13 elections, the assumption behind this Code Commissioner Bill
14 amendment is that the Legislature still wants the two
15 elections to have the same type of notice.

16 Section 5. 90-6-307. The subsection (10) reference to
17 "impact fund" is changed to "impact account" to conform the
18 name to 90-6-304, which establishes an "account".

19 Section 6. Effective date. See explanation for section
20 2.

1 HOUSE BILL NO. 6
 2 INTRODUCED BY MARKS
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY LAWS RELATING TO MINING AND TO WATER RIGHTS AND USE;
 7 AMENDING SECTIONS 82-4-254, 85-2-123, 85-8-624, AND
 8 90-6-307, ~~MCA-AND-SECTION-37-CHAPTER-7067-LAWS-OF-1983-AND~~
 9 ~~PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE-FOR-SECTION-2."~~

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 82-4-254, MCA, is amended to read:

13 "82-4-254. Violation -- penalty -- waiver. (1) Except
 14 as provided in subsection (2), a person or operator who
 15 violates any of the provisions of this part, rules or orders
 16 adopted under this part, or term or condition of a permit
 17 and any director, officer, or agent of a corporation who
 18 willfully authorizes, orders, or carries out a violation
 19 shall pay a civil penalty of not less than \$100 or more than
 20 \$5,000 for the violation and an additional civil penalty of
 21 not less than \$100 or more than \$5,000 for each day during
 22 which a violation continues and may be enjoined from
 23 continuing such violations as hereinafter provided in this
 24 section. Any person or operator who fails to correct a
 25 violation within the period permitted by law, rule of the

1 board or department, or order of the commissioner shall be
 2 assessed a penalty of not less than \$750 for each day during
 3 which such failure or violation continues. The period
 4 permitted for correction of a violation shall not, in the
 5 case of any review proceeding under 82-4-251(6), end until
 6 entry of a final order suspending the abatement requirements
 7 or until entry of an order of court ordering suspension of
 8 the abatement requirements.

9 (2) The department may waive the civil penalty for a
 10 minor violation of this part, a rule or order adopted under
 11 this part, or a term or condition of a permit if the
 12 department determines such violation is not of potential
 13 harm to public health, public safety, or the environment or
 14 impairs and does not impair the administration of this part.
 15 The board of land commissioners shall adopt rules to
 16 implement and administer a procedure for waiver of a penalty
 17 under this subsection.

18 (3) The department shall notify the person or operator
 19 of the violation. The person or operator shall by filing a
 20 written request within 20 days of receipt of the notice of
 21 violation be entitled to a hearing on the issues of whether
 22 the alleged violation has occurred and whether the penalty
 23 proposed to be assessed is proper. The department shall
 24 issue a statement of proposed penalty no more than 10 days
 25 after notice of violation. After the hearing or after the

1 time for requesting a hearing has expired, the board shall
 2 make findings of fact and shall issue a written decision as
 3 to the occurrence of the violation and the amount of penalty
 4 warranted and shall order the payment of a penalty in that
 5 amount. The person or operator shall remit the amount of the
 6 penalty within 30 days of the order. If the person or
 7 operator wishes to obtain judicial review of the assessment,
 8 he shall submit with the penalty a statement that the
 9 penalty is being paid under protest and the department shall
 10 hold the payment in escrow until judicial review is
 11 complete. Any person or operator who fails to request and
 12 submit testimony at the hearing provided for in this
 13 subsection or who fails to pay the assessed penalty under
 14 protest within 30 days of the order assessing the penalty
 15 forfeits his right to seek judicial review of the violation
 16 or penalty determinations. These penalties are recoverable
 17 in any action brought in the name of the state of Montana by
 18 the attorney general in the district court of the first
 19 judicial district of this state, in and for the county of
 20 Lewis and Clark, or the district having jurisdiction over
 21 the defendant.

