

HOUSE BILL NO. 912

INTRODUCED BY D. BROWN, LORY, ELLISON, IVERSON, MARKS, ECK
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

IN THE HOUSE

February 20, 1985	Introduced and referred to Committee on Natural Resources.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 6, 1985	Introduced and referred to Committee on Natural Resources.
March 26, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 29, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Ayes, 48; Noes, 0. Returned to House with amendments.

IN THE HOUSE

April 2, 1985	Received from Senate.
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April 8, 1985

Second reading, amendments
concurrent in.

On motion, rules suspended and
bill placed on third reading this
day.

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 by the rules:

2 (a) name and address of the operator and, if a
3 corporation or other business entity, the name and address
4 of its principal officers, partners, and the like and its
5 resident agent for service of process, if required by law;

6 (b) minerals expected to be mined;

7 (c) a proposed reclamation plan;

8 (d) expected starting date of mining;

9 (e) a map showing the specific area to be mined and
10 the boundaries of the land which will be disturbed,
11 topographic detail, the location and names of all streams,
12 roads, railroads, and utility lines on or immediately
13 adjacent to the area, location of proposed access roads to
14 be built, and the names and addresses of the surface and
15 mineral owners of all lands within the mining area, to the
16 extent known to applicant;

17 (f) types of access roads to be built and manner of
18 reclamation of road sites on abandonment; and

19 (g) a plan of mining which will provide, within limits
20 of normal operating procedures of the industry, for
21 completion of mining and associated land disturbances.

22 (2) Except as provided in subsection (3) (4), the
23 permit provided for in subsection (1) for a large-scale
24 mineral development as defined in 90-6-302 shall be
25 conditioned to provide that activities under the permit may

1 not commence until the hard-rock mining impact board
2 approves the impact plan under 90-6-307 and until the
3 permittee has provided a written guarantee to the department
4 and to the hard-rock mining impact board of compliance
5 within the time schedule with the commitment made in the
6 impact plan approved by the hard-rock mining impact board,
7 as provided in 90-6-307. If the permittee does not comply
8 with that commitment within the time scheduled, the board,
9 upon receipt of written notice from the hard-rock mining
10 impact board, shall suspend the permit until it receives
11 written notice from the hard-rock mining impact board that
12 the permittee is in compliance.

13 (3) When the department determines that a permittee
14 has become or will become a large-scale mineral developer
15 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
16 required under 82-4-339, within 6 months of receiving the
17 notice, the permittee shall provide the board with proof
18 that he has obtained a waiver of the impact plan requirement
19 from the hard-rock mining impact board or that he has filed
20 an impact plan with the hard-rock mining impact board and
21 the appropriate county or counties. If the permittee does
22 not file the required proof or if the hard-rock mining
23 impact board certifies to the board that the permittee has
24 failed to comply with the hard-rock mining impact review and
25 implementation requirements in Title 90, chapter 6, parts 3

1 and 4, the board shall suspend the permit until the
 2 permittee files the required proof or until the hard-rock
 3 mining impact board certifies that the permittee has
 4 complied with the hard-rock mining impact review and
 5 implementation requirements.

6 ~~f3~~(4) Compliance with 90-6-307 is not required for
 7 exploration and bulk sampling for metallurgical testing when
 8 the aggregate samples are less than 10,000 tons."

9 Section 3. Section 82-4-339, MCA, is amended to read:

10 "82-4-339. Annual report of activities by permittee --
 11 fee -- notice of large-scale mineral developer status. (1)
 12 Within 30 days after completion or abandonment of operations
 13 on an area under permit or within 30 days after each
 14 anniversary date of the permit, whichever is earlier, or at
 15 such later date as may be provided by rules of the board and
 16 each year thereafter until reclamation is completed and
 17 approved, the permittee shall pay the annual fee of \$25 and
 18 shall file a report of activities completed during the
 19 preceding year on a form prescribed by the board which
 20 report shall:

21 ~~f1~~(a) identify the permittee and the permit number;

22 ~~f2~~(b) locate the operation by subdivision, section,
 23 township, and range and with relation to the nearest town or
 24 other well-known geographic feature;

25 ~~f3~~(c) estimate acreage to be newly disturbed by

1 operation in the next 12-month period; and

2 ~~(d)~~ include the number of persons on the payroll for
 3 the previous permit year and for the next permit year at
 4 intervals that the department considers sufficient to enable
 5 a determination of the permittee's status under 90-6-302(4);
 6 and

7 ~~f4~~(e) update any maps previously submitted or
 8 specifically requested by the board. Such maps shall show:

9 ~~f4~~(i) the permit area;

10 ~~f4~~(ii) the unit of disturbed land;

11 ~~f4~~(iii) the area to be disturbed during the next
 12 12-month period;

13 ~~f4~~(iv) if completed, the date of completion of
 14 operations;

15 ~~f4~~(v) if not completed, the additional area estimated
 16 to be further disturbed by the operation within the
 17 following permit year; and

18 ~~f4~~(vi) the date of beginning, amount, and current
 19 status of reclamation performed during the previous 12
 20 months.

21 (2) Whenever the department determines that the
 22 permittee has become or will, during the next permit year,
 23 become a large-scale mineral developer, it shall immediately
 24 serve written notice of that fact on the permittee, the
 25 hard-rock mining impact board, and the county or counties in

1 which the operation is located."

2 Section 4. Section 90-6-302, MCA, is amended to read:
3 "90-6-302. Definitions. In this part the following
4 definitions apply:

5 (1) "Board" means the hard-rock mining impact board
6 established in 2-15-1822.

7 (2) "Bonds" include bonds, notes, warrants,
8 debentures, certificates of indebtedness, temporary bonds,
9 temporary notes, interim receipts, interim certificates, and
10 all instruments or obligations evidencing or representing
11 indebtedness or evidencing or representing the borrowing of
12 money or evidencing or representing a charge, lien, or
13 encumbrance on specific revenues, special assessments,
14 income, or property of a political subdivision, including
15 all instruments or obligations payable from a special fund.

16 (3) "Local government unit" means a political
17 ~~subdivision of this state, including a county, city, town,~~
18 ~~school district, or other special district that provides any~~
19 ~~of the services referred to in subsection (1)(c) of 90-6-307~~
20 any of the following independent special districts:

- 21 (a) rural fire district;
22 (b) public hospital district;
23 (c) refuse disposal district;
24 (d) county water and sewer district;
25 (e) county water district; or

1 (f) county sewer district.

2 (4) "Large-scale mineral development" means the
3 construction or operation of a hard-rock mine and the
4 associated milling facility ~~that will:~~

- 5 ~~(a) employ at any given time at least 100 people; or~~
6 ~~(b) cause, or be expected to cause, an increase in~~
7 ~~estimated population of at least 15% in a local government~~
8 ~~unit when measured against the average population of the~~
9 ~~local government unit in the 3-year period immediately~~
10 ~~preceding the commencement of the construction of the mining~~
11 ~~facility. A mining operation that would qualify as a~~
12 ~~large-scale mineral development under this subsection is not~~
13 ~~a large-scale mineral development if the mine owner and~~
14 ~~operator are small miners as defined in 82-4-303(10) for~~
15 ~~which a permit is applied for under 82-4-335 on or after May~~
16 ~~18, 1981, and for which the average number of persons on the~~
17 ~~payroll of the mineral developer and of contractors at the~~
18 ~~mineral development exceeds or is projected to exceed 75 for~~
19 ~~any consecutive 6-month period."~~

20 Section 5. Section 90-6-307, MCA, is amended to read:
21 "90-6-307. Impact plan to be submitted. (1.) After an
22 application for a permit for a large-scale mineral
23 development is made under 82-4-335, the person seeking the
24 permit shall submit to the affected counties and the board
25 an impact plan describing the economic impact the

1 large-scale mineral development will have on local
 2 government units and shall file proof of such submission to
 3 the counties with the board. Whenever an environmental
 4 impact statement on the permit application is prepared under
 5 75-1-201, the lead agency shall cooperate to the fullest
 6 extent practicable with the affected local government units
 7 to eliminate duplication of effort in data collection. The
 8 governing bodies of the affected counties shall publish
 9 notice of the submission of an impact plan at least once in
 10 a newspaper of general circulation in the county. The
 11 impact plan shall include:

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

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

16 (c) the increased capital and operating cost to local
 17 government units for providing services, ~~including but not~~
 18 ~~limited to police and fire protection, sewerage, water~~
 19 ~~treatment, schools, road construction and upkeep, education,~~
 20 ~~and medical care,~~ which can be expected as a result of the
 21 development;

22 (d) the financial or other assistance the developer
 23 will give to local government units to meet the increased
 24 need for services.

25 (2) In the impact plan, the developer shall commit

1 itself to pay all of the increased capital and net operating
 2 cost to local government units that will be a result of the
 3 development, as identified in the impact plan, either from
 4 tax prepayments, as provided in 90-6-309, special industrial
 5 educational impact bonds, as provided in 90-6-310, or other
 6 funds obtained from the developer, and shall provide a time
 7 schedule within which it will do so. The plan may provide
 8 for funding from other revenue sources or funding mechanisms
 9 if the developer guarantees that the amount to be provided
 10 from these sources will be paid.

11 (3) Upon request of the governing body of an affected
 12 unit of local government, the mineral developer, prior to
 13 commencement the end of the 90-day review period, shall
 14 provide financial or other assistance as necessary to
 15 prepare for and evaluate the impact plan. The governing body
 16 of the affected county must contract with the developer to
 17 obtain the requested financial assistance for each unit of
 18 local government within the county. Any disbursements to a
 19 unit of local government under this subsection shall be
 20 credited against future tax liabilities, if any.

21 (4) An affected local government unit shall, within 90
 22 days after receipt of the impact plan from the developer,
 23 notify the board in writing if that local government unit
 24 objects to the impact plan, specifying the reasons why the
 25 impact plan is objected to. During the 90-day period, an

1 affected local governmental unit may petition for one 30-day
 2 extension by submitting a written request to the board
 3 stating the need and justification for the extension. The
 4 board shall grant the extension unless it finds there is no
 5 reasonable basis for the request. If no objection is
 6 received within the 90-day period or any extension thereof,
 7 the impact plan shall be approved by the board.

8 (5) If objections are received from a local government
 9 unit, the board shall, within 10 days, notify the developer
 10 and forward a copy of the local government unit's objections
 11 to the developer. ~~If within 30 days the~~ The local government
 12 unit and the developer cannot have 30 days, or a longer
 13 period if both the local government unit and the developer
 14 request an extension, to resolve the objection. ~~If the~~
 15 objections are not resolved, the board shall conduct a
 16 hearing on the validity of the objections, which shall be
 17 held in the affected county or, if objections are received
 18 from local government units in more than one county, shall
 19 be held in the county which, in the board's judgment, is
 20 more greatly affected. The provisions of the Montana
 21 Administrative Procedure Act shall apply to the conduct of
 22 the hearing. The impact plan filed by the developer shall
 23 carry no presumption of correctness at the hearing.

