

HOUSE BILL NO. 230

INTRODUCED BY HANSON

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE HOUSE

JANUARY 15, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

JANUARY 26, 1987                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 27, 1987                   PRINTING REPORT.

JANUARY 28, 1987                   SECOND READING, DO PASS.

JANUARY 29, 1987                   ENGROSSING REPORT.

                                     THIRD READING, PASSED.

                                     TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 30, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

FEBRUARY 25, 1987                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 3, 1987                      SECOND READING, CONCURRED IN.

MARCH 5, 1987                      THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

                                     RETURNED TO HOUSE.

IN THE HOUSE

MARCH 6, 1987                      RECEIVED FROM SENATE.

                                     SENT TO ENROLLING.

1 House BILL NO. 230  
 2 INTRODUCED BY W. H. H. H.  
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IN ORDER  
 7 TO BRING THE ACT INTO COMPLIANCE WITH FEDERAL LAW; AND  
 8 AMENDING SECTIONS 82-4-203 AND 82-4-221 THROUGH 82-4-223,  
 9 MCA."  
 10

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

12 Section 1. Section 82-4-203, MCA, is amended to read:  
 13 "82-4-203. Definitions. Unless the context requires  
 14 otherwise, in this part the following definitions apply:

15 (1) "Abandoned" means an operation where no mineral is  
 16 being produced and where the department determines that the  
 17 operation will not continue or resume.

18 (2) "Alluvial valley floor" means the unconsolidated  
 19 stream-laid deposits holding streams where water  
 20 availability is sufficient for subirrigation or flood  
 21 irrigation agricultural activities; but the term does not  
 22 include upland areas which are generally overlain by a thin  
 23 veneer of colluvial deposits composed chiefly of debris from  
 24 sheet erosion, deposits by unconcentrated runoff or slope  
 25 wash, together with talus, other mass movement accumulation,

1 and windblown deposits.

2 (3) "Aquifer" means any geologic formation or natural  
 3 zone beneath the earth's surface that contains or stores  
 4 water and transmits it from one point to another in  
 5 quantities which permit or have the potential to permit  
 6 economic development as a water source.

7 (4) "Area of land affected" means the area of land  
 8 from which overburden is to be or has been removed and upon  
 9 which the overburden is to be or has been deposited and  
 10 includes all land overlying any tunnels, shafts, or other  
 11 excavations used to extract the mineral, lands affected by  
 12 the construction of new railroad loops and roads or the  
 13 improvement or use of existing railroad loops and roads to  
 14 gain access and to haul the mineral, processing facilities  
 15 at or near the mine site or other mine associated  
 16 facilities, waste deposition areas, treatment ponds, and any  
 17 other surface or subsurface disturbance associated with  
 18 strip mining or underground mining, and all activities  
 19 necessary and incident to the reclamation of such  
 20 operations.

21 (5) "Bench" means the ledge, shelf, table, or terrace  
 22 formed in the contour method of strip mining.

23 (6) "Board" means the board of land commissioners  
 24 provided for in Article X, section 4, of the constitution of  
 25 this state.

1 (7) "Coal conservation plan" means the planned course  
2 of conduct of a strip- or underground-mining operation to  
3 include plans for the removal and utilization of minable and  
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical  
6 processing of coal and its cleaning, concentrating, or other  
7 processing or preparation.

8 (9) "Coal preparation plant" means a facility where  
9 coal is subject to coal preparation. The term includes  
10 facilities associated with coal preparation activities but  
11 is not limited to loading buildings, water treatment  
12 facilities, water storage facilities, settling basins and  
13 impoundments, and coal processing and other waste disposal  
14 areas.

15 (10) "Commissioner" means the commissioner of state  
16 lands provided for in 2-15-3202.

17 (11) "Contour strip mining" means that strip-mining  
18 method commonly carried out in areas of rough and hilly  
19 topography in which the coal or mineral seam outcrops along  
20 the side of the slope and entrance is made to the seam by  
21 excavating a bench or table cut at and along the site of the  
22 seam outcropping with the excavated overburden commonly  
23 being cast down the slope below the mineral seam and the  
24 operating bench.

25 (12) "Degree" means from the horizontal and in each

1 case is subject to a tolerance of 5% error.

2 (13) "Department" means the department of state  
3 lands provided for in Title 2, chapter 15, part 32.

4 (14) "Failure to conserve coal" means the  
5 nonremoval or nonutilization of minable and marketable coal  
6 by an operation, provided that the nonremoval or  
7 nonutilization of minable and marketable coal in accordance  
8 with reclamation standards established by the department  
9 shall not be considered failure to conserve coal.

10 (15) "Fill bench" means that portion of a bench or  
11 table which is formed by depositing overburden beyond or  
12 downslope from the cut section as formed in the contour  
13 method of strip mining.

14 (16) "Imminent danger to the health and safety of  
15 the public" means the existence of any condition or practice  
16 or any violation of a permit or other requirement of this  
17 part in a strip- or underground-coal-mining and reclamation  
18 operation that could reasonably be expected to cause  
19 substantial physical harm to persons outside the permit area  
20 before such condition, practice, or violation can be abated.  
21 A reasonable expectation of death or serious injury before  
22 abatement exists if a rational person, subjected to the same  
23 conditions or practices giving rise to the peril, would not  
24 expose himself or herself to the danger during the time  
25 necessary for abatement.

1       †15†(17) "Marketable coal" means a minable coal that is  
2 economically feasible to mine and is fit for sale in the  
3 usual course of trade.

4       †16†(18) "Method of operation" means the method or  
5 manner by which the cut, open pit, shaft, or excavation is  
6 made, the overburden is placed or handled, water is  
7 controlled, and other acts are performed by the operator in  
8 the process of uncovering and removing the minerals that  
9 affect the reclamation of the area of land affected.

10       †17†(19) "Minaable coal" means that coal which can be  
11 removed through strip- or underground-mining methods  
12 adaptable to the location that coal is being mined or is  
13 planned to be mined.

14       †18†(20) "Mineral" means coal and uranium.

15       †19†(21) "Operation" means all of the premises,  
16 facilities, railroad loops, roads, and equipment used in the  
17 process of producing and removing mineral from and  
18 reclaiming a designated strip-mine or underground-mine area  
19 and all activities, including excavation incident thereto,  
20 or prospecting for the purpose of determining the location,  
21 quality, or quantity of a natural mineral deposit.

22       †20†(22) "Operator" means a person engaged in strip  
23 mining or underground mining who removes or intends to  
24 remove more than 10,000 cubic yards of mineral or overburden  
25 or a person engaged in coal mining who removes or intends to

1 remove more than 250 tons of coal from the earth by mining  
2 within 12 consecutive calendar months in any one location or  
3 a person engaged in operating a coal preparation plant.

4       †21†(23) "Overburden" means all of the earth and other  
5 materials which lie above a natural mineral deposit and also  
6 means such earth and other material after removal from their  
7 natural state in the process of mining.

8       †22†(24) "Person" means a person, partnership,  
9 corporation, association, or other legal entity or any  
10 political subdivision or agency of the state or federal  
11 government.

12       †23†(25) "Prime farmland" means that land previously  
13 prescribed by the United States secretary of agriculture on  
14 the basis of such factors as moisture availability,  
15 temperature regime, chemical balance, permeability,  
16 surface-layer composition, susceptibility to flooding, and  
17 erosion characteristics and which historically has been used  
18 for intensive agricultural purposes and as defined in the  
19 Federal Register.

20       †24†(26) "Prospecting" means the removal of overburden,  
21 core drilling, construction of roads, or any other  
22 disturbance of the surface for the purpose of determining  
23 the location, quantity, or quality of a natural mineral  
24 deposit.

25       †25†(27) "Reclamation" means backfilling, subsidence

1 stabilization, water control, grading, highwall reduction,  
2 topsoiling, planting, revegetation, and other work to  
3 restore an area of land affected by strip mining or  
4 underground mining under a plan approved by the department.

5 (28) "Remining" means conducting surface coal mining  
6 and reclamation operations that affect previously mined  
7 areas; for example, the recovery of additional mineral from  
8 existing gob or tailings piles.

9 ~~(26)~~(29) "Strip mining" means any part of the process  
10 followed in the production of mineral by the opencut method,  
11 including mining by the auger method or any similar method  
12 which penetrates a mineral deposit and removes mineral  
13 directly through a series of openings made by a machine  
14 which enters the deposit from a surface excavation or any  
15 other mining method or process in which the strata or  
16 overburden is removed or displaced in order to recover the  
17 mineral. For the purposes of this part only, strip mining  
18 also includes remining. The term "remining" is not included  
19 in the definition of "strip mining" for purposes of Title  
20 15, chapter 35, part 1.

21 ~~(27)~~(30) "Subsidence" means a vertically downward  
22 movement of overburden materials resulting from the actual  
23 mining of an underlying mineral deposit or associated  
24 underground excavations.

25 ~~(20)~~(31) "Surface owner" means a person who holds legal

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

8 ~~(29)~~(32) "Topsoil" means the unconsolidated mineral  
9 matter naturally present on the surface of the earth that  
10 has been subjected to and influenced by genetic and  
11 environmental factors of parent material, climate, macro-  
12 and microorganisms, and topography, all acting over a period  
13 of time, and that is necessary for the growth and  
14 regeneration of vegetation on the surface of the earth.

15 ~~(30)~~(33) "Underground mining" means any part of the  
16 process followed in the production of a mineral such that  
17 vertical or horizontal shafts, slopes, drifts, or incline  
18 planes connected with excavations penetrating the mineral  
19 stratum or strata are utilized and includes mining by in  
20 situ methods.

21 ~~(31)~~(34) "Unwarranted failure to comply" means the  
22 failure of a permittee to prevent the occurrence of any  
23 violation of his permit or any requirement of this part due  
24 to indifference, lack of diligence, or lack of reasonable  
25 care, or the failure to abate any violation of such permit

1 or this part due to indifference, lack of diligence, or lack  
2 of reasonable care.

3 ~~(32)~~(35) "Waiver" means any document which demonstrates  
4 the clear intention to release rights in the surface estate  
5 for the purpose of permitting the extraction of subsurface  
6 minerals by strip-mining methods.

7 ~~(33)~~(36) "Written consent" means such written statement  
8 as is executed by the owner of the surface estate, upon a  
9 form approved by the department, demonstrating that such  
10 owner consents to entry of an operator for the purpose of  
11 conducting strip-mining operations and that such consent is  
12 given only to such strip-mining and reclamation operations  
13 which fully comply with the terms and requirements of this  
14 part."

15 Section 2. Section 82-4-221, MCA, is amended to read:  
16 "82-4-221. Mining permit required. (1) An operator may  
17 not engage in strip or underground mining or coal  
18 preparation without having first obtained from the  
19 department a permit designating the area of land affected by  
20 the operation, which designation shall include all lands  
21 reasonably anticipated to be mined or otherwise affected  
22 during the applicable 5-year period. The permit shall  
23 authorize the operator to engage in strip or underground  
24 mining upon the area of land described in his application  
25 and designated in the permit for a period of 5 years from

1 the date of its issuance. Such permit shall be renewable  
2 upon each 5-year anniversary thereafter upon application to  
3 the department at least 120 but not more than 150 days prior  
4 to the renewal date so long as the operator is in compliance  
5 with the requirements of this part, the rules hereunder, and  
6 the reclamation plan provided for in 82-4-231 and agrees to  
7 comply with all applicable laws and rules in effect at the  
8 time of renewal. Such renewal shall further be subject to  
9 the denial provisions of 82-4-227, 82-4-234, and 82-4-251.  
10 On application for renewal, the burden shall be on the  
11 opponents of renewal to demonstrate that the permit should  
12 not be renewed. A permit shall terminate if the permittee  
13 has not commenced strip- or underground-mining operations  
14 pursuant to the permit within 3 years of the issuance of the  
15 permit. However, the department may grant reasonable  
16 extensions of time upon a showing that such extensions are  
17 necessary by reason of litigation precluding the  
18 commencement or threatening substantial economic loss to the  
19 permittee or by reason of conditions beyond the control and  
20 without the fault or negligence of the permittee. With  
21 respect to coal to be mined for use in a synthetic fuel  
22 facility or specific major electric generating facility, the  
23 permittee is considered to have commenced strip- or  
24 underground-mining operations at such time as the  
25 construction of the synthetic or generating facility is

1 initiated.