22 (4) The attorney general shall, upon request of the
 23 commissioner, sue for the recovery of the penalties provided
 24 for in this section and bring an action for a restraining
 25 order or temporary or permanent injunction against an

1 operator or other person who:

2 (a) violates, threatens to violate, or fails or
 3 refuses to comply with any order or decision issued under
 4 this part;

5 (b) interferes with, hinders, or delays the department
 6 in carrying out the provisions of the this part;

7 (c) refuses to admit an authorized representative of
 8 the department to the permit area;

9 (d) refuses to permit inspection of the permit area by
 10 an authorized representative of the department;

11 (e) refuses to furnish any information or report
 12 requested by the department in furtherance of the provisions
 13 of this part;

14 (f) refuses to permit access to and copying of such
 15 records as the department determines to be necessary in
 16 carrying out the provisions of this part.

17 (5) Any relief granted by a court under subsection
 18 (4)(a) continues in effect until the completion or final
 19 termination of all proceedings for review of such under this
 20 part unless, prior thereto, the district court granting the
 21 relief sets it aside or modifies it.

22 (6) A person who violates any of the provisions of
 23 this part or any determination or order adopted under this
 24 part or who willfully violates any permit condition issued
 25 under this part is guilty of a misdemeanor and shall be

1 fined not less than \$500 and not more than \$10,000 or
 2 imprisoned for not more than 1 year, or both. Each day on
 3 which the violation occurs constitutes a separate offense.

4 (7) Any person who knowingly makes any false
 5 statement, representation, or certification or knowingly
 6 fails to make any statement, representation, or
 7 certification in any application, record, report, plan, or
 8 other document filed or required to be maintained pursuant
 9 to this part shall upon conviction be punished by a fine of
 10 not more than \$10,000 or by imprisonment for not more than 1
 11 year, or both.

12 (8) Any person who except as permitted by law
 13 willfully resists, prevents, impedes, or interferes with the
 14 department or its agents in the performance of duties
 15 pursuant to this part shall be punished by a fine of not
 16 more than \$5,000 or by imprisonment for not more than 1
 17 year, or both.

18 (9) No employee of the department performing any
 19 function or duty under this part shall have a direct or
 20 indirect financial interest in any strip- or
 21 underground-coal-mining operation. Whoever knowingly
 22 violates the provisions of this subsection shall upon
 23 conviction be punished by a fine of not more than \$2,500 or
 24 by imprisonment of not more than 1 year, or both."

25 ~~Section 2. -- Section 37-Chapter 7067, laws of 1983, is~~

1 ~~amended-to-read:~~

2 ~~"Section 3. -- Repealer Suspension. -- Section -- 85-1-1217~~
 3 ~~MCA -- is repeated suspended."~~

4 Section 2. Section 85-2-123, MCA, is amended to read:
 5 "85-2-123. Deposit of fees and penalties. Except as
 6 provided in 85-2-124 and 85-2-241, all fees and penalties
 7 collected under this chapter shall be deposited in the water
 8 right appropriation account established in 85-2-318. All
 9 penalties or fines imposed by any court for a violation of
 10 this chapter shall be deposited in the general fund of the
 11 county where the court presides and shall be disposed of in
 12 the same manner as any other penalty or fine."

13 Section 3. Section 85-8-624, MCA, is amended to read:
 14 "85-8-624. Assessments on improvements -- taxpayers'
 15 approval, limitations, and election procedures. (1) It shall
 16 require a vote of the persons on the assessment rolls in any
 17 existing district to make Chapter 409, Laws of 1973,
 18 applicable to such districts.

19 (2) Nothing in Chapter 409, Laws of 1973, confers upon
 20 districts created for drainage purposes only the authority
 21 to levy assessments on benefits to improvements.

22 (3) The election provided for by subsection (1) shall
 23 be governed by the following rules:

24 (a) Notice of the election shall be as provided in
 25 85-8-303 13-1-401(3).