24 (6) Following the hearing, the board shall, within 60
 25 days, make findings as to those portions of the impact plan

1 which were objected to and, if appropriate, amend the impact
 2 plan accordingly. The findings and impact plan, as amended,
 3 shall be served by the board upon all parties. Any local
 4 government unit or the developer, if aggrieved by the
 5 decision of the board, is entitled to judicial review, as
 6 provided by Title 2, chapter 4, part 7, in the district
 7 court in and for the judicial district in which the hearing
 8 was held.

9 (7) The developer shall, within 30 days of receipt of
 10 the approved impact plan, provide the board with a written
 11 guaranty guarantee that the developer will make all the
 12 payments to the board required meet the increased costs of
 13 public services and facilities as specified in the approved
 14 impact plan and according to the time schedule contained in
 15 the approved impact plan.

16 (8) ~~The board shall deposit all payments received from~~
 17 ~~the developer into the hard rock mining impact account~~
 18 ~~established by 98-6-304. The developer may make payments as~~
 19 specified in the approved impact plan directly to a local
 20 government unit or to the board. The governing body of a
 21 local government unit receiving payments shall deposit the
 22 payments into an impact fund and shall issue to the board
 23 written verification of each payment and its intended use in
 24 compliance with the impact plan. The board shall deposit
 25 payments received from a developer into the hard rock mining

1 impact account established by 90-6-304.

2 (9) The board shall notify the department of state
3 lands of its receipt of the written guaranty guarantee of
4 payment, of each required payment, and of any failure of the
5 developer to comply with this section.

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

16 (11) If it is determined that an objection filed by an
17 affected local government unit under subsection (4) or
18 90-6-311(3) is valid and it results in some remedial order
19 by the board or court of competent jurisdiction, the local
20 government unit shall be awarded and the developer shall pay
21 reasonable costs and attorney fees associated with any
22 administrative or judicial appeals filed under this section.
23 Any attorney fees and costs awarded shall be in addition to
24 any amounts paid by the developer under this part.

25 (12) Upon a determination by the department of state

1 lands that a permittee under 82-4-335 has become or will
2 become a large-scale mineral developer, the permittee may
3 petition the board for a waiver of the impact plan
4 requirement. The board may grant a waiver or conditional
5 waiver of this requirement only if it has provided notice
6 and opportunity for hearing to the permittee and to all
7 affected local government units. The board shall adopt
8 criteria under which a waiver may be granted. A waiver
9 issued by the board may be revoked if the permittee and
10 contractors at the mineral development increase their
11 payrolls from the date of the waiver by 75 or more persons,
12 provided the revocation is requested by an affected local
13 government unit and notice and opportunity for hearing are
14 given to the permittee and all affected local government
15 units. The board shall notify the board of land
16 commissioners of any waiver that has been revoked.

17 (13) When a person who holds an operating permit under
18 82-4-335 and who has filed an impact plan fails to comply
19 with the review and implementation requirements in this part
20 and part 4 of this chapter, the board shall certify to the
21 board of land commissioners that the failure to comply has
22 occurred and shall certify when a permittee who has
23 previously failed to comply comes into compliance."

24 Section 6. Section 90-6-309, MCA, is amended to read:

25 "90-6-309. Tax prepayment -- large-scale mineral

1 development. (1) After permission to commence operation is
 2 granted by the appropriate governmental agency, and upon
 3 request of the governing body of a county in which a
 4 facility is to be located, a person intending to construct
 5 or locate a large-scale mineral development in this state
 6 shall prepay property taxes ~~in an amount equal to at least~~
 7 ~~three times the estimated property tax due the year the~~
 8 ~~large-scale mineral development facility commences operation~~
 9 as specified in the impact plan. This prepayment shall
 10 exclude the 6-mill university levy and may exclude the
 11 mandatory county levy for the school foundation program of
 12 ~~40~~ 45 mills.

13 (2) The person who is to prepay under this section
 14 shall not be obligated to prepay the entire amount
 15 established in subsection (1) at one time. Upon request of
 16 the governing body of an affected local government unit, the
 17 person shall prepay the amount shown to be needed from time
 18 to time as determined by the board.

19 (3) The person who is to prepay shall guarantee to the
 20 hard-rock mining impact board, through an appropriate
 21 financial institution, as may be required by the board, that
 22 property tax prepayments will be paid as needed for
 23 expenditures created by the impacts of the large-scale
 24 mineral development.

25 (4) When the mineral development facilities are

1 completed and assessed by the department of revenue, they
 2 shall be subject during the first 3 years and thereafter to
 3 taxation as all other property similarly situated, except
 4 that in each year after the start of production, the local
 5 government unit that received a property tax prepayment
 6 shall provide for repayment of prepaid property taxes in
 7 accordance with subsection (5).

8 (5) A local government unit that received all or a
 9 portion of the property tax prepayment under this section
 10 shall provide for ~~repayment according to the following~~
 11 procedure: tax crediting as specified in the impact plan.
 12 The tax credit allowed in any year may not, however, exceed
 13 the tax obligation of the developer for that year, and the
 14 time period for tax crediting is limited to the productive
 15 life of the mining operation. In addition, the impact plan
 16 shall include conditions that allow for adjustment in the
 17 tax credit to assure that the allowance of the credit will
 18 not result in substantial increases in local mill levies.

19 ~~(a) In each year after the commencement of mining, the~~
 20 ~~local government shall:~~

21 ~~(i) divide its budget by the average mill levy of its~~
 22 ~~jurisdiction during the 3 years immediately preceding~~
 23 ~~commencement of mining operations, to arrive at a taxable~~
 24 ~~valuation needed to fund its budget using the average 3-year~~
 25 ~~mill levy;~~

~~(iii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value determined under subsection (5)(a)(i), but in no case by an amount greater than the taxable value of the person's property;~~

~~(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall not be affected by this section, and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this part extend more than 10 years beyond the date the prepayment is made under this section.~~

~~(c) The procedure established under subsection (5)(a) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid."~~

Section 7. Section 90-6-311, MCA, is amended to read:

"90-6-311. Impact plan amendments. (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the

board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 100 people 75 payroll employees, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

~~(b) changes in the large-scale mineral development cause, or can be expected to cause, an increase in estimated population of at least 15% in a local government unit when measured against the average population of the local government unit in the 3-year period preceding the commencement of new construction or new operations of the mining facility; or~~

~~(c)(b)~~ it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

~~(d)(c)~~ the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

1 (b) a statement of the facts and circumstances
2 underlying the need for an amendment; and

3 (c) a description of the corrective measures proposed
4 by the petitioner.

5 (3) Within 60 days after notice that the petition has
6 been received, an affected local government unit or the
7 mineral developer must notify the board in writing if such
8 person objects to the amendments proposed by the petitioner,
9 specifying the reasons why the impact plan should not be
10 amended as proposed. If no objection is received within the
11 60-day period, the impact plan must be amended by the board
12 as proposed by the petitioner.

13 (4) If an objection is received, within 10 days of its
14 receipt, the board shall notify the petitioner and include a
15 copy of all objections received by the board. If the
16 objecting party and the petitioner cannot resolve the
17 objections within 30 days after the expiration of the 60-day
18 period, the board shall conduct a hearing on the validity of
19 the objections within 30 days after the failure of the
20 parties to resolve the objections. The hearing must be held
21 in the affected county or, if objections are received from
22 local government units in more than one county, must be held
23 in the county which in the board's judgment is more greatly
24 affected. The provisions of the Montana Administrative
25 Procedure Act apply to the conduct of the hearing.

1 (5) Following the hearing, the board shall make
2 findings as to those portions of the amendments which were
3 objected to and, if appropriate, amend the impact plan
4 accordingly. The board shall cause the findings and impact
5 plan, as amended, to be served on all parties. Any local
6 government unit or the developer is entitled to judicial
7 review, as provided by Title 2, chapter 4, part 7, in the
8 district court for the judicial district in which the
9 hearing was held."

10 NEW SECTION. Section 8. Local government budget
11 authority. A local government unit may budget and expend
12 payments received from a mineral developer under this part
13 or part 4 of this chapter or pursuant to a plan approved
14 under this part. If a payment is requested or received after
15 the adoption of the budget for the fiscal year in which the
16 payment is to be expended, the governing body of the local
17 government unit may by a majority vote amend its budget to
18 provide for the receipt and expenditure of the payments.

19 NEW SECTION. Section 9. Codification instruction.
20 Section 8 is intended to be codified as an integral part of
21 Title 90, chapter 6, part 3, and the provisions of Title 90,
22 chapter 6, part 3, apply to section 8.

23 NEW SECTION. Section 10. Extension of authority. Any
24 existing authority of the hard-rock mining impact board, the
25 department of state lands, and the board of land

1 commissioners to make rules on the subject of the provisions
2 of this act is extended to the provisions of this act.

3 NEW SECTION. Section 11. Applicability. The
4 provisions of this act apply to a mineral development for
5 which a permit application is made under 82-4-335 on or
6 after May 18, 1981, and prior to July 1, 1985, only if the
7 mineral development is or will become a large-scale mineral
8 development under 90-6-302(4), as that statute read prior to
9 July 1, 1985.

10 NEW SECTION. Section 12. Effective date. This act is
11 effective July 1, 1985.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 912

INTRODUCED BY D. BROWN, LORY, ELLISON,

IVERSON, MARKS, ECK

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE HARD-ROCK MINING IMPACT LAWS AND RELATED STATUTES; REDEFINING "LOCAL GOVERNMENT UNIT" AND "LARGE-SCALE MINERAL DEVELOPMENT"; MAKING CERTAIN CHANGES TO IMPACT PLAN SUBMISSION REQUIREMENTS; PROVIDING FOR TAX PREPAYMENT CREDITS AS SPECIFIED IN THE IMPACT PLAN; AMENDING SECTIONS 2-15-1822, 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-309, AND 90-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-15-1822, MCA, is amended to read:

"2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by

large-scale mineral development;

(b) no more than three persons from the same congressional district;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a chairman from among its members."

Section 2. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of \$25 and must submit an application on a form provided by the board, which shall contain the

1 following information and any other pertinent data required
2 by the rules:

3 (a) name and address of the operator and, if a
4 corporation or other business entity, the name and address
5 of its principal officers, partners, and the like and its
6 resident agent for service of process, if required by law;

7 (b) minerals expected to be mined;

8 (c) a proposed reclamation plan;

9 (d) expected starting date of mining;

10 (e) a map showing the specific area to be mined and
11 the boundaries of the land which will be disturbed,
12 topographic detail, the location and names of all streams,
13 roads, railroads, and utility lines on or immediately
14 adjacent to the area, location of proposed access roads to
15 be built, and the names and addresses of the surface and
16 mineral owners of all lands within the mining area, to the
17 extent known to applicant;

18 (f) types of access roads to be built and manner of
19 reclamation of road sites on abandonment; and

20 (g) a plan of mining which will provide, within limits
21 of normal operating procedures of the industry, for
22 completion of mining and associated land disturbances.

23 (2) Except as provided in subsection (3) (4), the
24 permit provided for in subsection (1) for a large-scale
25 mineral development as defined in 90-6-302 shall be

1 conditioned to provide that activities under the permit may
2 not commence until the hard-rock mining impact board
3 approves the impact plan under 90-6-307 and until the
4 permittee has provided a written guarantee to the department
5 and to the hard-rock mining impact board of compliance
6 within the time schedule with the commitment made in the
7 impact plan approved by the hard-rock mining impact board,
8 as provided in 90-6-307. If the permittee does not comply
9 with that commitment within the time scheduled, the board,
10 upon receipt of written notice from the hard-rock mining
11 impact board, shall suspend the permit until it receives
12 written notice from the hard-rock mining impact board that
13 the permittee is in compliance.