2 (2) As a condition to the issuance of every permit  
3 issued under this part, an authorized representative of the  
4 department shall, without advance notice, have the right of  
5 entry to, upon, or through a strip- or underground-mining  
6 operation or any premises in which any records required to  
7 be maintained under this part are located and may, at  
8 reasonable times and without delay, have access to copy any  
9 records and inspect any monitoring equipment or method of  
10 operation required under this part. When an inspection  
11 results from information provided to the department by any  
12 person, the department shall notify that person when the  
13 inspection is proposed to be made and that person shall be  
14 allowed to accompany the inspector during the inspection.

15 (3) During the term of the permit, the permittee may  
16 submit an application for a revision of the permit, together  
17 with a revised reclamation plan, to the department. The  
18 department may not approve the application unless it finds  
19 that reclamation in accordance with this part would be  
20 accomplished. Application for minor revision shall be  
21 approved or disapproved within a reasonable time, depending  
22 on the scope and complexity, but in no case longer than 120  
23 days. Applications for major revisions are subject to all  
24 the permit application requirements and procedures."

25 Section 3. Section 82-4-222, MCA, is amended to read:

1 "82-4-222. Permit application. (1) An operator  
2 desiring a permit shall file an application which shall  
3 contain a complete and detailed plan for the mining,  
4 reclamation, revegetation, and rehabilitation of the land  
5 and water to be affected by the operation or the coal  
6 preparation plant. Such plan shall reflect thorough advance  
7 investigation and study by the operator and shall include  
8 all known or readily discoverable past and present uses of  
9 the land and water to be affected and the approximate  
10 periods of such use and shall state:

11 (a) the location and area of land to be affected by  
12 the operation, with a description of access to the area from  
13 the nearest public highways;

14 (b) the names and addresses of the owners of record  
15 and any purchasers under contracts for deed of the surface  
16 of the area of land to be affected by the permit and the  
17 owners of record and any purchasers under contracts for deed  
18 of all surface area within one-half mile of any part of the  
19 affected area;

20 (c) the names and addresses of the present owners of  
21 record and any purchasers under contracts for deed of all  
22 subsurface minerals in the land to be affected;

23 (d) the source of the applicant's legal right to mine  
24 the mineral on the land affected by the permit;

25 (e) the permanent and temporary post-office addresses

1 of the applicant;

2 (f) whether the applicant or any person associated

3 with the applicant holds or has held any other permits under

4 this part and an identification of those permits;

5 (g) whether the applicant is in compliance with

6 82-4-251 and, if known, whether every officer, partner,

7 director, or any individual owning of record or

8 beneficially, alone or with associates, 10% or more of any

9 class of stock of the applicant is subject to any of the

10 provisions of 82-4-251 and he shall so certify and whether

11 any of the foregoing parties or persons have ever had a

12 strip-mining or underground-mining license or permit issued

13 by any other state or federal agency revoked or have ever

14 forfeited a strip-mining or underground-mining bond or a

15 security deposited in lieu of a bond and, if so, a detailed

16 explanation of the facts involved in each case must be

17 attached;

18 (h) whether the applicant has a record of outstanding

19 reclamation fees with the federal coal regulatory authority;

20 (h)(i) the names and addresses of any persons who are

21 engaged in strip- or underground-mining activities on behalf

22 of the applicant;

23 (i)(j) the annual rainfall and the direction and

24 average velocity of the prevailing winds in the area where

25 the applicant has requested a permit;

1 (j)(k) the results of any test borings or core

2 samplings which the applicant or his agent has conducted on

3 the land to be affected, including the nature and the depth

4 of the various strata or overburden and topsoil, the

5 quantities and location of subsurface water and its quality,

6 the thickness of any mineral seam, an analysis of the

7 chemical properties of such minerals, including the acidity,

8 sulphur content, and trace mineral elements of any coal

9 seam, as well as the British thermal unit (Btu) content of

10 such seam, and an analysis of the overburden, including

11 topsoil. If test borings or core samplings are submitted,

12 each permit application shall contain two copies each of two

13 sets of geologic cross sections accurately depicting the

14 known geologic makeup beneath the surface of the affected

15 land. Each set shall depict subsurface conditions at such

16 intervals as the department requires across the surface and

17 shall run at a 90-degree angle to the other set. The

18 department may not require intervals of less than 500 feet.

19 Each cross section shall depict the thickness and geologic

20 character of all known strata beginning with the topsoil. In

21 addition, each application for an underground-mining permit

22 shall be accompanied by cross sections and maps showing the

23 proposed underground locations of all shafts, entries, and

24 haulageways or other excavations to be excavated during the

25 permit period. These cross sections shall also include all



1 existing shafts, entries, and haulageways.

2       †\*(l) the name and date of a daily newspaper of  
3 general circulation within the county in which the applicant  
4 will prominently publish at least once a week for 4  
5 successive weeks after submission of the application an  
6 announcement of his application for a strip-mining or  
7 underground-mining permit and a detailed description of the  
8 area of land to be affected should a permit be granted;

9       †\*(m) a determination of the probable hydrologic  
10 consequences of coal mining and reclamation operations, both  
11 on and off the mine site, with respect to the hydrologic  
12 regime, quantity and quality of water in surface- and  
13 ground-water systems, including the dissolved and suspended  
14 solids under seasonal flow conditions and the collection of  
15 sufficient data for the mine site and surrounding areas, so  
16 that cumulative impacts of all anticipated mining in the  
17 area upon the hydrology of the area and particularly upon  
18 water availability can be made. However, this determination  
19 is not required until such time as hydrologic information on  
20 the general area prior to mining is made available from an  
21 appropriate federal or state agency. The permit may not be  
22 approved until such information is available and is  
23 incorporated into the application.

24       †\*(n) a coal conservation plan; and

25       †\*(o) such other or further information as the

1 department may require.

2       (2) The application for a permit shall be accompanied  
3 by two copies of all maps meeting the requirements of the  
4 subsections below. The maps shall:

5       (a) identify the area to correspond with the  
6 application;

7       (b) show any adjacent deep mining or surface mining  
8 and the boundaries of surface properties and names of owners  
9 of record of the affected area and within 1,000 feet of any  
10 part of the affected area;

11       (c) show the names and locations of all streams,  
12 creeks, or other bodies of water, roads, buildings,  
13 cemeteries, oil and gas wells, and utility lines on the area  
14 of land affected and within 1,000 feet of such area;

15       (d) show by appropriate markings the boundaries of the  
16 area of land affected, any cropline of the seam or deposit  
17 of mineral to be mined, and the total number of acres  
18 involved in the area of land affected;

19       (e) show the date on which the map was prepared and  
20 the north point;

21       (f) show the final surface and underground water  
22 drainage plan on and away from the area of land affected.  
23 This plan shall indicate the directional and volume flow of  
24 water, constructed drainways, natural waterways used for  
25 drainage, and the streams or tributaries receiving the

1 discharge.

2 (g) show the proposed location of waste or refuse  
3 area;

4 (h) show the proposed location of temporary subsoil  
5 and topsoil storage area;

6 (i) show the proposed location of all facilities;

7 (j) show the location of test boring holes;

8 (k) show the surface location lines of any geologic  
9 cross sections which have been submitted;

10 (l) show a listing of plant varieties encountered in  
11 the area to be affected and their relative dominance in the  
12 area, together with an enumeration of tree varieties and the  
13 approximate number of each variety occurring per acre on the  
14 area to be affected, and the locations generally of the  
15 various kinds and varieties of plants, including but not  
16 limited to grasses, shrubs, legumes, forbs, and trees;

17 (m) be certified as follows: "I, the undersigned,  
18 hereby certify that this map is correct and shows to the  
19 best of my knowledge and belief all the information required  
20 by the mining laws of this state." The certification shall  
21 be signed and notarized. The department may reject a map as  
22 incomplete if its accuracy is not so attested.

23 (n) contain such other or further information as the  
24 department may require.

25 (3) If the department finds that the probable total

1 annual production at all locations of any strip- or  
2 underground-coal-mining operation applied for will not  
3 exceed 100,000 tons, any determination of probable  
4 hydrologic consequences that the department requires and the  
5 statement of result of test borings or core samplings shall,  
6 upon written request of the operator, be performed by a  
7 qualified public or private laboratory designated by the  
8 department. The department shall assume the cost of the  
9 determination and statement to the extent that it has  
10 received funds for this purpose.

11 (4) In addition to the information and maps required  
12 above, each application for a permit shall be accompanied by  
13 detailed plans or proposals showing the method of operation,  
14 the manner, time or distance, and estimated cost for  
15 backfilling, subsidence stabilization, water control,  
16 grading work, highwall reduction, topsoiling, planting,  
17 revegetating, and a reclamation plan for the area affected  
18 by the operation, which proposals shall meet the  
19 requirements of this part and rules adopted under this part.  
20 The reclamation plan shall address the life of the operation  
21 and indicate the size, sequence, and the timing of the  
22 subareas for which it is anticipated that individual permits  
23 will be sought.

24 (5) Each applicant for a coal mining permit shall  
25 submit as part of the application a certificate issued by an

1 insurance company authorized to do business in the state  
 2 certifying that the applicant has in force for the strip- or  
 3 underground-mining and reclamation operations for which the  
 4 permit is sought a public liability insurance policy, or  
 5 evidence that the applicant has satisfied other state or  
 6 federal self-insurance requirements. This policy shall  
 7 provide for personal injury and property damage protection  
 8 in an amount adequate to compensate any persons damaged as a  
 9 result of strip- or underground-coal-mining and reclamation  
 10 operations, including use of explosives, and entitled to  
 11 compensation under applicable provisions of state law. The  
 12 permittee must maintain the policy in full force and effect  
 13 during the term of the permit and any renewal until all  
 14 reclamation operations have been completed.

15 (6) Each applicant for a strip-mining or  
 16 underground-mining reclamation permit shall file a copy of  
 17 his application for public inspection with the clerk and  
 18 recorder at the courthouse of the county where the major  
 19 portion of mining is proposed to occur."

20 Section 4. Section 82-4-223, MCA, is amended to read:  
 21 "82-4-223. Permit fee and surety bond. (1) An  
 22 application fee of ~~\$50~~ \$100 shall be paid before the permit  
 23 required in this part shall be issued.

24 (2) Before a permit may be issued, the operator shall  
 25 file with the department a bond payable to the state of

1 Montana with surety satisfactory to the department in the  
 2 penal sum to be determined by the board, on the  
 3 recommendation of the commissioner, of not less than \$200  
 4 for each acre or fraction thereof of the area of land  
 5 affected, with a minimum bond of \$10,000, conditioned upon  
 6 the faithful performance of the requirements set forth in  
 7 this part and of the rules of the board. The operator may  
 8 elect to deposit cash, negotiable bonds, or negotiable  
 9 certificates of deposit of any bank organized or transacting  
 10 business in the United States. The cash deposit or market  
 11 value of such securities shall be equal to or greater than  
 12 the amount of the bond required for the bonded area. The  
 13 level of bonding shall be relative to the degree of  
 14 disturbance projected by the original permit and the annual  
 15 report. A political subdivision or agency of the state need  
 16 not file a bond unless required to do so by the board. The  
 17 board shall adjust the amount of bond required if the cost  
 18 of reclamation changes.

19 (3) In determining the amount of the bond, the board  
 20 shall take into consideration the character and nature of  
 21 the overburden, the future suitable use of the land  
 22 involved, and the cost of backfilling, grading, highwall  
 23 reduction, subsidence stabilization, water control,  
 24 topsoiling, and reclamation to be required, but in no event  
 25 shall the bond be less than the total estimated cost to the

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1 state of completing the work described in the reclamation  
2 plan."