1 (b) The manner of conducting the election shall be as
2 provided in 85-8-304 and as nearly as practicable in
3 accordance with the provisions of the general election laws
4 of the state, except that no registration may be required.

5 (c) The qualifications of electors shall be as
6 provided in 85-8-305, except that, in addition to persons
7 holding title or evidence of title to lands within the
8 district, any person as therein defined who does not own
9 land within the district but has been assessed or will have
10 his improvements assessed under Chapter 409, Laws of 1973,
11 or who will be assessed for benefits received shall be
12 entitled to one vote. Commissioners shall prepare a list of
13 such persons and the election administrator or deputy
14 election administrator shall give them notice as provided in
15 85-8-303 13-1-401(3).

16 (d) The commissioners of any district in existence
17 prior to March 21, 1973, who wish to hold an election to
18 determine if the district shall be governed by Chapter 409,
19 Laws of 1973, shall at any regular or special meeting adopt
20 a resolution calling for an election to determine whether or
21 not the voters of said district wish to be governed by
22 Chapter 409, Laws of 1973. The resolution shall contain a
23 short summary of the changes made by Chapter 409, Laws of
24 1973, and ~~shall include~~ the summary ~~as--part--of~~ must be
25 included in the notice provided for by 85-8-303 13-1-401(3).

1 In addition, the commission shall provide copies of Chapter
2 409, Laws of 1973, to any person interested in obtaining a
3 copy of the same and the notice to the persons in the
4 district calling the election shall describe where and how
5 copies may be obtained. The commissioners may authorize a
6 reasonable charge for providing said copies, not to exceed
7 20 cents per page.

8 (e) The ballot shall include the summary as provided
9 for in the preceding subsection and the form of the ballot
10 shall conform as closely as possible to that provided for in
11 Title 13, chapter 27.

12 (f) A simple majority of those who cast valid ballots
13 shall determine the outcome of the election."

14 Section 4. Section 90-6-307, MCA, is amended to read:

15 "90-6-307. Impact plan to be submitted. (1) After an
16 application for a permit for a large-scale mineral
17 development is made under 82-4-335, the person seeking the
18 permit shall submit to the affected counties and the board
19 an impact plan describing the economic impact the
20 large-scale mineral development will have on local
21 government units and shall file proof of such submission to
22 the counties with the board. Whenever an environmental
23 impact statement on the permit application is prepared under
24 75-1-201, the lead agency shall cooperate to the fullest
25 extent practicable with the affected local government units

1 to eliminate duplication of effort in data collection. The
 2 governing bodies of the affected counties shall publish
 3 notice of the submission of an impact plan at least once in
 4 a newspaper of general circulation in the county. The
 5 impact plan shall include:

6 (a) a timetable for development, including the opening
 7 date of the development and the estimated closing date;

8 (b) the estimated number of persons coming into the
 9 impacted area as a result of the development;

10 (c) the increased capital and operating cost to local
 11 government units for providing services, including but not
 12 limited to police and fire protection, sewage, water
 13 treatment, schools, road construction and upkeep, education,
 14 and medical care, which can be expected as a result of the
 15 development;

16 (d) the financial or other assistance the developer
 17 will give to local government units to meet the increased
 18 need for services.

19 (2) In the impact plan, the developer shall commit
 20 itself to pay all of the increased capital and net operating
 21 cost to local government units that will be a result of the
 22 development, either from tax prepayments, as provided in
 23 90-6-309, special industrial educational impact bonds, as
 24 provided in 90-6-310, or other funds obtained from the
 25 developer, and shall provide a time schedule within which it

1 will do so.

2 (3) Upon request of the governing body of an affected
 3 unit of local government, the mineral developer, prior to
 4 commencement of the 90-day review period, shall provide
 5 financial or other assistance as necessary to prepare for
 6 and evaluate the impact plan. The governing body of the
 7 affected county must contract with the developer to obtain
 8 the requested financial assistance for each unit of local
 9 government within the county. Any disbursements to a unit of
 10 local government under this subsection shall be credited
 11 against future tax liabilities, if any.