14 (3) When the department determines that a permittee
15 has become or will become a large-scale mineral developer
16 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
17 required under 82-4-339, within 6 months of receiving the
18 notice, the permittee shall provide the board with proof
19 that he has obtained a waiver of the impact plan requirement
20 from the hard-rock mining impact board or that he has filed
21 an impact plan with the hard-rock mining impact board and
22 the appropriate county or counties. If the permittee does
23 not file the required proof or if the hard-rock mining
24 impact board certifies to the board that the permittee has
25 failed to comply with the hard-rock mining impact review and

1 implementation requirements in Title 90, chapter 6, parts 3
 2 and 4, the board shall suspend the permit until the
 3 permittee files the required proof or until the hard-rock
 4 mining impact board certifies that the permittee has
 5 complied with the hard-rock mining impact review and
 6 implementation requirements.

7 ~~f3~~(4) Compliance with 90-6-307 is not required for
 8 exploration and bulk sampling for metallurgical testing when
 9 the aggregate samples are less than 10,000 tons."

10 Section 3. Section 82-4-339, MCA, is amended to read:

11 "82-4-339. Annual report of activities by permittee --
 12 fee -- notice of large-scale mineral developer status. (1)

13 Within 30 days after completion or abandonment of operations
 14 on an area under permit or within 30 days after each
 15 anniversary date of the permit, whichever is earlier, or at
 16 such later date as may be provided by rules of the board and
 17 each year thereafter until reclamation is completed and
 18 approved, the permittee shall pay the annual fee of \$25 and
 19 shall file a report of activities completed during the
 20 preceding year on a form prescribed by the board which
 21 report shall:

22 ~~f1~~(a) identify the permittee and the permit number;

23 ~~f2~~(b) locate the operation by subdivision, section,
 24 township, and range and with relation to the nearest town or
 25 other well-known geographic feature;

1 ~~f3~~(c) estimate acreage to be newly disturbed by
 2 operation in the next 12-month period; and

3 ~~(d)~~ include the number of persons on the payroll for
 4 the previous permit year and for the next permit year at
 5 intervals that the department considers sufficient to enable
 6 a determination of the permittee's status under 90-6-302(4);
 7 and

8 ~~f4~~(e) update any maps previously submitted or
 9 specifically requested by the board. Such maps shall show:

10 ~~f(a)~~(i) the permit area;

11 ~~f(b)~~(ii) the unit of disturbed land;

12 ~~f(c)~~(iii) the area to be disturbed during the next
 13 12-month period;

14 ~~f(d)~~(iv) if completed, the date of completion of
 15 operations;

16 ~~f(e)~~(v) if not completed, the additional area estimated
 17 to be further disturbed by the operation within the
 18 following permit year; and

19 ~~f(f)~~(vi) the date of beginning, amount, and current
 20 status of reclamation performed during the previous 12
 21 months.

22 (2) Whenever the department determines that the
 23 permittee has become or will, during the next permit year,
 24 become a large-scale mineral developer, it shall immediately
 25 serve written notice of that fact on the permittee, the

1 hard-rock mining impact board, and the county or counties in
 2 which the operation is located."

3 Section 4. Section 90-6-302, MCA, is amended to read:
 4 "90-6-302. Definitions. In this part the following
 5 definitions apply:

6 (1) "Board" means the hard-rock mining impact board
 7 established in 2-15-1822.

8 (2) "Bonds" include bonds, notes, warrants,
 9 debentures, certificates of indebtedness, temporary bonds,
 10 temporary notes, interim receipts, interim certificates, and
 11 all instruments or obligations evidencing or representing
 12 indebtedness or evidencing or representing the borrowing of
 13 money or evidencing or representing a charge, lien, or
 14 encumbrance on specific revenues, special assessments,
 15 income, or property of a political subdivision, including
 16 all instruments or obligations payable from a special fund.

17 (3) "Local government unit" means a ~~political~~
 18 ~~subdivision-of-this-state,-including-a~~ county, city, town,
 19 ~~school district, or other-special-district-that-provides-any~~
 20 ~~of-the-services-referred-to-in-subsection-(1)-(c)-of-90-6-302~~
 21 any of the following independent special districts:

- 22 (a) rural fire district;
- 23 (b) public hospital district;
- 24 (c) refuse disposal district;
- 25 (d) county water and sewer district;

- 1 (e) county water district; or
- 2 (f) county sewer district.

3 (4) "Large-scale mineral development" means the
 4 construction or operation of a hard-rock mine and the
 5 associated milling facility ~~that will:~~

- 6 ~~(a) employ at any given time at least 100 people; or~~
- 7 ~~(b) cause, or be expected to cause, an increase in~~
 8 ~~estimated population of at least 15% in a local government~~
 9 ~~unit when measured against the average population of the~~
 10 ~~local government unit in the 3-year period immediately~~
 11 ~~preceding the commencement of the construction of the mining~~
 12 ~~facility. A mining operation that would qualify as a~~
 13 ~~large-scale mineral development under this subsection is not~~
 14 ~~a large-scale mineral development if the mine owner and~~
 15 ~~operator are small miners as defined in 82-4-303(10) for~~
 16 which a permit is applied for under 82-4-335 on or after May
 17 18, 1981, and for which the average number of persons on the
 18 payroll of the mineral developer and of contractors at the
 19 mineral development exceeds or is projected to exceed 75 for
 20 any consecutive 6-month period."

21 Section 5. Section 90-6-307, MCA, is amended to read:
 22 "90-6-307. Impact plan to be submitted. (1) After an
 23 application for a permit for a large-scale mineral
 24 development is made under 82-4-335, the person seeking the
 25 permit shall submit to the affected counties and the board

1 an impact plan describing the economic impact the
 2 large-scale mineral development will have on local
 3 government units and shall file proof of such submission to
 4 the counties with the board. Whenever an environmental
 5 impact statement on the permit application is prepared under
 6 75-1-201, the lead agency shall cooperate to the fullest
 7 extent practicable with the affected local government units
 8 to eliminate duplication of effort in data collection. The
 9 governing bodies of the affected counties shall publish
 10 notice of the submission of an impact plan at least once in
 11 a newspaper of general circulation in the county. The
 12 impact plan shall include:

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

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

17 (c) the increased capital and operating cost to local
 18 government units for providing services, ~~including but not~~
 19 ~~limited to police and fire protection, sewerage, water~~
 20 ~~treatment, schools, road construction and upkeep, education,~~
 21 ~~and medical care,~~ which can be expected as a result of the
 22 development;

23 (d) the financial or other assistance the developer
 24 will give to local government units to meet the increased
 25 need for services.

1 (2) In the impact plan, the developer shall commit
 2 itself to pay all of the increased capital and net operating
 3 cost to local government units that will be a result of the
 4 development, as identified in the impact plan, either from
 5 tax prepayments, as provided in 90-6-309, special industrial
 6 educational impact bonds, as provided in 90-6-310, or other
 7 funds obtained from the developer, and shall provide a time
 8 schedule within which it will do so. The plan may provide
 9 for funding from other revenue sources or funding mechanisms
 10 if the developer guarantees that the amount to be provided
 11 from these sources will be paid.

12 (3) Upon request of the governing body of an affected
 13 unit of local government, the mineral developer, prior to
 14 commencement the end of the 90-day review period, shall
 15 provide financial or other assistance as necessary to
 16 prepare for and evaluate the impact plan. The governing body
 17 of the affected county must contract with the developer to
 18 obtain the requested financial assistance for each unit of
 19 local government within the county. Any disbursements to a
 20 unit of local government under this subsection shall be
 21 credited against future tax liabilities, if any.

22 (4) An affected local government unit shall, within 90
 23 days after receipt of the impact plan from the developer,
 24 notify the board in writing if that local government unit
 25 objects to the impact plan, specifying the reasons why the

1 impact plan is objected to. During the 90-day period, an
 2 affected local governmental unit may petition for one 30-day
 3 extension by submitting a written request to the board
 4 stating the need and justification for the extension. The
 5 board shall grant the extension unless it finds there is no
 6 reasonable basis for the request. If no objection is
 7 received within the 90-day period or any extension thereof,
 8 the impact plan shall be approved by the board.

9 (5) If objections are received from a local government
 10 unit, the board shall, within 10 days, notify the developer
 11 and forward a copy of the local government unit's objections
 12 to the developer. ~~If within 30 days the~~ The local government
 13 unit and the developer cannot have 30 days, or a longer
 14 period if both the local government unit and the developer
 15 request an extension, to resolve the objection. If the
 16 objections are not resolved, the board shall conduct a
 17 hearing on the validity of the objections, which shall be
 18 held in the affected county or, if objections are received
 19 from local government units in more than one county, shall
 20 be held in the county which, in the board's judgment, is
 21 more greatly affected. The provisions of the Montana
 22 Administrative Procedure Act shall apply to the conduct of
 23 the hearing. The impact plan filed by the developer shall
 24 carry no presumption of correctness at the hearing.

25 (6) Following the hearing, the board shall, within 60

1 days, make findings as to those portions of the impact plan
 2 which were objected to and, if appropriate, amend the impact
 3 plan accordingly. The findings and impact plan, as amended,
 4 shall be served by the board upon all parties. Any local
 5 government unit or the developer, if aggrieved by the
 6 decision of the board, is entitled to judicial review, as
 7 provided by Title 2, chapter 4, part 7, in the district
 8 court in and for the judicial district in which the hearing
 9 was held.

10 (7) The developer shall, within 30 days of receipt of
 11 the approved impact plan, provide the board with a written
 12 ~~guaranty~~ guarantee that the developer will ~~make all the~~
 13 ~~payments to the board required~~ meet the increased costs of
 14 public services and facilities as specified in the approved
 15 impact plan and according to the time schedule contained in
 16 the approved impact plan.

17 (8) ~~The board shall deposit all payments received from~~
 18 ~~the developer into the hard rock mining impact account~~
 19 ~~established by 98-6-304. The developer may make payments as~~
 20 specified in the approved impact plan directly to a local
 21 government unit or to the board. The governing body of a
 22 local government unit receiving payments shall deposit the
 23 payments into an impact fund and. THE DEVELOPER AND THE
 24 AFFECTED GOVERNING BODY shall EACH issue to the board
 25 written verification of each payment and its intended use in

1 compliance with the impact plan. The board shall deposit
 2 payments received from a developer into the hard-rock mining
 3 impact account established by 90-6-304.

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

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

18 (11) If it is determined that an objection filed by an
 19 affected local government unit under subsection (4) or
 20 90-6-311(3) is valid and it results in some remedial order
 21 by the board or court of competent jurisdiction, the local
 22 government unit shall be awarded and the developer shall pay
 23 reasonable costs and attorney fees associated with any
 24 administrative or judicial appeals filed under this section.
 25 Any attorney fees and costs awarded shall be in addition to

1 any amounts paid by the developer under this part.