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

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

1                   HOUSE BILL NO. 230  
 2                   INTRODUCED BY HANSON  
 3                   BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
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 14                   otherwise, in this part the following definitions apply:  
 15                   (1) "Abandoned" means an operation where no mineral is  
 16                   being produced and where the department determines that the  
 17                   operation will not continue or resume.  
 18                   (2) "Alluvial valley floor" means the unconsolidated  
 19                   stream-laid deposits holding streams where water  
 20                   availability is sufficient for subirrigation or flood  
 21                   irrigation agricultural activities; but the term does not  
 22                   include upland areas which are generally overlain by a thin  
 23                   vener of colluvial deposits composed chiefly of debris from  
 24                   sheet erosion, deposits by unconcentrated runoff or slope  
 25                   wash, together with talus, other mass movement accumulation,

1                   and windblown deposits.  
 2                   (3) "Aquifer" means any geologic formation or natural  
 3                   zone beneath the earth's surface that contains or stores  
 4                   water and transmits it from one point to another in  
 5                   quantities which permit or have the potential to permit  
 6                   economic development as a water source.  
 7                   (4) "Area of land affected" means the area of land  
 8                   from which overburden is to be or has been removed and upon  
 9                   which the overburden is to be or has been deposited and  
 10                   includes all land overlying any tunnels, shafts, or other  
 11                   excavations used to extract the mineral, lands affected by  
 12                   the construction of new railroad loops and roads or the  
 13                   improvement or use of existing railroad loops and roads to  
 14                   gain access and to haul the mineral, processing facilities  
 15                   at or near the mine site or other mine associated  
 16                   facilities, waste deposition areas, treatment ponds, and any  
 17                   other surface or subsurface disturbance associated with  
 18                   strip mining or underground mining, and all activities  
 19                   necessary and incident to the reclamation of such  
 20                   operations.  
 21                   (5) "Bench" means the ledge, shelf, table, or terrace  
 22                   formed in the contour method of strip mining.  
 23                   (6) "Board" means the board of land commissioners  
 24                   provided for in Article X, section 4, of the constitution of  
 25                   this state.

1 (7) "Coal conservation plan" means the planned course  
2 of conduct of a strip- or underground-mining operation to  
3 include plans for the removal and utilization of minable and  
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical  
6 processing of coal and its cleaning, concentrating, or other  
7 processing or preparation. THE TERM DOES NOT MEAN THE  
8 CONVERSION OF COAL TO ANOTHER ENERGY FORM OR TO A GASEOUS OR  
9 LIQUID HYDROCARBON, EXCEPT FOR INCIDENTAL AMOUNTS THAT DO  
10 NOT LEAVE THE PLANT, NOR DOES THE TERM MEAN PROCESSING FOR  
11 OTHER THAN COMMERCIAL PURPOSES.

12 (9) "Coal preparation plant" means a COMMERCIAL  
13 facility where coal is subject to coal preparation. The  
14 term includes COMMERCIAL facilities associated with coal  
15 preparation activities but is not limited to loading  
16 buildings, water treatment facilities, water storage  
17 facilities, settling basins and impoundments, and coal  
18 processing and other waste disposal areas.

19 ~~(10)~~ (10) "Commissioner" means the commissioner of state  
20 lands provided for in 2-15-3202.

21 ~~(11)~~ (11) "Contour strip mining" means that strip-mining  
22 method commonly carried out in areas of rough and hilly  
23 topography in which the coal or mineral seam outcrops along  
24 the side of the slope and entrance is made to the seam by  
25 excavating a bench or table cut at and along the site of the

1 seam outcropping with the excavated overburden commonly  
2 being cast down the slope below the mineral seam and the  
3 operating bench.

4 ~~(12)~~ (12) "Degree" means from the horizontal and in each  
5 case is subject to a tolerance of 5% error.

6 ~~(13)~~ (13) "Department" means the department of state  
7 lands provided for in Title 2, chapter 15, part 32.

8 ~~(14)~~ (14) "Failure to conserve coal" means the  
9 nonremoval or nonutilization of minable and marketable coal  
10 by an operation, provided that the nonremoval or  
11 nonutilization of minable and marketable coal in accordance  
12 with reclamation standards established by the department  
13 shall not be considered failure to conserve coal.

14 ~~(15)~~ (15) "Fill bench" means that portion of a bench or  
15 table which is formed by depositing overburden beyond or  
16 downslope from the cut section as formed in the contour  
17 method of strip mining.

18 ~~(16)~~ (16) "Imminent danger to the health and safety of  
19 the public" means the existence of any condition or practice  
20 or any violation of a permit or other requirement of this  
21 part in a strip- or underground-coal-mining and reclamation  
22 operation that could reasonably be expected to cause  
23 substantial physical harm to persons outside the permit area  
24 before such condition, practice, or violation can be abated.  
25 A reasonable expectation of death or serious injury before

1 abatement exists if a rational person, subjected to the same  
 2 conditions or practices giving rise to the peril, would not  
 3 expose himself or herself to the danger during the time  
 4 necessary for abatement.

5 {15}(17) "Marketable coal" means a minable coal that is  
 6 economically feasible to mine and is fit for sale in the  
 7 usual course of trade.

8 {16}(18) "Method of operation" means the method or  
 9 manner by which the cut, open pit, shaft, or excavation is  
 10 made, the overburden is placed or handled, water is  
 11 controlled, and other acts are performed by the operator in  
 12 the process of uncovering and removing the minerals that  
 13 affect the reclamation of the area of land affected.

14 {17}(19) "Minaable coal" means that coal which can be  
 15 removed through strip- or underground-mining methods  
 16 adaptable to the location that coal is being mined or is  
 17 planned to be mined.

18 {18}(20) "Mineral" means coal and uranium.

19 {19}(21) "Operation" means all of the premises,  
 20 facilities, railroad loops, roads, and equipment used in the  
 21 process of producing and removing mineral from and  
 22 reclaiming a designated strip-mine or underground-mine area,  
 23 INCLUDING COAL PREPARATION PLANTS, and all activities,  
 24 including excavation incident thereto, or prospecting for  
 25 the purpose of determining the location, quality, or

1 quantity of a natural mineral deposit.

2 {20}(22) "Operator" means a person engaged in strip  
 3 mining or underground mining who removes or intends to  
 4 remove more than 10,000 cubic yards of mineral or overburden  
 5 or a person engaged in coal mining who removes or intends to  
 6 remove more than 250 tons of coal from the earth by mining  
 7 within 12 consecutive calendar months in any one location or  
 8 a person engaged in operating a coal preparation plant.

9 {21}(23) "Overburden" means all of the earth and other  
 10 materials which lie above a natural mineral deposit and also  
 11 means such earth and other material after removal from their  
 12 natural state in the process of mining.

13 {22}(24) "Person" means a person, partnership,  
 14 corporation, association, or other legal entity or any  
 15 political subdivision or agency of the state or federal  
 16 government.

17 {23}(25) "Prime farmland" means that land previously  
 18 prescribed by the United States secretary of agriculture on  
 19 the basis of such factors as moisture availability,  
 20 temperature regime, chemical balance, permeability,  
 21 surface-layer composition, susceptibility to flooding, and  
 22 erosion characteristics and which historically has been used  
 23 for intensive agricultural purposes and as defined in the  
 24 Federal Register.

25 {24}(26) "Prospecting" means the removal of overburden,

1 core drilling, construction of roads, or any other  
2 disturbance of the surface for the purpose of determining  
3 the location, quantity, or quality of a natural mineral  
4 deposit.

5 ~~(25)~~(27) "Reclamation" means backfilling, subsidence  
6 stabilization, water control, grading, highwall reduction,  
7 topsoiling, planting, revegetation, and other work to  
8 restore an area of land affected by strip mining or  
9 underground mining under a plan approved by the department.

10 (28) "Remining" means conducting surface coal mining  
11 and reclamation operations that affect previously mined  
12 areas; for example, the recovery of additional mineral from  
13 existing gob or tailings piles.

14 ~~(26)~~(29) "Strip mining" means any part of the process  
15 followed in the production of mineral by the opencut method,  
16 including mining by the auger method or any similar method  
17 which penetrates a mineral deposit and removes mineral  
18 directly through a series of openings made by a machine  
19 which enters the deposit from a surface excavation or any  
20 other mining method or process in which the strata or  
21 overburden is removed or displaced in order to recover the  
22 mineral. For the purposes of this part only, strip mining  
23 also includes remining AND COAL PREPARATION. The term  
24 "remining"--is TERMS "REMINING" AND "COAL PREPARATION" ARE  
25 not included in the definition of "strip mining" for

1 purposes of Title 15, chapter 35, part 1.

2 ~~(27)~~(30) "Subsidence" means a vertically downward  
3 movement of overburden materials resulting from the actual  
4 mining of an underlying mineral deposit or associated  
5 underground excavations.

6 ~~(28)~~(31) "Surface owner" means a person who holds legal  
7 or equitable title to the land surface and whose principal  
8 place of residence is on the land or who personally conducts  
9 farming or ranching operations upon a farm or ranch unit to  
10 be directly affected by strip-mining operations or who  
11 receives directly a significant portion of his income, if  
12 any, from such farming or ranching operations or the state  
13 of Montana where the state owns the surface.

14 ~~(29)~~(32) "Topsoil" means the unconsolidated mineral  
15 matter naturally present on the surface of the earth that  
16 has been subjected to and influenced by genetic and  
17 environmental factors of parent material, climate, macro-  
18 and microorganisms, and topography, all acting over a period  
19 of time, and that is necessary for the growth and  
20 regeneration of vegetation on the surface of the earth.

21 ~~(30)~~(33) "Underground mining" means any part of the  
22 process followed in the production of a mineral such that  
23 vertical or horizontal shafts, slopes, drifts, or incline  
24 planes connected with excavations penetrating the mineral  
25 stratum or strata are utilized and includes mining by in



1 situ methods.

2 ~~{31}~~(34) "Unwarranted failure to comply" means the  
 3 failure of a permittee to prevent the occurrence of any  
 4 violation of his permit or any requirement of this part due  
 5 to indifference, lack of diligence, or lack of reasonable  
 6 care, or the failure to abate any violation of such permit  
 7 or this part due to indifference, lack of diligence, or lack  
 8 of reasonable care.

9 ~~{32}~~(35) "Waiver" means any document which demonstrates  
 10 the clear intention to release rights in the surface estate  
 11 for the purpose of permitting the extraction of subsurface  
 12 minerals by strip-mining methods.

13 ~~{33}~~(36) "Written consent" means such written statement  
 14 as is executed by the owner of the surface estate, upon a  
 15 form approved by the department, demonstrating that such  
 16 owner consents to entry of an operator for the purpose of  
 17 conducting strip-mining operations and that such consent is  
 18 given only to such strip-mining and reclamation operations  
 19 which fully comply with the terms and requirements of this  
 20 part."

21 Section 2. Section 82-4-221, MCA, is amended to read:

22 "82-4-221. Mining permit required. (1) An operator  
 23 may not engage in strip or underground mining or coal  
 24 preparation without having first obtained from the  
 25 department a permit designating the area of land affected by

1 the operation, which designation shall include all lands  
 2 reasonably anticipated to be mined or otherwise affected  
 3 during the applicable 5-year period. The permit shall  
 4 authorize the operator to engage in strip or underground  
 5 mining upon the area of land described in his application  
 6 and designated in the permit for a period of 5 years from  
 7 the date of its issuance. Such permit shall be renewable  
 8 upon each 5-year anniversary thereafter upon application to  
 9 the department at least 120 but not more than 150 days prior  
 10 to the renewal date so long as the operator is in compliance  
 11 with the requirements of this part, the rules hereunder, and  
 12 the reclamation plan provided for in 82-4-231 and agrees to  
 13 comply with all applicable laws and rules in effect at the  
 14 time of renewal. Such renewal shall further be subject to  
 15 the denial provisions of 82-4-227, 82-4-234, and 82-4-251.  
 16 On application for renewal, the burden shall be on the  
 17 opponents of renewal to demonstrate that the permit should  
 18 not be renewed. A permit shall terminate if the permittee  
 19 has not commenced strip or underground mining operations  
 20 pursuant to the permit within 3 years of the issuance of the  
 21 permit. However, the department may grant reasonable  
 22 extensions of time upon a showing that such extensions are  
 23 necessary by reason of litigation precluding the  
 24 commencement or threatening substantial economic loss to the  
 25 permittee or by reason of conditions beyond the control and

1 without--the--fault--or--negligence--of--the--permittee--With  
 2 respect--to--coal--to--be--mined--for--use--in--a--synthetic--fuel  
 3 facility--or--specific--major--electric--generating--facility,--the  
 4 permittee--is--considered--to--have--commenced--strip--or  
 5 underground--mining--operations--at--such--time--as--the  
 6 construction--of--the--synthetic--or--generating--facility--is  
 7 initiated.