12 (4) An affected local government unit shall, within 90
 13 days after receipt of the impact plan from the developer,
 14 notify the board in writing if that local government unit
 15 objects to the impact plan, specifying the reasons why the
 16 impact plan is objected to. During the 90-day period, an
 17 affected local governmental unit may petition for one 30-day
 18 extension by submitting a written request to the board
 19 stating the need and justification for the extension. The
 20 board shall grant the extension unless it finds there is no
 21 reasonable basis for the request. If no objection is
 22 received within the 90-day period or any extension thereof,
 23 the impact plan shall be approved by the board.

24 (5) If objections are received from a local government
 25 unit, the board shall, within 10 days, notify the developer

1 and forward a copy of the local government unit's objections
 2 to the developer. If within 30 days the local government
 3 unit and the developer cannot resolve the objection, the
 4 board shall conduct a hearing on the validity of the
 5 objections, which shall be held in the affected county or,
 6 if objections are received from local government units in
 7 more than one county, shall be held in the county which, in
 8 the board's judgment, is more greatly affected. The
 9 provisions of the Montana Administrative Procedure Act shall
 10 apply to the conduct of the hearing. The impact plan filed
 11 by the developer shall carry no presumption of correctness
 12 at the hearing.

13 (6) Following the hearing, the board shall, within 60
 14 days, make findings as to those portions of the impact plan
 15 which were objected to and, if appropriate, amend the impact
 16 plan accordingly. The findings and impact plan, as amended,
 17 shall be served by the board upon all parties. Any local
 18 government unit or the developer, if aggrieved by the
 19 decision of the board, is entitled to judicial review, as
 20 provided by Title 2, chapter 4, part 7, in the district
 21 court in and for the judicial district in which the hearing
 22 was held.

23 (7) The developer shall, within 30 days of receipt of
 24 the approved impact plan, provide the board with a written
 25 guaranty that the developer will make all the payments to

1 the board required in the approved impact plan and according
 2 to the time schedule contained in the approved impact plan.

3 (8) The board shall deposit all payments received from
 4 the developer into the hard-rock mining impact account
 5 established by 90-6-304.

6 (9) The board shall notify the department of state
 7 lands of its receipt of the written guaranty of payment, of
 8 each required payment, and of any failure of the developer
 9 to comply with this section.

10 (10) Upon receipt of evidence that an affected local
 11 government unit identified in the approved impact plan is
 12 providing or is preparing to provide an additional service
 13 or facility provided for in the approved impact plan, the
 14 board shall pay to that local government unit, in one sum or
 15 in parts, the money from the hard-rock mining impact fund
 16 account identified in the plan as the increased cost to the
 17 local government unit of providing that public service or
 18 facility.

19 (11) If it is determined that an objection filed by an
 20 affected local government unit under subsection (4) is valid
 21 and it results in some remedial order by the board or court
 22 of competent jurisdiction, the local government unit shall
 23 be awarded and the developer shall pay reasonable costs and
 24 attorney fees associated with any administrative or judicial
 25 appeals filed under this section. Any attorney fees and

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1 costs awarded shall be in addition to any amounts paid by
2 the developer under this part."

3 ~~NEW-SECTION--Section-6--Effective-date--Section-2-is~~
4 ~~effective-on-passage-and-approval~~

-End-

HOUSE BILL NO. 6

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO MINING AND TO WATER RIGHTS AND USE; AMENDING SECTIONS 82-4-254, 85-2-123, 85-8-624, AND 90-6-307, MCA, AND SECTION 37-CHAPTER-7867-LAWS-OF-1983, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SECTION 2."

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

Section 1. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty -- waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the

THERE ARE NO CHANGES IN HB 6 AND WILL NOT BE RE-RUN. PLEASE REFER TO YELLOW OR BLUE COPY FOR COMPLETE TEXT.

REFERENCE BILL HB 6