2 (12) Upon a determination by the department of state
 3 lands that a permittee under 82-4-335 has become or will
 4 become a large-scale mineral developer, the permittee may
 5 petition the board for a waiver of the impact plan
 6 requirement. The board may grant a waiver or conditional
 7 waiver of this requirement only if it has provided notice
 8 and opportunity for hearing to the permittee and to all
 9 affected local government units. The board shall adopt
 10 criteria under which a waiver may be granted. A waiver
 11 issued by the board may be revoked AS PROVIDED IN THE
 12 CONDITIONAL WAIVER OR if the permittee and contractors at
 13 the mineral development increase their payrolls from the
 14 date of the waiver by 75 or more persons, provided the
 15 revocation is requested by an affected local government unit
 16 and notice and opportunity for hearing are given to the
 17 permittee and all affected local government units. The board
 18 shall notify the board of land commissioners of any waiver
 19 that has been revoked.

20 (13) When a person who holds an operating permit under
 21 82-4-335 and who has filed an impact plan fails to comply
 22 with the review and implementation requirements in this part
 23 and part 4 of this chapter, the board shall certify to the
 24 board of land commissioners that the failure to comply has
 25 occurred and shall certify when a permittee who has

1 previously failed to comply comes into compliance."

2 Section 6. Section 90-6-309, MCA, is amended to read:

3 "90-6-309. Tax prepayment -- large-scale mineral
4 development. (1) After permission to commence operation is
5 granted by the appropriate governmental agency, and upon
6 request of the governing body of a county in which a
7 facility is to be located, a person intending to construct
8 or locate a large-scale mineral development in this state
9 shall prepay property taxes ~~in an amount equal to at least~~
10 ~~three times the estimated property tax due the year the~~
11 ~~large-scale mineral development facility commences operation~~
12 as specified in the impact plan. This prepayment shall
13 exclude the 6-mill university levy and may exclude the
14 mandatory county levy for the school foundation program of
15 ~~40~~ 45 mills.

16 (2) The person who is to prepay under this section
17 shall not be obligated to prepay the entire amount
18 established in subsection (1) at one time. Upon request of
19 the governing body of an affected local government unit, the
20 person shall prepay the amount shown to be needed from time
21 to time as determined by the board.

22 (3) The person who is to prepay shall guarantee to the
23 hard-rock mining impact board, through an appropriate
24 financial institution, as may be required by the board, that
25 property tax prepayments will be paid as needed for

1 expenditures created by the impacts of the large-scale
2 mineral development.

3 (4) When the mineral development facilities are
4 completed and assessed by the department of revenue, they
5 shall be subject during the first 3 years and thereafter to
6 taxation as all other property similarly situated, except
7 that in each year after the start of production, the local
8 government unit that received a property tax prepayment
9 shall provide for repayment of prepaid property taxes in
10 accordance with subsection (5).

11 (5) A local government unit that received all or a
12 portion of the property tax prepayment under this section
13 shall provide for ~~repayment according to the following~~
14 procedure: tax crediting as specified in the impact plan.
15 The tax credit allowed in any year may not, however, exceed
16 the tax obligation of the developer for that year, and the
17 time period for tax crediting is limited to the productive
18 life of the mining operation. ~~In addition, the impact plan~~
19 ~~shall include conditions that allow for adjustment in the~~
20 ~~tax credit to assure that the allowance of the credit will~~
21 ~~not result in substantial increases in local mill levies.~~

22 (a) ~~in each year after the commencement of mining, the~~
23 ~~local government shall:~~

24 (i) ~~divide its budget by the average mill levy of its~~
25 ~~jurisdiction during the 3 years immediately preceding~~

1 commencement--of--mining--operations,--to--arrive--at--a--taxable
 2 valuation--needed--to--fund--its--budget--using--the--average--3--year
 3 mill--levy;

4 (ii)--reduce--the--taxable--valuation--of--property--of--a
 5 person--who--prepaid--property--taxes--by--the--excess,--if--any,--of
 6 the--total--taxable--value--of--the--taxing--jurisdiction--including
 7 the--person's--property--over--the--taxable--value--determined
 8 under--subsection--(5)(a)(i),--but--in--no--case--by--an--amount
 9 greater--than--the--taxable--value--of--the--person's--property;

10 (b)--The--reduction--in--taxable--value,--if--any,--determined
 11 under--subsection--(5)(a)(ii)--times--the--average--mill--levy--used
 12 in--subsection--(5)(a)(i)--equals--the--property--tax--prepayment
 13 credit--allowed--for--the--taxable--year--for--that--local
 14 government--unit.--Any--local--government--unit--not--receiving--a
 15 payment--shall--not--be--affected--by--this--section,--and--no
 16 reduction--in--value--shall--be--used--in--the--computation--of--taxes
 17 due--that--unit--of--local--government,--in--no--event--shall--the
 18 credit--allowed--under--this--part--extend--more--than--10--years
 19 beyond--the--date--the--prepayment--is--made--under--this--section;

20 (c)--The--procedure--established--under--subsection--(5)(a)
 21 shall--continue--from--year--to--year--until--the--total--credit
 22 allowed--the--person--who--prepaid--property--taxes--equals--the
 23 total--property--taxes--prepaid."

24 Section 7. Section 90-6-311, MCA, is amended to read:
 25 "90-6-311. Impact plan amendments. (1) The impact plan

1 may provide for amendment under definite conditions
 2 specified in the plan. Also, the governing body of an
 3 affected county or the mineral developer may petition the
 4 board for an amendment to an approved impact plan if:

5 (a) employment at the large-scale mineral development
 6 is forecast to increase or decrease by at least ~~±~~100 people
 7 75 payroll--employees PERSONS, as determined under
 8 90-6-302(4), over or under the employment levels
 9 contemplated by the approved impact plan; or

10 (b)--changes--in--the--large--scale--mineral--development
 11 cause,--or--can--be--expected--to--cause,--an--increase--in--estimated
 12 population--of--at--least--15%--in--a--local--government--unit--when
 13 measured--against--the--average--population--of--the--local
 14 government--unit--in--the--3--year--period--preceding--the
 15 commencement--of--new--construction--or--new--operations--of--the
 16 mining--facility;--or

17 (c)(b) it becomes apparent that an approved impact
 18 plan is materially inaccurate because of errors in
 19 assessment and 2 years have not elapsed since the date the
 20 facility begins commercial production; or

21 (d)(c) the governing body of an affected county and
 22 the mineral developer join in a petition to amend the impact
 23 plan.

24 (2) Within 10 days of receipt the board shall publish
 25 notice of the petition at least once in a newspaper of

1 general circulation in the affected county. The petition
2 must include:

- 3 (a) an explanation of the need for an amendment;
4 (b) a statement of the facts and circumstances
5 underlying the need for an amendment; and
6 (c) a description of the corrective measures proposed
7 by the petitioner.

8 (3) Within 60 days after notice that the petition has
9 been received, an affected local government unit or the
10 mineral developer must notify the board in writing if such
11 person objects to the amendments proposed by the petitioner,
12 specifying the reasons why the impact plan should not be
13 amended as proposed. If no objection is received within the
14 60-day period, the impact plan must be amended by the board
15 as proposed by the petitioner.

16 (4) If an objection is received, within 10 days of its
17 receipt, the board shall notify the petitioner and include a
18 copy of all objections received by the board. If the
19 objecting party and the petitioner cannot resolve the
20 objections within 30 days after the expiration of the 60-day
21 period, the board shall conduct a hearing on the validity of
22 the objections within 30 days after the failure of the
23 parties to resolve the objections. The hearing must be held
24 in the affected county or, if objections are received from
25 local government units in more than one county, must be held

1 in the county which in the board's judgment is more greatly
2 affected. The provisions of the Montana Administrative
3 Procedure Act apply to the conduct of the hearing.

4 (5) Following the hearing, the board shall make
5 findings as to those portions of the amendments which were
6 objected to and, if appropriate, amend the impact plan
7 accordingly. The board shall cause the findings and impact
8 plan, as amended, to be served on all parties. Any local
9 government unit or the developer is entitled to judicial
10 review, as provided by Title 2, chapter 4, part 7, in the
11 district court for the judicial district in which the
12 hearing was held."

13 NEW SECTION. Section 8. Local government budget
14 authority. A local government unit may budget and expend
15 payments received from a mineral developer under this part
16 or part 4 of this chapter or pursuant to a plan approved
17 under this part. If a payment is requested or received after
18 the adoption of the budget for the fiscal year in which the
19 payment is to be expended, the governing body of the local
20 government unit may by a majority vote amend its budget to
21 provide for the receipt and expenditure of the payments.

22 NEW SECTION. Section 9. Codification instruction.
23 Section 8 is intended to be codified as an integral part of
24 Title 90, chapter 6, part 3, and the provisions of Title 90,
25 chapter 6, part 3, apply to section 8.

1 NEW SECTION. Section 10. Extension of authority. Any
2 existing authority of the hard-rock mining impact board, the
3 department of state lands, and the board of land
4 commissioners to make rules on the subject of the provisions
5 of this act is extended to the provisions of this act.

6 NEW SECTION. Section 11. Applicability. The
7 provisions of this act apply to a mineral development for
8 which a permit application is made under 82-4-335 on or
9 after May 18, 1981, and prior to July 1, 1985, only if the
10 mineral development is or will become a large-scale mineral
11 development under 90-6-302(4), as that statute read prior to
12 July 1, 1985.

13 NEW SECTION. Section 12. Effective date. This act is
14 effective July 1, 1985.

-End-

HOUSE BILL NO. 912

INTRODUCED BY D. BROWN, LORY, ELLISON,

IVERSON, MARKS, ECK

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE HARD-ROCK MINING IMPACT LAWS AND RELATED STATUTES; REDEFINING "LOCAL GOVERNMENT UNIT" AND "LARGE-SCALE MINERAL DEVELOPMENT"; MAKING CERTAIN CHANGES TO IMPACT PLAN SUBMISSION REQUIREMENTS; PROVIDING FOR TAX PREPAYMENT CREDITS AS SPECIFIED IN THE IMPACT PLAN; AMENDING SECTIONS 2-15-1822, 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-309, AND 90-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-15-1822, MCA, is amended to read:

"2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by

large-scale mineral development;

(b) no more than three persons from the same congressional district;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a chairman from among its members."

Section 2. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of \$25 and must submit an application on a form provided by the board, which shall contain the



1 following information and any other pertinent data required
2 by the rules:

3 (a) name and address of the operator and, if a
4 corporation or other business entity, the name and address
5 of its principal officers, partners, and the like and its
6 resident agent for service of process, if required by law;

7 (b) minerals expected to be mined;

8 (c) a proposed reclamation plan;

9 (d) expected starting date of mining;

10 (e) a map showing the specific area to be mined and
11 the boundaries of the land which will be disturbed,
12 topographic detail, the location and names of all streams,
13 roads, railroads, and utility lines on or immediately
14 adjacent to the area, location of proposed access roads to
15 be built, and the names and addresses of the surface and
16 mineral owners of all lands within the mining area, to the
17 extent known to applicant;

18 (f) types of access roads to be built and manner of
19 reclamation of road sites on abandonment; and

20 (g) a plan of mining which will provide, within limits
21 of normal operating procedures of the industry, for
22 completion of mining and associated land disturbances.