8 {2}--As--a--condition--to--the--issuance--of--every--permit  
 9 issued--under--this--part,--an--authorized--representative--of--the  
 10 department--shall,--without--advance--notice,--have--the--right--of  
 11 entry--to,--upon,--or--through--a--strip--or--underground--mining  
 12 operation--or--any--premises--in--which--any--records--required--to  
 13 be--maintained--under--this--part--are--located--and--may,--at  
 14 reasonable--times--and--without--delay,--have--access--to--copy--any  
 15 records--and--inspect--any--monitoring--equipment--or--method--of  
 16 operation--required--under--this--part.--When--an--inspection  
 17 results--from--information--provided--to--the--department--by--any  
 18 person,--the--department--shall--notify--that--person--when--the  
 19 inspection--is--proposed--to--be--made--and--that--person--shall--be  
 20 allowed--to--accompany--the--inspector--during--the--inspection.

21 {3}--During--the--term--of--the--permit,--the--permittee--may  
 22 submit--an--application--for--a--revision--of--the--permit,--together  
 23 with--a--revised--reclamation--plan,--to--the--department.--The  
 24 department--may--not--approve--the--application--unless--it--finds  
 25 that--reclamation--in--accordance--with--this--part--would--be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 2. Section 82-4-222, MCA, is amended to read:  
 7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation or the coal  
 12 preparation plant. Such plan shall reflect thorough advance  
 13 investigation and study by the operator and shall include  
 14 all known or readily discoverable past and present uses of  
 15 the land and water to be affected and the approximate  
 16 periods of such use and shall state:

17 (a) the location and area of land to be affected by  
 18 the operation, with a description of access to the area from  
 19 the nearest public highways;

20 (b) the names and addresses of the owners of record  
 21 and any purchasers under contracts for deed of the surface  
 22 of the area of land to be affected by the permit and the  
 23 owners of record and any purchasers under contracts for deed  
 24 of all surface area within one-half mile of any part of the  
 25 affected area;

1 (c) the names and addresses of the present owners of  
2 record and any purchasers under contracts for deed of all  
3 subsurface minerals in the land to be affected;

4 (d) the source of the applicant's legal right to mine  
5 the mineral on the land affected by the permit;

6 (e) the permanent and temporary post-office addresses  
7 of the applicant;

8 (f) whether the applicant or any person associated  
9 with the applicant holds or has held any other permits under  
10 this part and an identification of those permits;

11 (g) whether the applicant is in compliance with  
12 82-4-251 and, if known, whether every officer, partner,  
13 director, or any individual owning of record or  
14 beneficially, alone or with associates, 10% or more of any  
15 class of stock of the applicant is subject to any of the  
16 provisions of 82-4-251 and he shall so certify and whether  
17 any of the foregoing parties or persons have ever had a  
18 strip-mining or underground-mining license or permit issued  
19 by any other state or federal agency revoked or have ever  
20 forfeited a strip-mining or underground-mining bond or a  
21 security deposited in lieu of a bond and, if so, a detailed  
22 explanation of the facts involved in each case must be  
23 attached;

24 (h) whether the applicant has a record of outstanding  
25 reclamation fees with the federal coal regulatory authority;

1 ~~(h)~~(i) the names and addresses of any persons who are  
2 engaged in strip- or underground-mining activities on behalf  
3 of the applicant;

4 ~~(i)~~(j) the annual rainfall and the direction and  
5 average velocity of the prevailing winds in the area where  
6 the applicant has requested a permit;

7 ~~(j)~~(k) the results of any test borings or core  
8 samplings which the applicant or his agent has conducted on  
9 the land to be affected, including the nature and the depth  
10 of the various strata or overburden and topsoil, the  
11 quantities and location of subsurface water and its quality,  
12 the thickness of any mineral seam, an analysis of the  
13 chemical properties of such minerals, including the acidity,  
14 sulphur content, and trace mineral elements of any coal  
15 seam, as well as the British thermal unit (Btu) content of  
16 such seam, and an analysis of the overburden, including  
17 topsoil. If test borings or core samplings are submitted,  
18 each permit application shall contain two copies each of two  
19 sets of geologic cross sections accurately depicting the  
20 known geologic makeup beneath the surface of the affected  
21 land. Each set shall depict subsurface conditions at such  
22 intervals as the department requires across the surface and  
23 shall run at a 90-degree angle to the other set. The  
24 department may not require intervals of less than 500 feet.  
25 Each cross section shall depict the thickness and geologic

1 character of all known strata beginning with the topsoil. In  
 2 addition, each application for an underground-mining permit  
 3 shall be accompanied by cross sections and maps showing the  
 4 proposed underground locations of all shafts, entries, and  
 5 haulageways or other excavations to be excavated during the  
 6 permit period. These cross sections shall also include all  
 7 existing shafts, entries, and haulageways.

8 ~~(\*)~~(1) the name and date of a daily newspaper of  
 9 general circulation within the county in which the applicant  
 10 will prominently publish at least once a week for 4  
 11 successive weeks after submission of the application an  
 12 announcement of his application for a strip-mining or  
 13 underground-mining permit and a detailed description of the  
 14 area of land to be affected should a permit be granted;

15 ~~(\*)~~(m) a determination of the probable hydrologic  
 16 consequences of coal mining and reclamation operations, both  
 17 on and off the mine site, with respect to the hydrologic  
 18 regime, quantity and quality of water in surface- and  
 19 ground-water systems, including the dissolved and suspended  
 20 solids under seasonal flow conditions and the collection of  
 21 sufficient data for the mine site and surrounding areas, so  
 22 that cumulative impacts of all anticipated mining in the  
 23 area upon the hydrology of the area and particularly upon  
 24 water availability can be made. However, this determination  
 25 is not required until such time as hydrologic information on

1 the general area prior to mining is made available from an  
 2 appropriate federal or state agency. The permit may not be  
 3 approved until such information is available and is  
 4 incorporated into the application.

5 ~~(\*)~~(n) a coal conservation plan; and

6 ~~(\*)~~(o) such other or further information as the  
 7 department may require.

8 (2) The application for a permit shall be accompanied  
 9 by two copies of all maps meeting the requirements of the  
 10 subsections below. The maps shall:

11 (a) identify the area to correspond with the  
 12 application;

13 (b) show any adjacent deep mining or surface mining  
 14 and the boundaries of surface properties and names of owners  
 15 of record of the affected area and within 1,000 feet of any  
 16 part of the affected area;

17 (c) show the names and locations of all streams,  
 18 creeks, or other bodies of water, roads, buildings,  
 19 cemeteries, oil and gas wells, and utility lines on the area  
 20 of land affected and within 1,000 feet of such area;

21 (d) show by appropriate markings the boundaries of the  
 22 area of land affected, any cropline of the seam or deposit  
 23 of mineral to be mined, and the total number of acres  
 24 involved in the area of land affected;

25 (e) show the date on which the map was prepared and

1 the north point;

2 (f) show the final surface and underground water  
3 drainage plan on and away from the area of land affected.  
4 This plan shall indicate the directional and volume flow of  
5 water, constructed drainways, natural waterways used for  
6 drainage, and the streams or tributaries receiving the  
7 discharge.

8 (g) show the proposed location of waste or refuse  
9 area;

10 (h) show the proposed location of temporary subsoil  
11 and topsoil storage area;

12 (i) show the proposed location of all facilities;

13 (j) show the location of test boring holes;

14 (k) show the surface location lines of any geologic  
15 cross sections which have been submitted;

16 (l) show a listing of plant varieties encountered in  
17 the area to be affected and their relative dominance in the  
18 area, together with an enumeration of tree varieties and the  
19 approximate number of each variety occurring per acre on the  
20 area to be affected, and the locations generally of the  
21 various kinds and varieties of plants, including but not  
22 limited to grasses, shrubs, legumes, forbs, and trees;

23 (m) be certified as follows: "I, the undersigned,  
24 hereby certify that this map is correct and shows to the  
25 best of my knowledge and belief all the information required

1 by the mining laws of this state." The certification shall  
2 be signed and notarized. The department may reject a map as  
3 incomplete if its accuracy is not so attested.

4 (n) contain such other or further information as the  
5 department may require.

6 (3) If the department finds that the probable total  
7 annual production at all locations of any strip- or  
8 underground-coal-mining operation applied for will not  
9 exceed 100,000 tons, any determination of probable  
10 hydrologic consequences that the department requires and the  
11 statement of result of test borings or core samplings shall,  
12 upon written request of the operator, be performed by a  
13 qualified public or private laboratory designated by the  
14 department. The department shall assume the cost of the  
15 determination and statement to the extent that it has  
16 received funds for this purpose.

17 (4) In addition to the information and maps required  
18 above, each application for a permit shall be accompanied by  
19 detailed plans or proposals showing the method of operation,  
20 the manner, time or distance, and estimated cost for  
21 backfilling, subsidence stabilization, water control,  
22 grading work, highwall reduction, topsoiling, planting,  
23 revegetating, and a reclamation plan for the area affected  
24 by the operation, which proposals shall meet the  
25 requirements of this part and rules adopted under this part.

1 The reclamation plan shall address the life of the operation  
2 and indicate the size, sequence, and the timing of the  
3 subareas for which it is anticipated that individual permits  
4 will be sought.

5 (5) Each applicant for a coal mining permit shall  
6 submit as part of the application a certificate issued by an  
7 insurance company authorized to do business in the state  
8 certifying that the applicant has in force for the strip- or  
9 underground-mining and reclamation operations for which the  
10 permit is sought a public liability insurance policy, or  
11 evidence that the applicant has satisfied other state or  
12 federal self-insurance requirements. This policy shall  
13 provide for personal injury and property damage protection  
14 in an amount adequate to compensate any persons damaged as a  
15 result of strip- or underground-coal-mining and reclamation  
16 operations, including use of explosives, and entitled to  
17 compensation under applicable provisions of state law. The  
18 permittee must maintain the policy in full force and effect  
19 during the term of the permit and any renewal until all  
20 reclamation operations have been completed.

21 (6) Each applicant for a strip-mining or  
22 underground-mining reclamation permit shall file a copy of  
23 his application for public inspection with the clerk and  
24 recorder at the courthouse of the county where the major  
25 portion of mining is proposed to occur."

1 Section 3. Section 82-4-223, MCA, is amended to read:  
2 "82-4-223. Permit fee and surety bond. (1) An  
3 application fee of \$50 \$100 shall be paid before the permit  
4 required in this part shall be issued.

5 (2) Before a permit may be issued, the operator shall  
6 file with the department a bond payable to the state of  
7 Montana with surety satisfactory to the department in the  
8 penal sum to be determined by the board, on the  
9 recommendation of the commissioner, of not less than \$200  
10 for each acre or fraction thereof of the area of land  
11 affected, with a minimum bond of \$10,000, conditioned upon  
12 the faithful performance of the requirements set forth in  
13 this part and of the rules of the board. The operator may  
14 elect to deposit cash, negotiable bonds, or negotiable  
15 certificates of deposit of any bank organized or transacting  
16 business in the United States. The cash deposit or market  
17 value of such securities shall be equal to or greater than  
18 the amount of the bond required for the bonded area. The  
19 level of bonding shall be relative to the degree of  
20 disturbance projected by the original permit and the annual  
21 report. A political subdivision or agency of the state need  
22 not file a bond unless required to do so by the board. The  
23 board shall adjust the amount of bond required if the cost  
24 of reclamation changes.

25 (3) In determining the amount of the bond, the board

1 shall take into consideration the character and nature of  
2 the overburden, the future suitable use of the land  
3 involved, and the cost of backfilling, grading, highwall  
4 reduction, subsidence stabilization, water control,  
5 topsoiling, and reclamation to be required, but in no event  
6 shall the bond be less than the total estimated cost to the  
7 state of completing the work described in the reclamation  
8 plan."

