

SENATE BILL NO. 359

INTRODUCED BY YELLOWTAIL

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE SENATE

February 8, 1985	Introduced and referred to Committee on Natural Resources.
February 16, 1985	Committee recommend bill do pass. Report adopted.
February 18, 1985	Bill printed and placed on members' desks.
February 19, 1985	Second reading, pass consideration.
February 20, 1985	Second reading, do pass.
February 21, 1985	Considered correctly engrossed.
February 22, 1985	Third reading, passed. Ayes, 49; Noes, 0.  Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Natural Resources.
March 18, 1985	Committee recommend bill be concurred in. Report adopted.
March 20, 1985	Second reading, concurred in.
March 22, 1985	Third reading, concurred in.  Returned to Senate.

IN THE SENATE

March 22, 1985

Received from House.

March 23, 1985

Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 359  
 2 INTRODUCED BY Hellawalt  
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE MANDATORY  
 6 CIVIL PENALTY FOR FAILURE TO COMPLY WITH AN ABATEMENT OR  
 7 CESSATION ORDER UNDER THE STRIP AND UNDERGROUND MINE  
 8 RECLAMATION ACT; AMENDING SECTION 82-4-254, MCA."  
 9

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

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

1 assessed a penalty of not less than \$750 for each day, up to  
 2 30 days, during which such failure or violation continues.  
 3 The period permitted for correction of a violation shall  
 4 not, in the case of any review proceeding under 82-4-251(6),  
 5 end until entry of a final order suspending the abatement  
 6 requirements or until entry of an order of court ordering  
 7 suspension of the abatement requirements. If the failure to  
 8 abate continues for more than 30 days, the department shall,  
 9 within 30 days after such 30-day period, take appropriate  
 10 action pursuant to 82-4-251(3) or request action under  
 11 subsection (4) or (6).

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

20 (3) The department shall notify the person or operator  
 21 of the violation. The person or operator shall by filing a  
 22 written request within 20 days of receipt of the notice of  
 23 violation be entitled to a hearing on the issues of whether  
 24 the alleged violation has occurred and whether the penalty  
 25 proposed to be assessed is proper. The department shall



1 issue a statement of proposed penalty no more than 10 days  
 2 after notice of violation. After the hearing or after the  
 3 time for requesting a hearing has expired, the board shall  
 4 make findings of fact and shall issue a written decision as  
 5 to the occurrence of the violation and the amount of penalty  
 6 warranted and shall order the payment of a penalty in that  
 7 amount. The person or operator shall remit the amount of the  
 8 penalty within 30 days of the order. If the person or  
 9 operator wishes to obtain judicial review of the assessment,  
 10 he shall submit with the penalty a statement that the  
 11 penalty is being paid under protest and the department shall  
 12 hold the payment in escrow until judicial review is  
 13 complete. Any person or operator who fails to request and  
 14 submit testimony at the hearing provided for in this  
 15 subsection or who fails to pay the assessed penalty under  
 16 protest within 30 days of the order assessing the penalty  
 17 forfeits his right to seek judicial review of the violation  
 18 or penalty determinations. These penalties are recoverable  
 19 in any action brought in the name of the state of Montana by  
 20 the attorney general in the district court of the first  
 21 judicial district of this state, in and for the county of  
 22 Lewis and Clark, or the district having jurisdiction over  
 23 the defendant.

24 (4) The attorney general shall, upon request of the  
 25 commissioner, sue for the recovery of the penalties provided

1 for in this section and bring an action for a restraining  
 2 order or temporary or permanent injunction against an  
 3 operator or other person who:

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

7 (b) interferes with, hinders, or delays the department  
 8 in carrying out the provisions of the part;

9 (c) refuses to admit an authorized representative of  
 10 the department to the permit area;

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

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

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

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

24 (6) A person who violates any of the provisions of  
 25 this part or any determination or order adopted under this

1 part or who willfully violates any permit condition issued  
 2 under this part is guilty of a misdemeanor and shall be  
 3 fined not less than \$500 and not more than \$10,000 or  
 4 imprisoned for not more than 1 year, or both. Each day on  
 5 which the violation occurs constitutes a separate offense.

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

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

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

1 by imprisonment of not more than 1 year, or both."

2 NEW SECTION. Section 2. Extension of authority. Any  
 3 existing authority of the department of state lands or the  
 4 board of land commissioners to make rules on the subject of  
 5 the provisions of this act is extended to the provisions of  
 6 this act.

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

*Senate* BILL NO. 359

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3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
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6 CIVIL PENALTY FOR FAILURE TO COMPLY WITH AN ABATEMENT OR  
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16 and any director, officer, or agent of a corporation who  
17 willfully authorizes, orders, or carries out a violation  
18 shall pay a civil penalty of not less than \$100 or more than  
19 \$5,000 for the violation and an additional civil penalty of  
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21 which a violation continues and may be enjoined from  
22 continuing such violations as hereinafter provided in this  
23 section. Any person or operator who fails to correct a  
24 violation within the period permitted by law, rule of the  
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 19 in any action brought in the name of the state of Montana by  
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2 NEW SECTION. Section 2. Extension of authority. Any  
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INTRODUCED BY *Hellebrandt*  
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

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assessed a penalty of not less than \$750 for each day, up to 30 days, during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after such 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6).

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

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2 NEW SECTION. Section 2. Extension of authority. Any  
 3 existing authority of the department of state lands or the  
 4 board of land commissioners to make rules on the subject of  
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