23 (2) Except as provided in subsection (3) (4), the
24 permit provided for in subsection (1) for a large-scale
25 mineral development as defined in 90-6-302 shall be

1 conditioned to provide that activities under the permit may
2 not commence until the hard-rock mining impact board
3 approves the impact plan under 90-6-307 and until the
4 permittee has provided a written guarantee to the department
5 and to the hard-rock mining impact board of compliance
6 within the time schedule with the commitment made in the
7 impact plan approved by the hard-rock mining impact board,
8 as provided in 90-6-307. If the permittee does not comply
9 with that commitment within the time scheduled, the board,
10 upon receipt of written notice from the hard-rock mining
11 impact board, shall suspend the permit until it receives
12 written notice from the hard-rock mining impact board that
13 the permittee is in compliance.

14 (3) When the department determines that a permittee
15 has become or will become a large-scale mineral developer
16 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
17 required under 82-4-339, within 6 months of receiving the
18 notice, the permittee shall provide the board with proof
19 that he has obtained a waiver of the impact plan requirement
20 from the hard-rock mining impact board or that he has filed
21 an impact plan with the hard-rock mining impact board and
22 the appropriate county or counties. If the permittee does
23 not file the required proof or if the hard-rock mining
24 impact board certifies to the board that the permittee has
25 failed to comply with the hard-rock mining impact review and

1 implementation requirements in Title 90, chapter 6, parts 3
 2 and 4, the board shall suspend the permit until the
 3 permittee files the required proof or until the hard-rock
 4 mining impact board certifies that the permittee has
 5 complied with the hard-rock mining impact review and
 6 implementation requirements.

7 ~~{3}~~(4) Compliance with 90-6-307 is not required for
 8 exploration and bulk sampling for metallurgical testing when
 9 the aggregate samples are less than 10,000 tons."

10 Section 3. Section 82-4-339, MCA, is amended to read:

11 "82-4-339. Annual report of activities by permittee --
 12 fee -- notice of large-scale mineral developer status. (1)

13 Within 30 days after completion or abandonment of operations
 14 on an area under permit or within 30 days after each
 15 anniversary date of the permit, whichever is earlier, or at
 16 such later date as may be provided by rules of the board and
 17 each year thereafter until reclamation is completed and
 18 approved, the permittee shall pay the annual fee of \$25 and
 19 shall file a report of activities completed during the
 20 preceding year on a form prescribed by the board which
 21 report shall:

22 ~~{1}~~(a) identify the permittee and the permit number;

23 ~~{2}~~(b) locate the operation by subdivision, section,
 24 township, and range and with relation to the nearest town or
 25 other well-known geographic feature;

1 ~~{3}~~(c) estimate acreage to be newly disturbed by
 2 operation in the next 12-month period; and

3 ~~(d)~~ include the number of persons on the payroll for
 4 the previous permit year and for the next permit year at
 5 intervals that the department considers sufficient to enable
 6 a determination of the permittee's status under 90-6-302(4);
 7 and

8 ~~{4}~~(e) update any maps previously submitted or
 9 specifically requested by the board. Such maps shall show:

10 ~~{a}~~(i) the permit area;

11 ~~{b}~~(ii) the unit of disturbed land;

12 ~~{c}~~(iii) the area to be disturbed during the next
 13 12-month period;

14 ~~{d}~~(iv) if completed, the date of completion of
 15 operations;

16 ~~{e}~~(v) if not completed, the additional area estimated
 17 to be further disturbed by the operation within the
 18 following permit year; and

19 ~~{f}~~(vi) the date of beginning, amount, and current
 20 status of reclamation performed during the previous 12
 21 months.

22 (2) Whenever the department determines that the
 23 permittee has become or will, during the next permit year,
 24 become a large-scale mineral developer, it shall immediately
 25 serve written notice of that fact on the permittee, the

1 hard-rock mining impact board, and the county or counties in
 2 which the operation is located."

3 Section 4. Section 90-6-302, MCA, is amended to read:
 4 "90-6-302. Definitions. In this part the following
 5 definitions apply:

6 (1) "Board" means the hard-rock mining impact board
 7 established in 2-15-1822.

8 (2) "Bonds" include bonds, notes, warrants,
 9 debentures, certificates of indebtedness, temporary bonds,
 10 temporary notes, interim receipts, interim certificates, and
 11 all instruments or obligations evidencing or representing
 12 indebtedness or evidencing or representing the borrowing of
 13 money or evidencing or representing a charge, lien, or
 14 encumbrance on specific revenues, special assessments,
 15 income, or property of a political subdivision, including
 16 all instruments or obligations payable from a special fund.

17 (3) "Local government unit" means a political
 18 ~~subdivision of this state, including a county, city, town,~~
 19 ~~school district, or other special district that provides any~~
 20 ~~of the services referred to in subsection (1)(c) of 90-6-307~~
 21 any of the following independent special districts:

- 22 (a) rural fire district;
- 23 (b) public hospital district;
- 24 (c) refuge disposal district;
- 25 (d) county water and sewer district;

1 (e) county water district; or

2 (f) county sewer district.

3 (4) "Large-scale mineral development" means the
 4 construction or operation of a hard-rock mine and the
 5 associated milling facility that will:

- 6 (a) ~~employ at any given time at least 100 people; or~~
- 7 (b) ~~cause, or be expected to cause, an increase in~~
 8 ~~estimated population of at least 15% in a local government~~
 9 ~~unit when measured against the average population of the~~
 10 ~~local government unit in the 3-year period immediately~~
 11 ~~preceding the commencement of the construction of the mining~~
 12 ~~facility. A mining operation that would qualify as a~~
 13 ~~large-scale mineral development under this subsection is not~~
 14 ~~a large-scale mineral development if the mine owner and~~
 15 ~~operator are small miners as defined in 82-4-303(10) for~~
 16 which a permit is applied for under 82-4-335 on or after May
 17 18, 1981, and for which the average number of persons on the
 18 payroll of the mineral developer and of contractors at the
 19 mineral development exceeds or is projected to exceed 75 for
 20 any consecutive 6-month period."

21 Section 5. Section 90-6-307, MCA, is amended to read:

22 "90-6-307. Impact plan to be submitted. (1) After an
 23 application for a permit for a large-scale mineral
 24 development is made under 82-4-335, the person seeking the
 25 permit shall submit to the affected counties and the board

1 an impact plan describing the economic impact the
 2 large-scale mineral development will have on local
 3 government units and shall file proof of such submission to
 4 the counties with the board. Whenever an environmental
 5 impact statement on the permit application is prepared under
 6 75-1-201, the lead agency shall cooperate to the fullest
 7 extent practicable with the affected local government units
 8 to eliminate duplication of effort in data collection. The
 9 governing bodies of the affected counties shall publish
 10 notice of the submission of an impact plan at least once in
 11 a newspaper of general circulation in the county. The
 12 impact plan shall include:

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

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

17 (c) the increased capital and operating cost to local
 18 government units for providing services ~~including but not~~
 19 ~~limited to police and fire protection, sewerage, water~~
 20 ~~treatment, schools, road construction and upkeep, education,~~
 21 ~~and medical care,~~ which can be expected as a result of the
 22 development;

23 (d) the financial or other assistance the developer
 24 will give to local government units to meet the increased
 25 need for services.

1 (2) In the impact plan, the developer shall commit
 2 itself to pay all of the increased capital and net operating
 3 cost to local government units that will be a result of the
 4 development, as identified in the impact plan, either from
 5 tax prepayments, as provided in 90-6-309, special industrial
 6 educational impact bonds, as provided in 90-6-310, or other
 7 funds obtained from the developer, and shall provide a time
 8 schedule within which it will do so. The plan may provide
 9 for funding from other revenue sources or funding mechanisms
 10 if the developer guarantees that the amount to be provided
 11 from these sources will be paid.

12 (3) Upon request of the governing body of an affected
 13 unit of local government, the mineral developer, prior to
 14 commencement the end of the 90-day review period, shall
 15 provide financial or other assistance as necessary to
 16 prepare for and evaluate the impact plan. The governing body
 17 of the affected county must contract with the developer to
 18 obtain the requested financial assistance for each unit of
 19 local government within the county. Any disbursements to a
 20 unit of local government under this subsection shall be
 21 credited against future tax liabilities, if any.

22 (4) An affected local government unit shall, within 90
 23 days after receipt of the impact plan from the developer,
 24 notify the board in writing if that local government unit
 25 objects to the impact plan, specifying the reasons why the

1 impact plan is objected to. During the 90-day period, an
 2 affected local governmental unit may petition for one 30-day
 3 extension by submitting a written request to the board
 4 stating the need and justification for the extension. The
 5 board shall grant the extension unless it finds there is no
 6 reasonable basis for the request. If no objection is
 7 received within the 90-day period or any extension thereof,
 8 the impact plan shall be approved by the board.

9 (5) If objections are received from a local government
 10 unit, the board shall, within 10 days, notify the developer
 11 and forward a copy of the local government unit's objections
 12 to the developer. ~~If within 30 days the~~ The local government
 13 unit and the developer ~~cannot have 30 days, or a longer~~
 14 period if both the local government unit and the developer
 15 request an extension, to resolve the objection. If the
 16 objections are not resolved, the board shall conduct a
 17 hearing on the validity of the objections, which shall be
 18 held in the affected county or, if objections are received
 19 from local government units in more than one county, shall
 20 be held in the county which, in the board's judgment, is
 21 more greatly affected. The provisions of the Montana
 22 Administrative Procedure Act shall apply to the conduct of
 23 the hearing. The impact plan filed by the developer shall
 24 carry no presumption of correctness at the hearing.

25 (6) Following the hearing, the board shall, within 60

1 days, make findings as to those portions of the impact plan
 2 which were objected to and, if appropriate, amend the impact
 3 plan accordingly. The findings and impact plan, as amended,
 4 shall be served by the board upon all parties. Any local
 5 government unit or the developer, if aggrieved by the
 6 decision of the board, is entitled to judicial review, as
 7 provided by Title 2, chapter 4, part 7, in the district
 8 court in and for the judicial district in which the hearing
 9 was held.

10 (7) The developer shall, within 30 days of receipt of
 11 the approved impact plan, provide the board with a written
 12 guaranty guarantee that the developer will ~~make all the~~
 13 payments to the board required meet the increased costs of
 14 public services and facilities as specified in the approved
 15 impact plan and according to the time schedule contained in
 16 the approved impact plan.

17 (8) ~~The board shall deposit all payments received from~~
 18 ~~the developer into the hard rock mining impact account~~
 19 ~~established by 90-6-304. The developer may make payments as~~
 20 specified in the approved impact plan directly to a local
 21 government unit or to the board. The governing body of a
 22 local government unit receiving payments shall deposit the
 23 payments into an impact fund and. THE DEVELOPER AND THE
 24 AFFECTED GOVERNING BODY shall EACH issue to the board
 25 written verification of each payment and its intended use in

1 compliance with the impact plan. The board shall deposit
 2 payments received from a developer into the hard-rock mining
 3 impact account established by 90-6-304.

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

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

18 (11) If it is determined that an objection filed by an
 19 affected local government unit under subsection (4) or
 20 90-6-311(3) is valid and it results in some remedial order
 21 by the board or court of competent jurisdiction, the local
 22 government unit shall be awarded and the developer shall pay
 23 reasonable costs and attorney fees associated with any
 24 administrative or judicial appeals filed under this section.
 25 Any attorney fees and costs awarded shall be in addition to

1 any amounts paid by the developer under this part.