9 NEW SECTION. Section 4. Extension of authority. Any  
10 existing authority of the department of state lands or the  
11 board of land commissioners to make rules on the subject of  
12 the provisions of this act is extended to the provisions of  
13 this act.

-End-

1 HOUSE BILL NO. 230  
 2 INTRODUCED BY HANSON  
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IN ORDER  
 7 TO BRING THE ACT INTO COMPLIANCE WITH FEDERAL LAW; AND  
 8 AMENDING SECTIONS 82-4-203 AND ~~82-4-221~~ THROUGH, 82-4-222,  
 9 AND 82-4-223, MCA."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Section 82-4-203, MCA, is amended to read:  
 13 "82-4-203. Definitions. Unless the context requires  
 14 otherwise, in this part the following definitions apply:  
 15 (1) "Abandoned" means an operation where no mineral is  
 16 being produced and where the department determines that the  
 17 operation will not continue or resume.  
 18 (2) "Alluvial valley floor" means the unconsolidated  
 19 stream-laid deposits holding streams where water  
 20 availability is sufficient for subirrigation or flood  
 21 irrigation agricultural activities; but the term does not  
 22 include upland areas which are generally overlain by a thin  
 23 veneer of colluvial deposits composed chiefly of debris from  
 24 sheet erosion, deposits by unconcentrated runoff or slope  
 25 wash, together with talus, other mass movement accumulation,

and windblown deposits.  
 (3) "Aquifer" means any geologic formation or natural  
 zone beneath the earth's surface that contains or stores  
 water and transmits it from one point to another in  
 quantities which permit or have the potential to permit  
 economic development as a water source.  
 (4) "Area of land affected" means the area of land  
 from which overburden is to be or has been removed and upon  
 which the overburden is to be or has been deposited and  
 includes all land overlying any tunnels, shafts, or other  
 excavations used to extract the mineral, lands affected by  
 the construction of new railroad loops and roads or the  
 improvement or use of existing railroad loops and roads to  
 gain access and to haul the mineral, processing facilities  
 at or near the mine site or other mine associated  
 facilities, waste deposition areas, treatment ponds, and any  
 other surface or subsurface disturbance associated with  
 strip mining or underground mining, and all activities  
 necessary and incident to the reclamation of such  
 operations.  
 (5) "Bench" means the ledge, shelf, table, or terrace  
 formed in the contour method of strip mining.  
 (6) "Board" means the board of land commissioners  
 provided for in Article X, section 4, of the constitution of  
 this state.



1 (7) "Coal conservation plan" means the planned course  
2 of conduct of a strip- or underground-mining operation to  
3 include plans for the removal and utilization of minable and  
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical  
6 processing of coal and its cleaning, concentrating, or other  
7 processing or preparation. THE TERM DOES NOT MEAN THE  
8 CONVERSION OF COAL TO ANOTHER ENERGY FORM OR TO A GASEOUS OR  
9 LIQUID HYDROCARBON, EXCEPT FOR INCIDENTAL AMOUNTS THAT DO  
10 NOT LEAVE THE PLANT, NOR DOES THE TERM MEAN PROCESSING FOR  
11 OTHER THAN COMMERCIAL PURPOSES.

12 (9) "Coal preparation plant" means a COMMERCIAL  
13 facility where coal is subject to coal preparation. The  
14 term includes COMMERCIAL facilities associated with coal  
15 preparation activities but is not limited to loading  
16 buildings, water treatment facilities, water storage  
17 facilities, settling basins and impoundments, and coal  
18 processing and other waste disposal areas.

19 (10) "Commissioner" means the commissioner of state  
20 lands provided for in 2-15-3202.

21 (11) "Contour strip mining" means that strip-mining  
22 method commonly carried out in areas of rough and hilly  
23 topography in which the coal or mineral seam outcrops along  
24 the side of the slope and entrance is made to the seam by  
25 excavating a bench or table cut at and along the site of the

1 seam outcropping with the excavated overburden commonly  
2 being cast down the slope below the mineral seam and the  
3 operating bench.

4 (12) "Degree" means from the horizontal and in each  
5 case is subject to a tolerance of 5% error.

6 (13) "Department" means the department of state  
7 lands provided for in Title 2, chapter 15, part 32.

8 (14) "Failure to conserve coal" means the  
9 nonremoval or nonutilization of minable and marketable coal  
10 by an operation, provided that the nonremoval or  
11 nonutilization of minable and marketable coal in accordance  
12 with reclamation standards established by the department  
13 shall not be considered failure to conserve coal.

14 (15) "Fill bench" means that portion of a bench or  
15 table which is formed by depositing overburden beyond or  
16 downslope from the cut section as formed in the contour  
17 method of strip mining.

18 (16) "Imminent danger to the health and safety of  
19 the public" means the existence of any condition or practice  
20 or any violation of a permit or other requirement of this  
21 part in a strip- or underground-coal-mining and reclamation  
22 operation that could reasonably be expected to cause  
23 substantial physical harm to persons outside the permit area  
24 before such condition, practice, or violation can be abated.  
25 A reasonable expectation of death or serious injury before

1 abatement exists if a rational person, subjected to the same  
2 conditions or practices giving rise to the peril, would not  
3 expose himself or herself to the danger during the time  
4 necessary for abatement.

5 †15†(17) "Marketable coal" means a minable coal that is  
6 economically feasible to mine and is fit for sale in the  
7 usual course of trade.

8 †16†(18) "Method of operation" means the method or  
9 manner by which the cut, open pit, shaft, or excavation is  
10 made, the overburden is placed or handled, water is  
11 controlled, and other acts are performed by the operator in  
12 the process of uncovering and removing the minerals that  
13 affect the reclamation of the area of land affected.

14 †17†(19) "Minaable coal" means that coal which can be  
15 removed through strip- or underground-mining methods  
16 adaptable to the location that coal is being mined or is  
17 planned to be mined.

18 †18†(20) "Mineral" means coal and uranium.

19 †19†(21) "Operation" means all of the premises,  
20 facilities, railroad loops, roads, and equipment used in the  
21 process of producing and removing mineral from and  
22 reclaiming a designated strip-mine or underground-mine area,  
23 INCLUDING COAL PREPARATION PLANTS, and all activities,  
24 including excavation incident thereto, or prospecting for  
25 the purpose of determining the location, quality, or

1 quantity of a natural mineral deposit.

2 †20†(22) "Operator" means a person engaged in strip  
3 mining or underground mining who removes or intends to  
4 remove more than 10,000 cubic yards of mineral or overburden  
5 or a person engaged in coal mining who removes or intends to  
6 remove more than 250 tons of coal from the earth by mining  
7 within 12 consecutive calendar months in any one location or  
8 a person engaged in operating a coal preparation plant.

9 †21†(23) "Overburden" means all of the earth and other  
10 materials which lie above a natural mineral deposit and also  
11 means such earth and other material after removal from their  
12 natural state in the process of mining.

13 †22†(24) "Person" means a person, partnership,  
14 corporation, association, or other legal entity or any  
15 political subdivision or agency of the state or federal  
16 government.

17 †23†(25) "Prime farmland" means that land previously  
18 prescribed by the United States secretary of agriculture on  
19 the basis of such factors as moisture availability,  
20 temperature regime, chemical balance, permeability,  
21 surface-layer composition, susceptibility to flooding, and  
22 erosion characteristics and which historically has been used  
23 for intensive agricultural purposes and as defined in the  
24 Federal Register.

25 †24†(26) "Prospecting" means the removal of overburden,

1 core drilling, construction of roads, or any other  
2 disturbance of the surface for the purpose of determining  
3 the location, quantity, or quality of a natural mineral  
4 deposit.

5 ~~(25)~~(27) "Reclamation" means backfilling, subsidence  
6 stabilization, water control, grading, highwall reduction,  
7 topsoiling, planting, revegetation, and other work to  
8 restore an area of land affected by strip mining or  
9 underground mining under a plan approved by the department.

10 (28) "Remining" means conducting surface coal mining  
11 and reclamation operations that affect previously mined  
12 areas; for example, the recovery of additional mineral from  
13 existing gob or tailings piles.

14 ~~(26)~~(29) "Strip mining" means any part of the process  
15 followed in the production of mineral by the opencut method,  
16 including mining by the auger method or any similar method  
17 which penetrates a mineral deposit and removes mineral  
18 directly through a series of openings made by a machine  
19 which enters the deposit from a surface excavation or any  
20 other mining method or process in which the strata or  
21 overburden is removed or displaced in order to recover the  
22 mineral. For the purposes of this part only, strip mining  
23 also includes remining AND COAL PREPARATION. The term  
24 "remining"-is TERMS "REMINING" AND "COAL PREPARATION" ARE  
25 not included in the definition of "strip mining" for

1 purposes of Title 15, chapter 35, part 1.

2 ~~(27)~~(30) "Subsidence" means a vertically downward  
3 movement of overburden materials resulting from the actual  
4 mining of an underlying mineral deposit or associated  
5 underground excavations.

6 ~~(28)~~(31) "Surface owner" means a person who holds legal  
7 or equitable title to the land surface and whose principal  
8 place of residence is on the land or who personally conducts  
9 farming or ranching operations upon a farm or ranch unit to  
10 be directly affected by strip-mining operations or who  
11 receives directly a significant portion of his income, if  
12 any, from such farming or ranching operations or the state  
13 of Montana where the state owns the surface.

14 ~~(29)~~(32) "Topsoil" means the unconsolidated mineral  
15 matter naturally present on the surface of the earth that  
16 has been subjected to and influenced by genetic and  
17 environmental factors of parent material, climate, macro-  
18 and microorganisms, and topography, all acting over a period  
19 of time, and that is necessary for the growth and  
20 regeneration of vegetation on the surface of the earth.

21 ~~(30)~~(33) "Underground mining" means any part of the  
22 process followed in the production of a mineral such that  
23 vertical or horizontal shafts, slopes, drifts, or incline  
24 planes connected with excavations penetrating the mineral  
25 stratum or strata are utilized and includes mining by in

1 situ methods.

2 ~~{31}~~(34) "Unwarranted failure to comply" means the  
3 failure of a permittee to prevent the occurrence of any  
4 violation of his permit or any requirement of this part due  
5 to indifference, lack of diligence, or lack of reasonable  
6 care, or the failure to abate any violation of such permit  
7 or this part due to indifference, lack of diligence, or lack  
8 of reasonable care.

9 ~~{32}~~(35) "Waiver" means any document which demonstrates  
10 the clear intention to release rights in the surface estate  
11 for the purpose of permitting the extraction of subsurface  
12 minerals by strip-mining methods.

13 ~~{33}~~(36) "Written consent" means such written statement  
14 as is executed by the owner of the surface estate, upon a  
15 form approved by the department, demonstrating that such  
16 owner consents to entry of an operator for the purpose of  
17 conducting strip-mining operations and that such consent is  
18 given only to such strip-mining and reclamation operations  
19 which fully comply with the terms and requirements of this  
20 part."

21 Section 2. Section 02-4-221, MCA, is amended to read:

22 "02-4-221. Mining permit required. (1) An operator  
23 may not engage in strip or underground mining or coal  
24 preparation without having first obtained from the  
25 department a permit designating the area of land affected by

1 the operation, which designation shall include all lands  
2 reasonably anticipated to be mined or otherwise affected  
3 during the applicable 5-year period. The permit shall  
4 authorize the operator to engage in strip or underground  
5 mining upon the area of land described in his application  
6 and designated in the permit for a period of 5 years from  
7 the date of its issuance. Such permit shall be renewable  
8 upon each 5-year anniversary thereafter upon application to  
9 the department at least 120 but not more than 150 days prior  
10 to the renewal date so long as the operator is in compliance  
11 with the requirements of this part, the rules hereunder, and  
12 the reclamation plan provided for in 02-4-231 and agrees to  
13 comply with all applicable laws and rules in effect at the  
14 time of renewal. Such renewal shall further be subject to  
15 the denial provisions of 02-4-227, 02-4-234, and 02-4-251.  
16 On application for renewal, the burden shall be on the  
17 opponents of renewal to demonstrate that the permit should  
18 not be renewed. A permit shall terminate if the permittee  
19 has not commenced strip or underground mining operations  
20 pursuant to the permit within 3 years of the issuance of the  
21 permit. However, the department may grant reasonable  
22 extensions of time upon a showing that such extensions are  
23 necessary by reason of litigation precluding the  
24 commencement or threatening substantial economic loss to the  
25 permittee or by reason of conditions beyond the control and

1 without the fault or negligence of the permittee. With  
 2 respect to coal to be mined for use in a synthetic fuel  
 3 facility or specific major electric generating facility, the  
 4 permittee is considered to have commenced strip or  
 5 underground mining operations at such time as the  
 6 construction of the synthetic or generating facility is  
 7 initiated.