2 (12) Upon a determination by the department of state
 3 lands that a permittee under 82-4-335 has become or will
 4 become a large-scale mineral developer, the permittee may
 5 petition the board for a waiver of the impact plan
 6 requirement. The board may grant a waiver or conditional
 7 waiver of this requirement only if it has provided notice
 8 and opportunity for hearing to the permittee and to all
 9 affected local government units. The board shall adopt
 10 criteria under which a waiver may be granted. A waiver
 11 issued by the board may be revoked AS PROVIDED IN THE
 12 CONDITIONAL WAIVER OR if the permittee and contractors at
 13 the mineral development increase their payrolls from the
 14 date of the waiver by 75 or more persons, provided the
 15 revocation is requested by an affected local government unit
 16 and notice and opportunity for hearing are given to the
 17 permittee and all affected local government units. The board
 18 shall notify the board of land commissioners of any waiver
 19 that has been revoked.

20 (13) When a person who holds an operating permit under
 21 82-4-335 and who has filed an impact plan fails to comply
 22 with the review and implementation requirements in this part
 23 and part 4 of this chapter, the board shall certify to the
 24 board of land commissioners that the failure to comply has
 25 occurred and shall certify when a permittee who has

1 previously failed to comply comes into compliance."

2 Section 6. Section 90-6-309, MCA, is amended to read:

3 "90-6-309. Tax prepayment -- large-scale mineral
4 development. (1) After permission to commence operation is
5 granted by the appropriate governmental agency, and upon
6 request of the governing body of a county in which a
7 facility is to be located, a person intending to construct
8 or locate a large-scale mineral development in this state
9 shall prepay property taxes ~~in an amount equal to at least~~
10 ~~three times the estimated property tax due the year the~~
11 ~~large-scale mineral development facility commences operation~~
12 as specified in the impact plan. This prepayment shall
13 exclude the 6-mill university levy and may exclude the
14 mandatory county levy for the school foundation program of
15 ~~40~~ 45 mills.

16 (2) The person who is to prepay under this section
17 shall not be obligated to prepay the entire amount
18 established in subsection (1) at one time. Upon request of
19 the governing body of an affected local government unit, the
20 person shall prepay the amount shown to be needed from time
21 to time as determined by the board.

22 (3) The person who is to prepay shall guarantee to the
23 hard-rock mining impact board, through an appropriate
24 financial institution, as may be required by the board, that
25 property tax prepayments will be paid as needed for

1 expenditures created by the impacts of the large-scale
2 mineral development.

3 (4) When the mineral development facilities are
4 completed and assessed by the department of revenue, they
5 shall be subject during the first 3 years and thereafter to
6 taxation as all other property similarly situated, except
7 that in each year after the start of production, the local
8 government unit that received a property tax prepayment
9 shall provide for repayment of prepaid property taxes in
10 accordance with subsection (5).

11 (5) A local government unit that received all or a
12 portion of the property tax prepayment under this section
13 shall provide for ~~repayment according to the following~~
14 procedure: tax crediting as specified in the impact plan.
15 The tax credit allowed in any year may not, however, exceed
16 the tax obligation of the developer for that year, and the
17 time period for tax crediting is limited to the productive
18 life of the mining operation. ~~In addition, the impact plan~~
19 ~~shall include conditions that allow for adjustment in the~~
20 ~~tax credit to assure that the allowance of the credit will~~
21 ~~not result in substantial increases in local mill levies.~~

22 ~~(a) In each year after the commencement of mining, the~~
23 ~~local government shall:~~

24 ~~(*) divide its budget by the average mill levy of its~~
25 ~~jurisdiction during the 3 years immediately preceding~~

1 commencement--of--mining--operations,--to--arrive--at--a--taxable
 2 valuation--needed--to--fund--its--budget--using--the--average--3--year
 3 mill--levy;

4 (ii)--reduce--the--taxable--valuation--of--property--of--a
 5 person--who--prepaid--property--taxes--by--the--excess,--if--any,--of
 6 the--total--taxable--value--of--the--taxing--jurisdiction--including
 7 the--person's--property--over--the--taxable--value--determined
 8 under--subsection--(5)(a)(i),--but--in--no--case--by--an--amount
 9 greater--than--the--taxable--value--of--the--person's--property;

10 (b)--The--reduction--in--taxable--value,--if--any,--determined
 11 under--subsection--(5)(a)(ii)--times--the--average--mill--levy--used
 12 in--subsection--(5)(a)(i)--equals--the--property--tax--prepayment
 13 credit--allowed--for--the--taxable--year--for--that--local
 14 government--unit. Any--local--government--unit--not--receiving--a
 15 payment--shall--not--be--affected--by--this--section,--and--no
 16 reduction--in--value--shall--be--used--in--the--computation--of--taxes
 17 due--that--unit--of--local--government. In--no--event--shall--the
 18 credit--allowed--under--this--part--extend--more--than--10--years
 19 beyond--the--date--the--prepayment--is--made--under--this--section.

20 (c)--The--procedure--established--under--subsection--(5)(a)
 21 shall--continue--from--year--to--year--until--the--total--credit
 22 allowed--the--person--who--prepaid--property--taxes--equals--the
 23 total--property--taxes--prepaid."

24 Section 7. Section 90-6-311, MCA, is amended to read:
 25 "90-6-311. Impact plan amendments. (1) The impact plan

1 may provide for amendment under definite conditions
 2 specified in the plan. Also, the governing body of an
 3 affected county or the mineral developer may petition the
 4 board for an amendment to an approved impact plan if:

5 (a) employment at the large-scale mineral development
 6 is forecast to increase or decrease by at least ~~100~~ 100 people
 7 75 payroll--employees PERSONS, as determined under
 8 90-6-302(4), over or under the employment levels
 9 contemplated by the approved impact plan; or

10 (b)--changes--in--the--large--scale--mineral--development
 11 cause,--or--can--be--expected--to--cause,--an--increase--in--estimated
 12 population--of--at--least--15%--in--a--local--government--unit--when
 13 measured--against--the--average--population--of--the--local
 14 government--unit--in--the--3--year--period--preceding--the
 15 commencement--of--new--construction--or--new--operations--of--the
 16 mining--facility,--or

17 (c)(b) it becomes apparent that an approved impact
 18 plan is materially inaccurate because of errors in
 19 assessment and 2 years have not elapsed since the date the
 20 facility begins commercial production; or

21 (d)(c) the governing body of an affected county and
 22 the mineral developer join in a petition to amend the impact
 23 plan.

24 (2) Within 10 days of receipt the board shall publish
 25 notice of the petition at least once in a newspaper of

1 general circulation in the affected county. The petition
2 must include:

3 (a) an explanation of the need for an amendment;

4 (b) a statement of the facts and circumstances
5 underlying the need for an amendment; and

6 (c) a description of the corrective measures proposed
7 by the petitioner.

8 (3) Within 60 days after notice that the petition has
9 been received, an affected local government unit or the
10 mineral developer must notify the board in writing if such
11 person objects to the amendments proposed by the petitioner,
12 specifying the reasons why the impact plan should not be
13 amended as proposed. If no objection is received within the
14 60-day period, the impact plan must be amended by the board
15 as proposed by the petitioner.

16 (4) If an objection is received, within 10 days of its
17 receipt, the board shall notify the petitioner and include a
18 copy of all objections received by the board. If the
19 objecting party and the petitioner cannot resolve the
20 objections within 30 days after the expiration of the 60-day
21 period, the board shall conduct a hearing on the validity of
22 the objections within 30 days after the failure of the
23 parties to resolve the objections. The hearing must be held
24 in the affected county or, if objections are received from
25 local government units in more than one county, must be held

1 in the county which in the board's judgment is more greatly
2 affected. The provisions of the Montana Administrative
3 Procedure Act apply to the conduct of the hearing.

4 (5) Following the hearing, the board shall make
5 findings as to those portions of the amendments which were
6 objected to and, if appropriate, amend the impact plan
7 accordingly. The board shall cause the findings and impact
8 plan, as amended, to be served on all parties. Any local
9 government unit or the developer is entitled to judicial
10 review, as provided by Title 2, chapter 4, part 7, in the
11 district court for the judicial district in which the
12 hearing was held."

13 NEW SECTION. Section 8. Local government budget
14 authority. A local government unit may budget and expend
15 payments received from a mineral developer under this part
16 or part 4 of this chapter or pursuant to a plan approved
17 under this part. If a payment is requested or received after
18 the adoption of the budget for the fiscal year in which the
19 payment is to be expended, the governing body of the local
20 government unit may by a majority vote amend its budget to
21 provide for the receipt and expenditure of the payments.

22 NEW SECTION. Section 9. Codification instruction.
23 Section 8 is intended to be codified as an integral part of
24 Title 90, chapter 6, part 3, and the provisions of Title 90,
25 chapter 6, part 3, apply to section 8.

1 NEW SECTION. Section 10. Extension of authority. Any
2 existing authority of the hard-rock mining impact board, the
3 department of state lands, and the board of land
4 commissioners to make rules on the subject of the provisions
5 of this act is extended to the provisions of this act.

6 NEW SECTION. Section 11. Applicability. The
7 provisions of this act apply to a mineral development for
8 which a permit application is made under 82-4-335 on or
9 after May 18, 1981, and prior to July 1, 1985, only if the
10 mineral development is or will become a large-scale mineral
11 development under 90-6-302(4), as that statute read prior to
12 July 1, 1985.

13 NEW SECTION. Section 12. Effective date. This act is
14 effective July 1, 1985.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 26

19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 912

THIRD reading copy (BLUE)
(ECK) color

REVISES THE HARD-ROCK MINING IMPACT ACT AND RELATED STATUTES

Respectfully report as follows: That HOUSE BILL No. 912

be amended as follows:

1. Page 8, line 20.

Following: "period."

Insert: "A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303."

AND, AS AMENDED
BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~


.....
SENATOR DOROTHY ECK

Chairman.

1 HOUSE BILL NO. 912

2 INTRODUCED BY D. BROWN, LORY, ELLISON,

3 IVERSON, MARKS, ECK

4 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE HARD-ROCK
7 MINING IMPACT LAWS AND RELATED STATUTES; REDEFINING "LOCAL
8 GOVERNMENT UNIT" AND "LARGE-SCALE MINERAL DEVELOPMENT";
9 MAKING CERTAIN CHANGES TO IMPACT PLAN SUBMISSION
10 REQUIREMENTS; PROVIDING FOR TAX PREPAYMENT CREDITS AS
11 SPECIFIED IN THE IMPACT PLAN; AMENDING SECTIONS 2-15-1822,
12 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-309, AND
13 90-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
14 APPLICABILITY DATE."
15

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

17 Section 1. Section 2-15-1822, MCA, is amended to read:

18 "2-15-1822. Hard-rock mining impact board. (1) There
19 is a hard-rock mining impact board.20 (2) The hard-rock mining impact board is a five-member
21 board.22 (3) The hard-rock mining impact board shall include
23 among its members:24 (a) three persons who, when appointed to the board,
25 reside in an area impacted or expected to be impacted by

1 large-scale mineral development;

2 (b) no more than three persons from the same
3 congressional district;

4 (c) a representative of the hard-rock mining industry;

5 (d) a representative of a major financial institution
6 in Montana;7 (e) a person who, when appointed to the board, is an
8 elected school district trustee;9 (f) a person who, when appointed to the board, is an
10 elected county commissioner;

11 (g) a member of the public-at-large.

12 (4) The hard-rock mining impact board is a
13 quasi-judicial board subject to the provisions of 2-15-124
14 except that one of the members need not be an attorney
15 licensed to practice law in this state, and the board shall
16 elect a chairman from among its members."

17 Section 2. Section 82-4-335, MCA, is amended to read:

18 "82-4-335. Operating permit. (1) No person shall
19 engage in mining or disturb land in anticipation of mining
20 in the state without first obtaining an operating permit
21 from the board to do so. A separate operating permit shall
22 be required for each mine complex. Prior to receiving an
23 operating permit from the board, any person must pay the
24 basic permit fee of \$25 and must submit an application on a
25 form provided by the board, which shall contain theREFERENCE BILL
HB 912

1 following information and any other pertinent data required
2 by the rules:

3 (a) name and address of the operator and, if a
4 corporation or other business entity, the name and address
5 of its principal officers, partners, and the like and its
6 resident agent for service of process, if required by law;

7 (b) minerals expected to be mined;

8 (c) a proposed reclamation plan;

9 (d) expected starting date of mining;

10 (e) a map showing the specific area to be mined and
11 the boundaries of the land which will be disturbed,
12 topographic detail, the location and names of all streams,
13 roads, railroads, and utility lines on or immediately
14 adjacent to the area, location of proposed access roads to
15 be built, and the names and addresses of the surface and
16 mineral owners of all lands within the mining area, to the
17 extent known to applicant;

18 (f) types of access roads to be built and manner of
19 reclamation of road sites on abandonment; and

20 (g) a plan of mining which will provide, within limits
21 of normal operating procedures of the industry, for
22 completion of mining and associated land disturbances.

23 (2) Except as provided in subsection (3) (4), the
24 permit provided for in subsection (1) for a large-scale
25 mineral development as defined in 90-6-302 shall be

1 conditioned to provide that activities under the permit may
2 not commence until the hard-rock mining impact board
3 approves the impact plan under 90-6-307 and until the
4 permittee has provided a written guarantee to the department
5 and to the hard-rock mining impact board of compliance
6 within the time schedule with the commitment made in the
7 impact plan approved by the hard-rock mining impact board,
8 as provided in 90-6-307. If the permittee does not comply
9 with that commitment within the time scheduled, the board,
10 upon receipt of written notice from the hard-rock mining
11 impact board, shall suspend the permit until it receives
12 written notice from the hard-rock mining impact board that
13 the permittee is in compliance.

14 (3) When the department determines that a permittee
15 has become or will become a large-scale mineral developer
16 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
17 required under 82-4-339, within 6 months of receiving the
18 notice, the permittee shall provide the board with proof
19 that he has obtained a waiver of the impact plan requirement
20 from the hard-rock mining impact board or that he has filed
21 an impact plan with the hard-rock mining impact board and
22 the appropriate county or counties. If the permittee does
23 not file the required proof or if the hard-rock mining
24 impact board certifies to the board that the permittee has
25 failed to comply with the hard-rock mining impact review and

1 implementation requirements in Title 90, chapter 6, parts 3
 2 and 4, the board shall suspend the permit until the
 3 permittee files the required proof or until the hard-rock
 4 mining impact board certifies that the permittee has
 5 complied with the hard-rock mining impact review and
 6 implementation requirements.

7 ~~(3)~~(4) Compliance with 90-6-307 is not required for
 8 exploration and bulk sampling for metallurgical testing when
 9 the aggregate samples are less than 10,000 tons."

10 Section 3. Section 82-4-339, MCA, is amended to read:

11 "82-4-339. Annual report of activities by permittee --
 12 fee -- notice of large-scale mineral developer status. (1)
 13 Within 30 days after completion or abandonment of operations
 14 on an area under permit or within 30 days after each
 15 anniversary date of the permit, whichever is earlier, or at
 16 such later date as may be provided by rules of the board and
 17 each year thereafter until reclamation is completed and
 18 approved, the permittee shall pay the annual fee of \$25 and
 19 shall file a report of activities completed during the
 20 preceding year on a form prescribed by the board which
 21 report shall:

22 ~~(1)~~(a) identify the permittee and the permit number;
 23 ~~(2)~~(b) locate the operation by subdivision, section,
 24 township, and range and with relation to the nearest town or
 25 other well-known geographic feature;

1 ~~(3)~~(c) estimate acreage to be newly disturbed by
 2 operation in the next 12-month period; and

3 ~~(d)~~ include the number of persons on the payroll for
 4 the previous permit year and for the next permit year at
 5 intervals that the department considers sufficient to enable
 6 a determination of the permittee's status under 90-6-302(4);
 7 and

8 ~~(4)~~(e) update any maps previously submitted or
 9 specifically requested by the board. Such maps shall show:

10 ~~(a)~~(i) the permit area;

11 ~~(b)~~(ii) the unit of disturbed land;

12 ~~(c)~~(iii) the area to be disturbed during the next
 13 12-month period;

14 ~~(d)~~(iv) if completed, the date of completion of
 15 operations;

16 ~~(e)~~(v) if not completed, the additional area estimated
 17 to be further disturbed by the operation within the
 18 following permit year; and

19 ~~(f)~~(vi) the date of beginning, amount, and current
 20 status of reclamation performed during the previous 12
 21 months.

22 (2) Whenever the department determines that the
 23 permittee has become or will, during the next permit year,
 24 become a large-scale mineral developer, it shall immediately
 25 serve written notice of that fact on the permittee, the

1 hard-rock mining impact board, and the county or counties in
2 which the operation is located."

3 Section 4. Section 90-6-302, MCA, is amended to read:
4 "90-6-302. Definitions. In this part the following
5 definitions apply:

6 (1) "Board" means the hard-rock mining impact board
7 established in 2-15-1822.

8 (2) "Bonds" include bonds, notes, warrants,
9 debentures, certificates of indebtedness, temporary bonds,
10 temporary notes, interim receipts, interim certificates, and
11 all instruments or obligations evidencing or representing
12 indebtedness or evidencing or representing the borrowing of
13 money or evidencing or representing a charge, lien, or
14 encumbrance on specific revenues, special assessments,
15 income, or property of a political subdivision, including
16 all instruments or obligations payable from a special fund.

17 (3) "Local government unit" means a political
18 ~~subdivision of this state, including a~~ county, city, town,
19 ~~school district, or other special district that provides any~~
20 ~~of the services referred to in subsection (1)(c) of 90-6-307~~
21 any of the following independent special districts:

- 22 (a) rural fire district;
- 23 (b) public hospital district;
- 24 (c) refuse disposal district;
- 25 (d) county water and sewer district;

- 1 (e) county water district; or
- 2 (f) county sewer district.

3 (4) "Large-scale mineral development" means the
4 construction or operation of a hard-rock mine and the
5 associated milling facility ~~that will:~~

- 6 ~~(a) employ at any given time at least 90 people; or~~
- 7 ~~(b) cause, or be expected to cause, an increase in~~
8 ~~estimated population of at least 15% in a local government~~
9 ~~unit when measured against the average population of the~~
10 ~~local government unit in the 3-year period immediately~~
11 ~~preceding the commencement of the construction of the mining~~
12 ~~facility. A mining operation that would qualify as a~~
13 ~~large-scale mineral development under this subsection is not~~
14 ~~a large-scale mineral development if the mine owner and~~
15 ~~operator are small miners as defined in 82-4-303(10) for~~
16 ~~which a permit is applied for under 82-4-335 on or after May~~
17 ~~18, 1981, and for which the average number of persons on the~~
18 ~~payroll of the mineral developer and of contractors at the~~
19 ~~mineral development exceeds or is projected to exceed 75 for~~
20 ~~any consecutive 6-month period. A MINING OPERATION THAT~~
21 ~~WOULD QUALIFY AS A LARGE-SCALE MINERAL DEVELOPMENT UNDER~~
22 ~~THIS SUBSECTION IS NOT A LARGE-SCALE MINERAL DEVELOPMENT IF~~
23 ~~THE MINE OWNER AND OPERATOR ARE SMALL MINERS AS DEFINED IN~~
24 ~~82-4-303.~~

25 Section 5. Section 90-6-307, MCA, is amended to read:

1 "90-6-307. Impact plan to be submitted. (1) After an
 2 application for a permit for a large-scale mineral
 3 development is made under 82-4-335, the person seeking the
 4 permit shall submit to the affected counties and the board
 5 an impact plan describing the economic impact the
 6 large-scale mineral development will have on local
 7 government units and shall file proof of such submission to
 8 the counties with the board. Whenever an environmental
 9 impact statement on the permit application is prepared under
 10 75-1-201, the lead agency shall cooperate to the fullest
 11 extent practicable with the affected local government units
 12 to eliminate duplication of effort in data collection. The
 13 governing bodies of the affected counties shall publish
 14 notice of the submission of an impact plan at least once in
 15 a newspaper of general circulation in the county. The
 16 impact plan shall include:

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

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

21 (c) the increased capital and operating cost to local
 22 government units for providing services, ~~including but not~~
 23 ~~limited to police and fire protection, sewage, water~~
 24 ~~treatment, schools, road construction and upkeep, education,~~
 25 ~~and medical care,~~ which can be expected as a result of the

1 development;

2 (d) the financial or other assistance the developer
 3 will give to local government units to meet the increased
 4 need for services.

5 (2) In the impact plan, the developer shall commit
 6 itself to pay all of the increased capital and net operating
 7 cost to local government units that will be a result of the
 8 development, as identified in the impact plan, either from
 9 tax prepayments, as provided in 90-6-309, special industrial
 10 educational impact bonds, as provided in 90-6-310, or other
 11 funds obtained from the developer, and shall provide a time
 12 schedule within which it will do so. The plan may provide
 13 for funding from other revenue sources or funding mechanisms
 14 if the developer guarantees that the amount to be provided
 15 from these sources will be paid.

16 (3) Upon request of the governing body of an affected
 17 unit of local government, the mineral developer, prior to
 18 commencement the end of the 90-day review period, shall
 19 provide financial or other assistance as necessary to
 20 prepare for and evaluate the impact plan. The governing body
 21 of the affected county must contract with the developer to
 22 obtain the requested financial assistance for each unit of
 23 local government within the county. Any disbursements to a
 24 unit of local government under this subsection shall be
 25 credited against future tax liabilities, if any.

1 (4) An affected local government unit shall, within 90
 2 days after receipt of the impact plan from the developer,
 3 notify the board in writing if that local government unit
 4 objects to the impact plan, specifying the reasons why the
 5 impact plan is objected to. During the 90-day period, an
 6 affected local governmental unit may petition for one 30-day
 7 extension by submitting a written request to the board
 8 stating the need and justification for the extension. The
 9 board shall grant the extension unless it finds there is no
 10 reasonable basis for the request. If no objection is
 11 received within the 90-day period or any extension thereof,
 12 the impact plan shall be approved by the board.