8 (2) As a condition to the issuance of every permit  
 9 issued under this part, an authorized representative of the  
 10 department shall, without advance notice, have the right of  
 11 entry to, upon, or through a strip or underground mining  
 12 operation or any premises in which any records required to  
 13 be maintained under this part are located and may, at  
 14 reasonable times and without delay, have access to copy any  
 15 records and inspect any monitoring equipment or method of  
 16 operation required under this part. When an inspection  
 17 results from information provided to the department by any  
 18 person, the department shall notify that person when the  
 19 inspection is proposed to be made and that person shall be  
 20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
 22 submit an application for a revision of the permit, together  
 23 with a revised reclamation plan, to the department. The  
 24 department may not approve the application unless it finds  
 25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 2. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation or the coal  
 12 preparation plant. Such plan shall reflect thorough advance  
 13 investigation and study by the operator and shall include  
 14 all known or readily discoverable past and present uses of  
 15 the land and water to be affected and the approximate  
 16 periods of such use and shall state:

17 (a) the location and area of land to be affected by  
 18 the operation, with a description of access to the area from  
 19 the nearest public highways;

20 (b) the names and addresses of the owners of record  
 21 and any purchasers under contracts for deed of the surface  
 22 of the area of land to be affected by the permit and the  
 23 owners of record and any purchasers under contracts for deed  
 24 of all surface area within one-half mile of any part of the  
 25 affected area;

1 (c) the names and addresses of the present owners of  
 2 record and any purchasers under contracts for deed of all  
 3 subsurface minerals in the land to be affected;

4 (d) the source of the applicant's legal right to mine  
 5 the mineral on the land affected by the permit;

6 (e) the permanent and temporary post-office addresses  
 7 of the applicant;

8 (f) whether the applicant or any person associated  
 9 with the applicant holds or has held any other permits under  
 10 this part and an identification of those permits;

11 (g) whether the applicant is in compliance with  
 12 82-4-251 and, if known, whether every officer, partner,  
 13 director, or any individual owning of record or  
 14 beneficially, alone or with associates, 10% or more of any  
 15 class of stock of the applicant is subject to any of the  
 16 provisions of 82-4-251 and he shall so certify and whether  
 17 any of the foregoing parties or persons have ever had a  
 18 strip-mining or underground-mining license or permit issued  
 19 by any other state or federal agency revoked or have ever  
 20 forfeited a strip-mining or underground-mining bond or a  
 21 security deposited in lieu of a bond and, if so, a detailed  
 22 explanation of the facts involved in each case must be  
 23 attached;

24 (h) whether the applicant has a record of outstanding  
 25 reclamation fees with the federal coal regulatory authority;

1 ~~(h)~~(i) the names and addresses of any persons who are  
 2 engaged in strip- or underground-mining activities on behalf  
 3 of the applicant;

4 ~~(i)~~(j) the annual rainfall and the direction and  
 5 average velocity of the prevailing winds in the area where  
 6 the applicant has requested a permit;

7 ~~(j)~~(k) the results of any test borings or core  
 8 samplings which the applicant or his agent has conducted on  
 9 the land to be affected, including the nature and the depth  
 10 of the various strata or overburden and topsoil, the  
 11 quantities and location of subsurface water and its quality,  
 12 the thickness of any mineral seam, an analysis of the  
 13 chemical properties of such minerals, including the acidity,  
 14 sulphur content, and trace mineral elements of any coal  
 15 seam, as well as the British thermal unit (Btu) content of  
 16 such seam, and an analysis of the overburden, including  
 17 topsoil. If test borings or core samplings are submitted,  
 18 each permit application shall contain two copies each of two  
 19 sets of geologic cross sections accurately depicting the  
 20 known geologic makeup beneath the surface of the affected  
 21 land. Each set shall depict subsurface conditions at such  
 22 intervals as the department requires across the surface and  
 23 shall run at a 90-degree angle to the other set. The  
 24 department may not require intervals of less than 500 feet.  
 25 Each cross section shall depict the thickness and geologic

1 character of all known strata beginning with the topsoil. In  
 2 addition, each application for an underground-mining permit  
 3 shall be accompanied by cross sections and maps showing the  
 4 proposed underground locations of all shafts, entries, and  
 5 haulageways or other excavations to be excavated during the  
 6 permit period. These cross sections shall also include all  
 7 existing shafts, entries, and haulageways.

8 ~~(\*)~~(1) the name and date of a daily newspaper of  
 9 general circulation within the county in which the applicant  
 10 will prominently publish at least once a week for 4  
 11 successive weeks after submission of the application an  
 12 announcement of his application for a strip-mining or  
 13 underground-mining permit and a detailed description of the  
 14 area of land to be affected should a permit be granted;

15 ~~(\*)~~(m) a determination of the probable hydrologic  
 16 consequences of coal mining and reclamation operations, both  
 17 on and off the mine site, with respect to the hydrologic  
 18 regime, quantity and quality of water in surface- and  
 19 ground-water systems, including the dissolved and suspended  
 20 solids under seasonal flow conditions and the collection of  
 21 sufficient data for the mine site and surrounding areas, so  
 22 that cumulative impacts of all anticipated mining in the  
 23 area upon the hydrology of the area and particularly upon  
 24 water availability can be made. However, this determination  
 25 is not required until such time as hydrologic information on

1 the general area prior to mining is made available from an  
 2 appropriate federal or state agency. The permit may not be  
 3 approved until such information is available and is  
 4 incorporated into the application.

5 ~~(\*)~~(n) a coal conservation plan; and  
 6 ~~(\*)~~(o) such other or further information as the  
 7 department may require.

8 (2) The application for a permit shall be accompanied  
 9 by two copies of all maps meeting the requirements of the  
 10 subsections below. The maps shall:

11 (a) identify the area to correspond with the  
 12 application;

13 (b) show any adjacent deep mining or surface mining  
 14 and the boundaries of surface properties and names of owners  
 15 of record of the affected area and within 1,000 feet of any  
 16 part of the affected area;

17 (c) show the names and locations of all streams,  
 18 creeks, or other bodies of water, roads, buildings,  
 19 cemeteries, oil and gas wells, and utility lines on the area  
 20 of land affected and within 1,000 feet of such area;

21 (d) show by appropriate markings the boundaries of the  
 22 area of land affected, any cropline of the seam or deposit  
 23 of mineral to be mined, and the total number of acres  
 24 involved in the area of land affected;

25 (e) show the date on which the map was prepared and

1 the north point;

2 (f) show the final surface and underground water

3 drainage plan on and away from the area of land affected.

4 This plan shall indicate the directional and volume flow of

5 water, constructed drainways, natural waterways used for

6 drainage, and the streams or tributaries receiving the

7 discharge.

8 (g) show the proposed location of waste or refuse

9 area;

10 (h) show the proposed location of temporary subsoil

11 and topsoil storage area;

12 (i) show the proposed location of all facilities;

13 (j) show the location of test boring holes;

14 (k) show the surface location lines of any geologic

15 cross sections which have been submitted;

16 (l) show a listing of plant varieties encountered in

17 the area to be affected and their relative dominance in the

18 area, together with an enumeration of tree varieties and the

19 approximate number of each variety occurring per acre on the

20 area to be affected, and the locations generally of the

21 various kinds and varieties of plants, including but not

22 limited to grasses, shrubs, legumes, forbs, and trees;

23 (m) be certified as follows: "I, the undersigned,

24 hereby certify that this map is correct and shows to the

25 best of my knowledge and belief all the information required

1 by the mining laws of this state." The certification shall

2 be signed and notarized. The department may reject a map as

3 incomplete if its accuracy is not so attested.

4 (n) contain such other or further information as the

5 department may require.

6 (3) If the department finds that the probable total

7 annual production at all locations of any strip- or

8 underground-coal-mining operation applied for will not

9 exceed 100,000 tons, any determination of probable

10 hydrologic consequences that the department requires and the

11 statement of result of test borings or core samplings shall,

12 upon written request of the operator, be performed by a

13 qualified public or private laboratory designated by the

14 department. The department shall assume the cost of the

15 determination and statement to the extent that it has

16 received funds for this purpose.

17 (4) In addition to the information and maps required

18 above, each application for a permit shall be accompanied by

19 detailed plans or proposals showing the method of operation,

20 the manner, time or distance, and estimated cost for

21 backfilling, subsidence stabilization, water control,

22 grading work, highwall reduction, topsoiling, planting,

23 revegetating, and a reclamation plan for the area affected

24 by the operation, which proposals shall meet the

25 requirements of this part and rules adopted under this part.



1 The reclamation plan shall address the life of the operation  
 2 and indicate the size, sequence, and the timing of the  
 3 subareas for which it is anticipated that individual permits  
 4 will be sought.

5 (5) Each applicant for a coal mining permit shall  
 6 submit as part of the application a certificate issued by an  
 7 insurance company authorized to do business in the state  
 8 certifying that the applicant has in force for the strip- or  
 9 underground-mining and reclamation operations for which the  
 10 permit is sought a public liability insurance policy, or  
 11 evidence that the applicant has satisfied other state or  
 12 federal self-insurance requirements. This policy shall  
 13 provide for personal injury and property damage protection  
 14 in an amount adequate to compensate any persons damaged as a  
 15 result of strip- or underground-coal-mining and reclamation  
 16 operations, including use of explosives, and entitled to  
 17 compensation under applicable provisions of state law. The  
 18 permittee must maintain the policy in full force and effect  
 19 during the term of the permit and any renewal until all  
 20 reclamation operations have been completed.

21 (6) Each applicant for a strip-mining or  
 22 underground-mining reclamation permit shall file a copy of  
 23 his application for public inspection with the clerk and  
 24 recorder at the courthouse of the county where the major  
 25 portion of mining is proposed to occur."

1 Section 3. Section 82-4-223, MCA, is amended to read:  
 2 "82-4-223. Permit fee and surety bond. (1) An  
 3 application fee of ~~950~~ 100 shall be paid before the permit  
 4 required in this part shall be issued.

5 (2) Before a permit may be issued, the operator shall  
 6 file with the department a bond payable to the state of  
 7 Montana with surety satisfactory to the department in the  
 8 penal sum to be determined by the board, on the  
 9 recommendation of the commissioner, of not less than \$200  
 10 for each acre or fraction thereof of the area of land  
 11 affected, with a minimum bond of \$10,000, conditioned upon  
 12 the faithful performance of the requirements set forth in  
 13 this part and of the rules of the board. The operator may  
 14 elect to deposit cash, negotiable bonds, or negotiable  
 15 certificates of deposit of any bank organized or transacting  
 16 business in the United States. The cash deposit or market  
 17 value of such securities shall be equal to or greater than  
 18 the amount of the bond required for the bonded area. The  
 19 level of bonding shall be relative to the degree of  
 20 disturbance projected by the original permit and the annual  
 21 report. A political subdivision or agency of the state need  
 22 not file a bond unless required to do so by the board. The  
 23 board shall adjust the amount of bond required if the cost  
 24 of reclamation changes.

25 (3) In determining the amount of the bond, the board

1 shall take into consideration the character and nature of  
2 the overburden, the future suitable use of the land  
3 involved, and the cost of backfilling, grading, highwall  
4 reduction, subsidence stabilization, water control,  
5 topsoiling, and reclamation to be required, but in no event  
6 shall the bond be less than the total estimated cost to the  
7 state of completing the work described in the reclamation  
8 plan."

9 NEW SECTION. Section 4. Extension of authority. Any  
10 existing authority of the department of state lands or the  
11 board of land commissioners to make rules on the subject of  
12 the provisions of this act is extended to the provisions of  
13 this act.