13 (5) If objections are received from a local government
 14 unit, the board shall, within 10 days, notify the developer
 15 and forward a copy of the local government unit's objections
 16 to the developer. ~~If within 30 days the~~ The local government
 17 unit and the developer cannot have 30 days, or a longer
 18 period if both the local government unit and the developer
 19 request an extension, to resolve the objection. If the
 20 objections are not resolved, the board shall conduct a
 21 hearing on the validity of the objections, which shall be
 22 held in the affected county or, if objections are received
 23 from local government units in more than one county, shall
 24 be held in the county which, in the board's judgment, is
 25 more greatly affected. The provisions of the Montana

1 Administrative Procedure Act shall apply to the conduct of
 2 the hearing. The impact plan filed by the developer shall
 3 carry no presumption of correctness at the hearing.

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

14 (7) The developer shall, within 30 days of receipt of
 15 the approved impact plan, provide the board with a written
 16 ~~guaranty guarantee~~ that the developer will ~~make all the~~
 17 ~~payments to the board required~~ meet the increased costs of
 18 public services and facilities as specified in the approved
 19 impact plan and according to the time schedule contained in
 20 the approved impact plan.

21 ~~The board shall deposit all payments received from~~
 22 ~~the developer into the hard rock mining impact account~~
 23 ~~established by 90-6-304.~~ The developer may make payments as
 24 specified in the approved impact plan directly to a local
 25 government unit or to the board. The governing body of a

1 local government unit receiving payments shall deposit the
 2 payments into an impact fund and. THE DEVELOPER AND THE
 3 AFFECTED GOVERNING BODY shall EACH issue to the board
 4 written verification of each payment and its intended use in
 5 compliance with the impact plan. The board shall deposit
 6 payments received from a developer into the hard-rock mining
 7 impact account established by 90-6-304.

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

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

22 (11) If it is determined that an objection filed by an
 23 affected local government unit under subsection (4) or
 24 90-6-311(3) is valid and it results in some remedial order
 25 by the board or court of competent jurisdiction, the local

1 government unit shall be awarded and the developer shall pay
 2 reasonable costs and attorney fees associated with any
 3 administrative or judicial appeals filed under this section.
 4 Any attorney fees and costs awarded shall be in addition to
 5 any amounts paid by the developer under this part.

6 (12) Upon a determination by the department of state
 7 lands that a permittee under 82-4-335 has become or will
 8 become a large-scale mineral developer, the permittee may
 9 petition the board for a waiver of the impact plan
 10 requirement. The board may grant a waiver or conditional
 11 waiver of this requirement only if it has provided notice
 12 and opportunity for hearing to the permittee and to all
 13 affected local government units. The board shall adopt
 14 criteria under which a waiver may be granted. A waiver
 15 issued by the board may be revoked AS PROVIDED IN THE
 16 CONDITIONAL WAIVER OR if the permittee and contractors at
 17 the mineral development increase their payrolls from the
 18 date of the waiver by 75 or more persons, provided the
 19 revocation is requested by an affected local government unit
 20 and notice and opportunity for hearing are given to the
 21 permittee and all affected local government units. The board
 22 shall notify the board of land commissioners of any waiver
 23 that has been revoked.

24 (13) When a person who holds an operating permit under
 25 82-4-335 and who has filed an impact plan fails to comply

1 with the review and implementation requirements in this part
 2 and part 4 of this chapter, the board shall certify to the
 3 board of land commissioners that the failure to comply has
 4 occurred and shall certify when a permittee who has
 5 previously failed to comply comes into compliance."

6 Section 6. Section 90-6-309, MCA, is amended to read:

7 "90-6-309. Tax prepayment -- large-scale mineral
 8 development. (1) After permission to commence operation is
 9 granted by the appropriate governmental agency, and upon
 10 request of the governing body of a county in which a
 11 facility is to be located, a person intending to construct
 12 or locate a large-scale mineral development in this state
 13 shall prepay property taxes ~~in an amount equal to at least~~
 14 ~~three times the estimated property tax due the year the~~
 15 ~~large-scale mineral development facility commences operation~~
 16 as specified in the impact plan. This prepayment shall
 17 exclude the 6-mill university levy and may exclude the
 18 mandatory county levy for the school foundation program of
 19 ~~40~~ 45 mills.

20 (2) The person who is to prepay under this section
 21 shall not be obligated to prepay the entire amount
 22 established in subsection (1) at one time. Upon request of
 23 the governing body of an affected local government unit, the
 24 person shall prepay the amount shown to be needed from time
 25 to time as determined by the board.

1 (3) The person who is to prepay shall guarantee to the
 2 hard-rock mining impact board, through an appropriate
 3 financial institution, as may be required by the board, that
 4 property tax prepayments will be paid as needed for
 5 expenditures created by the impacts of the large-scale
 6 mineral development.

7 (4) When the mineral development facilities are
 8 completed and assessed by the department of revenue, they
 9 shall be subject during the first 3 years and thereafter to
 10 taxation as all other property similarly situated, except
 11 that in each year after the start of production, the local
 12 government unit that received a property tax prepayment
 13 shall provide for repayment of prepaid property taxes in
 14 accordance with subsection (5).

15 (5) A local government unit that received all or a
 16 portion of the property tax prepayment under this section
 17 shall provide for ~~repayment according to the following~~
 18 ~~procedure: tax crediting as specified in the impact plan.~~
 19 The tax credit allowed in any year may not, however, exceed
 20 the tax obligation of the developer for that year, and the
 21 time period for tax crediting is limited to the productive
 22 life of the mining operation. ~~in addition, the impact plan~~
 23 ~~shall include conditions that allow for adjustment in the~~
 24 ~~tax credit to assure that the allowance of the credit will~~
 25 ~~not result in substantial increases in local mill levies.~~

1 (a) In each year after the commencement of mining, the
 2 local government shall:
 3 (i) divide its budget by the average mill levy of its
 4 jurisdiction during the 3 years immediately preceding
 5 commencement of mining operations, to arrive at a taxable
 6 valuation needed to fund its budget using the average 3-year
 7 mill levy;
 8 (ii) reduce the taxable valuation of property of a
 9 person who prepaid property taxes by the excess, if any, of
 10 the total taxable value of the taxing jurisdiction including
 11 the person's property over the taxable value determined
 12 under subsection (5)(a)(i), but in no case by an amount
 13 greater than the taxable value of the person's property;
 14 (b) The reduction in taxable value, if any, determined
 15 under subsection (5)(a)(ii) times the average mill levy used
 16 in subsection (5)(a)(i) equals the property tax prepayment
 17 credit allowed for the taxable year for that local
 18 government unit. Any local government unit not receiving a
 19 payment shall not be affected by this section, and no
 20 reduction in value shall be used in the computation of taxes
 21 due that unit of local government; in no event shall the
 22 credit allowed under this part extend more than 10 years
 23 beyond the date the prepayment is made under this section.
 24 (c) The procedure established under subsection (5)(a)
 25 shall continue from year to year until the total credit

1 allowed the person who prepaid property taxes equals the
 2 total property taxes prepaid."
 3 Section 7. Section 90-6-311, MCA, is amended to read:
 4 "90-6-311. Impact plan amendments. (1) The impact plan
 5 may provide for amendment under definite conditions
 6 specified in the plan. Also, the governing body of an
 7 affected county or the mineral developer may petition the
 8 board for an amendment to an approved impact plan if:
 9 (a) employment at the large-scale mineral development
 10 is forecast to increase or decrease by at least 100 people
 11 75 payroll employees PERSONS, as determined under
 12 90-6-302(4), over or under the employment levels
 13 contemplated by the approved impact plan; or
 14 (b) changes in the large-scale mineral development
 15 cause, or can be expected to cause, an increase in estimated
 16 population of at least 15% in a local government unit when
 17 measured against the average population of the local
 18 government unit in the 3-year period preceding the
 19 commencement of new construction or new operations of the
 20 mining facility; or
 21 (c)(b) it becomes apparent that an approved impact
 22 plan is materially inaccurate because of errors in
 23 assessment and 2 years have not elapsed since the date the
 24 facility begins commercial production; or
 25 (d)(c) the governing body of an affected county and

1 the mineral developer join in a petition to amend the impact
2 plan.

3 (2) Within 10 days of receipt the board shall publish
4 notice of the petition at least once in a newspaper of
5 general circulation in the affected county. The petition
6 must include:

7 (a) an explanation of the need for an amendment;

8 (b) a statement of the facts and circumstances
9 underlying the need for an amendment; and

10 (c) a description of the corrective measures proposed
11 by the petitioner.

12 (3) Within 60 days after notice that the petition has
13 been received, an affected local government unit or the
14 mineral developer must notify the board in writing if such
15 person objects to the amendments proposed by the petitioner,
16 specifying the reasons why the impact plan should not be
17 amended as proposed. If no objection is received within the
18 60-day period, the impact plan must be amended by the board
19 as proposed by the petitioner.

20 (4) If an objection is received, within 10 days of its
21 receipt, the board shall notify the petitioner and include a
22 copy of all objections received by the board. If the
23 objecting party and the petitioner cannot resolve the
24 objections within 30 days after the expiration of the 60-day
25 period, the board shall conduct a hearing on the validity of

1 the objections within 30 days after the failure of the
2 parties to resolve the objections. The hearing must be held
3 in the affected county or, if objections are received from
4 local government units in more than one county, must be held
5 in the county which in the board's judgment is more greatly
6 affected. The provisions of the Montana Administrative
7 Procedure Act apply to the conduct of the hearing.

8 (5) Following the hearing, the board shall make
9 findings as to those portions of the amendments which were
10 objected to and, if appropriate, amend the impact plan
11 accordingly. The board shall cause the findings and impact
12 plan, as amended, to be served on all parties. Any local
13 government unit or the developer is entitled to judicial
14 review, as provided by Title 2, chapter 4, part 7, in the
15 district court for the judicial district in which the
16 hearing was held."

17 NEW SECTION. Section 8. Local government budget
18 authority. A local government unit may budget and expend
19 payments received from a mineral developer under this part
20 or part 4 of this chapter or pursuant to a plan approved
21 under this part. If a payment is requested or received after
22 the adoption of the budget for the fiscal year in which the
23 payment is to be expended, the governing body of the local
24 government unit may by a majority vote amend its budget to
25 provide for the receipt and expenditure of the payments.

1 NEW SECTION. Section 9. Codification instruction.
2 Section 8 is intended to be codified as an integral part of
3 Title 90, chapter 6, part 3, and the provisions of Title 90,
4 chapter 6, part 3, apply to section 8.

5 NEW SECTION. Section 10. Extension of authority. Any
6 existing authority of the hard-rock mining impact board, the
7 department of state lands, and the board of land
8 commissioners to make rules on the subject of the provisions
9 of this act is extended to the provisions of this act.

10 NEW SECTION. Section 11. Applicability. The
11 provisions of this act apply to a mineral development for
12 which a permit application is made under 82-4-335 on or
13 after May 18, 1981, and prior to July 1, 1985, only if the
14 mineral development is or will become a large-scale mineral
15 development under 90-6-302(4), as that statute read prior to
16 July 1, 1985.

17 NEW SECTION. Section 12. Effective date. This act is
18 effective July 1, 1985.

-End-