-End-

## 1 HOUSE BILL NO. 230

2 INTRODUCED BY HANSON

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IN ORDER  
7 TO BRING THE ACT INTO COMPLIANCE WITH FEDERAL LAW; AND  
8 AMENDING SECTIONS 82-4-203 ANB-~~82-4-221~~--THROUGH, 82-4-222,  
9 AND 82-4-223, MCA."

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

12 Section 1. Section 82-4-203, MCA, is amended to read:

13 "82-4-203. Definitions. Unless the context requires  
14 otherwise, in this part the following definitions apply:15 (1) "Abandoned" means an operation where no mineral is  
16 being produced and where the department determines that the  
17 operation will not continue or resume.18 (2) "Alluvial valley floor" means the unconsolidated  
19 stream-laid deposits holding streams where water  
20 availability is sufficient for subirrigation or flood  
21 irrigation agricultural activities; but the term does not  
22 include upland areas which are generally overlain by a thin  
23 veneer of colluvial deposits composed chiefly of debris from  
24 sheet erosion, deposits by unconcentrated runoff or slope  
25 wash, together with talus, other mass movement accumulation,

1 and windblown deposits.

2 (3) "Aquifer" means any geologic formation or natural  
3 zone beneath the earth's surface that contains or stores  
4 water and transmits it from one point to another in  
5 quantities which permit or have the potential to permit  
6 economic development as a water source.7 (4) "Area of land affected" means the area of land  
8 from which overburden is to be or has been removed and upon  
9 which the overburden is to be or has been deposited and  
10 includes all land overlying any tunnels, shafts, or other  
11 excavations used to extract the mineral, lands affected by  
12 the construction of new railroad loops and roads or the  
13 improvement or use of existing railroad loops and roads to  
14 gain access and to haul the mineral, processing facilities  
15 at or near the mine site or other mine associated  
16 facilities, waste deposition areas, treatment ponds, and any  
17 other surface or subsurface disturbance associated with  
18 strip mining or underground mining, and all activities  
19 necessary and incident to the reclamation of such  
20 operations.21 (5) "Bench" means the ledge, shelf, table, or terrace  
22 formed in the contour method of strip mining.23 (6) "Board" means the board of land commissioners  
24 provided for in Article X, section 4, of the constitution of  
25 this state.

1 (7) "Coal conservation plan" means the planned course  
2 of conduct of a strip- or underground-mining operation to  
3 include plans for the removal and utilization of minable and  
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical  
6 processing of coal and its cleaning, concentrating, or other  
7 processing or preparation. THE TERM DOES NOT MEAN THE  
8 CONVERSION OF COAL TO ANOTHER ENERGY FORM OR TO A GASEOUS OR  
9 LIQUID HYDROCARBON, EXCEPT FOR INCIDENTAL AMOUNTS THAT DO  
10 NOT LEAVE THE PLANT, NOR DOES THE TERM MEAN PROCESSING FOR  
11 OTHER THAN COMMERCIAL PURPOSES.

12 (9) "Coal preparation plant" means a COMMERCIAL  
13 facility where coal is subject to coal preparation. The  
14 term includes COMMERCIAL facilities associated with coal  
15 preparation activities but is not limited to loading  
16 buildings, water treatment facilities, water storage  
17 facilities, settling basins and impoundments, and coal  
18 processing and other waste disposal areas.

19 (10) "Commissioner" means the commissioner of state  
20 lands provided for in 2-15-3202.

21 (11) "Contour strip mining" means that strip-mining  
22 method commonly carried out in areas of rough and hilly  
23 topography in which the coal or mineral seam outcrops along  
24 the side of the slope and entrance is made to the seam by  
25 excavating a bench or table cut at and along the site of the

1 seam outcropping with the excavated overburden commonly  
2 being cast down the slope below the mineral seam and the  
3 operating bench.

4 (12) "Degree" means from the horizontal and in each  
5 case is subject to a tolerance of 5% error.

6 (13) "Department" means the department of state  
7 lands provided for in Title 2, chapter 15, part 32.

8 (14) "Failure to conserve coal" means the  
9 nonremoval or nonutilization of minable and marketable coal  
10 by an operation, provided that the nonremoval or  
11 nonutilization of minable and marketable coal in accordance  
12 with reclamation standards established by the department  
13 shall not be considered failure to conserve coal.

14 (15) "Fill bench" means that portion of a bench or  
15 table which is formed by depositing overburden beyond or  
16 downslope from the cut section as formed in the contour  
17 method of strip mining.

18 (16) "Imminent danger to the health and safety of  
19 the public" means the existence of any condition or practice  
20 or any violation of a permit or other requirement of this  
21 part in a strip- or underground-coal-mining and reclamation  
22 operation that could reasonably be expected to cause  
23 substantial physical harm to persons outside the permit area  
24 before such condition, practice, or violation can be abated.  
25 A reasonable expectation of death or serious injury before

1 abatement exists if a rational person, subjected to the same  
 2 conditions or practices giving rise to the peril, would not  
 3 expose himself or herself to the danger during the time  
 4 necessary for abatement.

5 ~~{15}~~(17) "Marketable coal" means a minable coal that is  
 6 economically feasible to mine and is fit for sale in the  
 7 usual course of trade.

8 ~~{16}~~(18) "Method of operation" means the method or  
 9 manner by which the cut, open pit, shaft, or excavation is  
 10 made, the overburden is placed or handled, water is  
 11 controlled, and other acts are performed by the operator in  
 12 the process of uncovering and removing the minerals that  
 13 affect the reclamation of the area of land affected.

14 ~~{17}~~(19) "Minaable coal" means that coal which can be  
 15 removed through strip- or underground-mining methods  
 16 adaptable to the location that coal is being mined or is  
 17 planned to be mined.

18 ~~{18}~~(20) "Mineral" means coal and uranium.

19 ~~{19}~~(21) "Operation" means all of the premises,  
 20 facilities, railroad loops, roads, and equipment used in the  
 21 process of producing and removing mineral from and  
 22 reclaiming a designated strip-mine or underground-mine area,  
 23 INCLUDING COAL PREPARATION PLANTS, and all activities,  
 24 including excavation incident thereto, or prospecting for  
 25 the purpose of determining the location, quality, or

1 quantity of a natural mineral deposit.

2 ~~{20}~~(22) "Operator" means a person engaged in strip  
 3 mining or underground mining who removes or intends to  
 4 remove more than 10,000 cubic yards of mineral or overburden  
 5 or a person engaged in coal mining who removes or intends to  
 6 remove more than 250 tons of coal from the earth by mining  
 7 within 12 consecutive calendar months in any one location or  
 8 a person engaged in operating a coal preparation plant.

9 ~~{21}~~(23) "Overburden" means all of the earth and other  
 10 materials which lie above a natural mineral deposit and also  
 11 means such earth and other material after removal from their  
 12 natural state in the process of mining.

13 ~~{22}~~(24) "Person" means a person, partnership,  
 14 corporation, association, or other legal entity or any  
 15 political subdivision or agency of the state or federal  
 16 government.

17 ~~{23}~~(25) "Prime farmland" means that land previously  
 18 prescribed by the United States secretary of agriculture on  
 19 the basis of such factors as moisture availability,  
 20 temperature regime, chemical balance, permeability,  
 21 surface-layer composition, susceptibility to flooding, and  
 22 erosion characteristics and which historically has been used  
 23 for intensive agricultural purposes and as defined in the  
 24 Federal Register.

25 ~~{24}~~(26) "Prospecting" means the removal of overburden,

1 core drilling, construction of roads, or any other  
2 disturbance of the surface for the purpose of determining  
3 the location, quantity, or quality of a natural mineral  
4 deposit.

5 ~~(25)~~(27) "Reclamation" means backfilling, subsidence  
6 stabilization, water control, grading, highwall reduction,  
7 topsoiling, planting, revegetation, and other work to  
8 restore an area of land affected by strip mining or  
9 underground mining under a plan approved by the department.

10 (28) "Remining" means conducting surface coal mining  
11 and reclamation operations that affect previously mined  
12 areas; for example, the recovery of additional mineral from  
13 existing gob or tailings piles.

14 ~~(26)~~(29) "Strip mining" means any part of the process  
15 followed in the production of mineral by the open-cut method,  
16 including mining by the auger method or any similar method  
17 which penetrates a mineral deposit and removes mineral  
18 directly through a series of openings made by a machine  
19 which enters the deposit from a surface excavation or any  
20 other mining method or process in which the strata or  
21 overburden is removed or displaced in order to recover the  
22 mineral. For the purposes of this part only, strip mining  
23 also includes remining AND COAL PREPARATION. The term  
24 "remining"--is TERMS "REMINING" AND "COAL PREPARATION" ARE  
25 not included in the definition of "strip mining" for

1 purposes of Title 15, chapter 35, part 1.

2 ~~(27)~~(30) "Subsidence" means a vertically downward  
3 movement of overburden materials resulting from the actual  
4 mining of an underlying mineral deposit or associated  
5 underground excavations.

6 ~~(28)~~(31) "Surface owner" means a person who holds legal  
7 or equitable title to the land surface and whose principal  
8 place of residence is on the land or who personally conducts  
9 farming or ranching operations upon a farm or ranch unit to  
10 be directly affected by strip-mining operations or who  
11 receives directly a significant portion of his income, if  
12 any, from such farming or ranching operations or the state  
13 of Montana where the state owns the surface.

14 ~~(29)~~(32) "Topsoil" means the unconsolidated mineral  
15 matter naturally present on the surface of the earth that  
16 has been subjected to and influenced by genetic and  
17 environmental factors of parent material, climate, macro-  
18 and microorganisms, and topography, all acting over a period  
19 of time, and that is necessary for the growth and  
20 regeneration of vegetation on the surface of the earth.

21 ~~(30)~~(33) "Underground mining" means any part of the  
22 process followed in the production of a mineral such that  
23 vertical or horizontal shafts, slopes, drifts, or incline  
24 planes connected with excavations penetrating the mineral  
25 stratum or strata are utilized and includes mining by in

1 situ methods.

2 ~~{31}~~(34) "Unwarranted failure to comply" means the  
 3 failure of a permittee to prevent the occurrence of any  
 4 violation of his permit or any requirement of this part due  
 5 to indifference, lack of diligence, or lack of reasonable  
 6 care, or the failure to abate any violation of such permit  
 7 or this part due to indifference, lack of diligence, or lack  
 8 of reasonable care.

9 ~~{32}~~(35) "Waiver" means any document which demonstrates  
 10 the clear intention to release rights in the surface estate  
 11 for the purpose of permitting the extraction of subsurface  
 12 minerals by strip-mining methods.

13 ~~{33}~~(36) "Written consent" means such written statement  
 14 as is executed by the owner of the surface estate, upon a  
 15 form approved by the department, demonstrating that such  
 16 owner consents to entry of an operator for the purpose of  
 17 conducting strip-mining operations and that such consent is  
 18 given only to such strip-mining and reclamation operations  
 19 which fully comply with the terms and requirements of this  
 20 part."

21 Section 2. Section 82-4-221, MCA, is amended to read:

22 "82-4-221. Mining permit required. (1) An operator  
 23 may not engage in strip or underground mining or coal  
 24 preparation without having first obtained from the  
 25 department a permit designating the area of land affected by

1 the operation, which designation shall include all lands  
 2 reasonably anticipated to be mined or otherwise affected  
 3 during the applicable 5-year period. The permit shall  
 4 authorize the operator to engage in strip or underground  
 5 mining upon the area of land described in his application  
 6 and designated in the permit for a period of 5 years from  
 7 the date of its issuance. Such permit shall be renewable  
 8 upon each 5-year anniversary thereafter upon application to  
 9 the department at least 120 but not more than 150 days prior  
 10 to the renewal date so long as the operator is in compliance  
 11 with the requirements of this part, the rules hereunder, and  
 12 the reclamation plan provided for in 82-4-231 and agrees to  
 13 comply with all applicable laws and rules in effect at the  
 14 time of renewal. Such renewal shall further be subject to  
 15 the denial provisions of 82-4-227, 82-4-234, and 82-4-251.  
 16 On application for renewal, the burden shall be on the  
 17 opponents of renewal to demonstrate that the permit should  
 18 not be renewed. A permit shall terminate if the permittee  
 19 has not commenced strip or underground mining operations  
 20 pursuant to the permit within 3 years of the issuance of the  
 21 permit. However, the department may grant reasonable  
 22 extensions of time upon a showing that such extensions are  
 23 necessary by reason of litigation precluding the  
 24 commencement or threatening substantial economic loss to the  
 25 permittee or by reason of conditions beyond the control and

1 without the fault or negligence of the permittee. With  
 2 respect to coal to be mined for use in a synthetic fuel  
 3 facility or specific major electric generating facility, the  
 4 permittee is considered to have commenced strip or  
 5 underground mining operations at such time as the  
 6 construction of the synthetic or generating facility is  
 7 initiated.

8 (2) As a condition to the issuance of every permit  
 9 issued under this part, an authorized representative of the  
 10 department shall, without advance notice, have the right of  
 11 entry to, upon, or through a strip or underground mining  
 12 operation or any premises in which any records required to  
 13 be maintained under this part are located and may, at  
 14 reasonable times and without delay, have access to copy any  
 15 records and inspect any monitoring equipment or method of  
 16 operation required under this part. When an inspection  
 17 results from information provided to the department by any  
 18 person, the department shall notify that person when the  
 19 inspection is proposed to be made and that person shall be  
 20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
 22 submit an application for a revision of the permit, together  
 23 with a revised reclamation plan, to the department. The  
 24 department may not approve the application unless it finds  
 25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 20  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 2. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation or the coal  
 12 preparation plant. Such plan shall reflect thorough advance  
 13 investigation and study by the operator and shall include  
 14 all known or readily discoverable past and present uses of  
 15 the land and water to be affected and the approximate  
 16 periods of such use and shall state:

17 (a) the location and area of land to be affected by  
 18 the operation, with a description of access to the area from  
 19 the nearest public highways;

20 (b) the names and addresses of the owners of record  
 21 and any purchasers under contracts for deed of the surface  
 22 of the area of land to be affected by the permit and the  
 23 owners of record and any purchasers under contracts for deed  
 24 of all surface area within one-half mile of any part of the  
 25 affected area;



1 (c) the names and addresses of the present owners of  
2 record and any purchasers under contracts for deed of all  
3 subsurface minerals in the land to be affected;

4 (d) the source of the applicant's legal right to mine  
5 the mineral on the land affected by the permit;

6 (e) the permanent and temporary post-office addresses  
7 of the applicant;

8 (f) whether the applicant or any person associated  
9 with the applicant holds or has held any other permits under  
10 this part and an identification of those permits;

11 (g) whether the applicant is in compliance with  
12 82-4-251 and, if known, whether every officer, partner,  
13 director, or any individual owning of record or  
14 beneficially, alone or with associates, 10% or more of any  
15 class of stock of the applicant is subject to any of the  
16 provisions of 82-4-251 and he shall so certify and whether  
17 any of the foregoing parties or persons have ever had a  
18 strip-mining or underground-mining license or permit issued  
19 by any other state or federal agency revoked or have ever  
20 forfeited a strip-mining or underground-mining bond or a  
21 security deposited in lieu of a bond and, if so, a detailed  
22 explanation of the facts involved in each case must be  
23 attached;

24 (h) whether the applicant has a record of outstanding  
25 reclamation fees with the federal coal regulatory authority;

1 ~~(h)~~(i) the names and addresses of any persons who are  
2 engaged in strip- or underground-mining activities on behalf  
3 of the applicant;

4 ~~(i)~~(j) the annual rainfall and the direction and  
5 average velocity of the prevailing winds in the area where  
6 the applicant has requested a permit;

7 ~~(j)~~(k) the results of any test borings or core  
8 samplings which the applicant or his agent has conducted on  
9 the land to be affected, including the nature and the depth  
10 of the various strata or overburden and topsoil, the  
11 quantities and location of subsurface water and its quality,  
12 the thickness of any mineral seam, an analysis of the  
13 chemical properties of such minerals, including the acidity,  
14 sulphur content, and trace mineral elements of any coal  
15 seam, as well as the British thermal unit (Btu) content of  
16 such seam, and an analysis of the overburden, including  
17 topsoil. If test borings or core samplings are submitted,  
18 each permit application shall contain two copies each of two  
19 sets of geologic cross sections accurately depicting the  
20 known geologic makeup beneath the surface of the affected  
21 land. Each set shall depict subsurface conditions at such  
22 intervals as the department requires across the surface and  
23 shall run at a 90-degree angle to the other set. The  
24 department may not require intervals of less than 500 feet.  
25 Each cross section shall depict the thickness and geologic

1 character of all known strata beginning with the topsoil. In  
 2 addition, each application for an underground-mining permit  
 3 shall be accompanied by cross sections and maps showing the  
 4 proposed underground locations of all shafts, entries, and  
 5 haulageways or other excavations to be excavated during the  
 6 permit period. These cross sections shall also include all  
 7 existing shafts, entries, and haulageways.

8 ~~(k)~~(l) the name and date of a daily newspaper of  
 9 general circulation within the county in which the applicant  
 10 will prominently publish at least once a week for 4  
 11 successive weeks after submission of the application an  
 12 announcement of his application for a strip-mining or  
 13 underground-mining permit and a detailed description of the  
 14 area of land to be affected should a permit be granted;

15 ~~(j)~~(m) a determination of the probable hydrologic  
 16 consequences of coal mining and reclamation operations, both  
 17 on and off the mine site, with respect to the hydrologic  
 18 regime, quantity and quality of water in surface- and  
 19 ground-water systems, including the dissolved and suspended  
 20 solids under seasonal flow conditions and the collection of  
 21 sufficient data for the mine site and surrounding areas, so  
 22 that cumulative impacts of all anticipated mining in the  
 23 area upon the hydrology of the area and particularly upon  
 24 water availability can be made. However, this determination  
 25 is not required until such time as hydrologic information on

1 the general area prior to mining is made available from an  
 2 appropriate federal or state agency. The permit may not be  
 3 approved until such information is available and is  
 4 incorporated into the application.

5 ~~(n)~~(n) a coal conservation plan; and  
 6 ~~(o)~~(o) such other or further information as the  
 7 department may require.

8 (2) The application for a permit shall be accompanied  
 9 by two copies of all maps meeting the requirements of the  
 10 subsections below. The maps shall:

11 (a) identify the area to correspond with the  
 12 application;

13 (b) show any adjacent deep mining or surface mining  
 14 and the boundaries of surface properties and names of owners  
 15 of record of the affected area and within 1,000 feet of any  
 16 part of the affected area;

17 (c) show the names and locations of all streams,  
 18 creeks, or other bodies of water, roads, buildings,  
 19 cemeteries, oil and gas wells, and utility lines on the area  
 20 of land affected and within 1,000 feet of such area;

21 (d) show by appropriate markings the boundaries of the  
 22 area of land affected, any cropline of the seam or deposit  
 23 of mineral to be mined, and the total number of acres  
 24 involved in the area of land affected;

25 (e) show the date on which the map was prepared and

1 the north point;

2 (F) show the final surface and underground water  
3 drainage plan on and away from the area of land affected.  
4 This plan shall indicate the directional and volume flow of  
5 water, constructed drainways, natural waterways used for  
6 drainage, and the streams or tributaries receiving the  
7 discharge.

8 (g) show the proposed location of waste or refuse  
9 area;

10 (h) show the proposed location of temporary subsoil  
11 and topsoil storage area;

12 (i) show the proposed location of all facilities;

13 (j) show the location of test boring holes;

14 (k) show the surface location lines of any geologic  
15 cross sections which have been submitted;

16 (l) show a listing of plant varieties encountered in  
17 the area to be affected and their relative dominance in the  
18 area, together with an enumeration of tree varieties and the  
19 approximate number of each variety occurring per acre on the  
20 area to be affected, and the locations generally of the  
21 various kinds and varieties of plants, including but not  
22 limited to grasses, shrubs, legumes, forbs, and trees;

23 (m) be certified as follows: "I, the undersigned,  
24 hereby certify that this map is correct and shows to the  
25 best of my knowledge and belief all the information required

1 by the mining laws of this state." The certification shall  
2 be signed and notarized. The department may reject a map as  
3 incomplete if its accuracy is not so attested.

4 (n) contain such other or further information as the  
5 department may require.

6 (3) If the department finds that the probable total  
7 annual production at all locations of any strip- or  
8 underground-coal-mining operation applied for will not  
9 exceed 100,000 tons, any determination of probable  
10 hydrologic consequences that the department requires and the  
11 statement of result of test borings or core samplings shall,  
12 upon written request of the operator, be performed by a  
13 qualified public or private laboratory designated by the  
14 department. The department shall assume the cost of the  
15 determination and statement to the extent that it has  
16 received funds for this purpose.

17 (4) In addition to the information and maps required  
18 above, each application for a permit shall be accompanied by  
19 detailed plans or proposals showing the method of operation,  
20 the manner, time or distance, and estimated cost for  
21 backfilling, subsidence stabilization, water control,  
22 grading work, highwall reduction, topsoiling, planting,  
23 revegetating, and a reclamation plan for the area affected  
24 by the operation, which proposals shall meet the  
25 requirements of this part and rules adopted under this part.

1 The reclamation plan shall address the life of the operation  
2 and indicate the size, sequence, and the timing of the  
3 subareas for which it is anticipated that individual permits  
4 will be sought.

5 (5) Each applicant for a coal mining permit shall  
6 submit as part of the application a certificate issued by an  
7 insurance company authorized to do business in the state  
8 certifying that the applicant has in force for the strip- or  
9 underground-mining and reclamation operations for which the  
10 permit is sought a public liability insurance policy, or  
11 evidence that the applicant has satisfied other state or  
12 federal self-insurance requirements. This policy shall  
13 provide for personal injury and property damage protection  
14 in an amount adequate to compensate any persons damaged as a  
15 result of strip- or underground-coal-mining and reclamation  
16 operations, including use of explosives, and entitled to  
17 compensation under applicable provisions of state law. The  
18 permittee must maintain the policy in full force and effect  
19 during the term of the permit and any renewal until all  
20 reclamation operations have been completed.

21 (6) Each applicant for a strip-mining or  
22 underground-mining reclamation permit shall file a copy of  
23 his application for public inspection with the clerk and  
24 recorder at the courthouse of the county where the major  
25 portion of mining is proposed to occur."

1 Section 3. Section 82-4-223, MCA, is amended to read:  
2 "82-4-223. Permit fee and surety bond. (1) An  
3 application fee of \$50 \$100 shall be paid before the permit  
4 required in this part shall be issued.

5 (2) Before a permit may be issued, the operator shall  
6 file with the department a bond payable to the state of  
7 Montana with surety satisfactory to the department in the  
8 penal sum to be determined by the board, on the  
9 recommendation of the commissioner, of not less than \$200  
10 for each acre or fraction thereof of the area of land  
11 affected, with a minimum bond of \$10,000, conditioned upon  
12 the faithful performance of the requirements set forth in  
13 this part and of the rules of the board. The operator may  
14 elect to deposit cash, negotiable bonds, or negotiable  
15 certificates of deposit of any bank organized or transacting  
16 business in the United States. The cash deposit or market  
17 value of such securities shall be equal to or greater than  
18 the amount of the bond required for the bonded area. The  
19 level of bonding shall be relative to the degree of  
20 disturbance projected by the original permit and the annual  
21 report. A political subdivision or agency of the state need  
22 not file a bond unless required to do so by the board. The  
23 board shall adjust the amount of bond required if the cost  
24 of reclamation changes.

25 (3) In determining the amount of the bond, the board

1 shall take into consideration the character and nature of  
2 the overburden, the future suitable use of the land  
3 involved, and the cost of backfilling, grading, highwall  
4 reduction, subsidence stabilization, water control,  
5 topsoiling, and reclamation to be required, but in no event  
6 shall the bond be less than the total estimated cost to the  
7 state of completing the work described in the reclamation  
8 plan."

9 NEW SECTION. Section 4. Extension of authority. Any  
10 existing authority of the department of state lands or the  
11 board of land commissioners to make rules on the subject of  
12 the provisions of this act is extended to the provisions of  
13 this act.

-End-