

1 House BILL NO. 370
 2 INTRODUCED BY Clay Albert
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS W. H. Williams

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE OPENCUT MINING ACT; AND AMENDING
 7 SECTIONS 82-4-402, 82-4-403, 82-4-423, 82-4-431, 82-4-433,
 8 82-4-434, AND 82-4-441, MCA."
 9

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

11 Section 1. Section 82-4-402, MCA, is amended to read:
 12 "82-4-402. Policy. It is the policy of this state to
 13 provide for the reclamation and conservation of land
 14 subjected to opencut ~~bentonite, clay, scoria, phosphate~~
 15 ~~rock, sand, or gravel~~ mineral mining. Therefore, it is the
 16 purpose of this part to preserve natural resources, to aid
 17 in the protection of wildlife and aquatic resources, to
 18 safeguard and reclaim through effective means and methods
 19 all agricultural, recreational, home, and industrial sites
 20 subjected to or which may be affected by opencut ~~bentonite,~~
 21 ~~clay, scoria, phosphate, rock, sand, or gravel~~ mineral mining
 22 to protect and perpetuate the taxable value of property, to
 23 protect scenic, scientific, historic, or other unique areas,
 24 and to promote the health, safety, and general welfare of
 25 the people of this state."

1 Section 2. Section 82-4-403, MCA, is amended to read:
 2 "82-4-403. Definitions. When used in this part, unless
 3 a different meaning clearly appears from the context, the
 4 following definitions apply:

5 (1) "Affected land" means the area of land and land
 6 covered by water that is disturbed by opencut mining
 7 operations, including the area from which overburden or
 8 mineral is to be or has been removed and upon which the
 9 overburden is to be or has been deposited, roads constructed
 10 to gain access to the mineral, areas of processing
 11 facilities on or contiguous to the opencut mine, treatment
 12 and sedimentation ponds, and mineral stockpile areas on or
 13 contiguous to the opencut mine.

14 (2) "Board" means the state board of land
 15 commissioners.

16 (3) "Contract" means a mined land reclamation contract
 17 prepared by the board to meet the requirements of this part.

18 (4) "Final cut" means the last pit created in an
 19 opencut-mined area.

20 (5) ~~"Highwall" means that side of the pit adjacent to~~
 21 ~~unmined land.~~

22 (6) (5) "Landowner" means the owner of land directly or
 23 indirectly affected by an opencut-mining operation.

24 (6) "Minerals" means bentonite, clay, scoria,
 25 phosphate rock, sand, or gravel.



1 (7) "Opencut mining" means the mining of ~~bentonite,~~
2 ~~clay,~~~~scoria,~~~~phosphate-rock,~~~~sand,~~~~or~~~~gravel~~ minerals by:

3 (a) removing the overburden lying upon natural
4 deposits thereof and mining directly from the natural
5 deposits thereby exposed;

6 (b) mining directly from natural deposits of such
7 minerals;~~including the removal of or~~

8 (c) removing overburden for the purpose of determining
9 the location, quality, or quantity of any natural deposit of
10 ~~bentonite,~~~~clay,~~~~scoria,~~~~phosphate--rock,~~~~--sand,~~~~--or--gravel~~
11 minerals.

12 (8) "Operator" means a person engaged in and or
13 controlling an opencut-mining operation.

14 (9) "Overburden" means all of the earth and other
15 materials which lie above a natural deposit of ~~bentonite,~~
16 ~~clay,~~~~scoria,~~~~phosphate--rock,~~~~--sand,~~~~--or--gravel~~ minerals.

17 "Spoil" is the overburden disturbed from its natural state
18 in the process of opencut mining.

19 (10) "Person" means a natural person or a firm,
20 association, partnership, cooperative, or corporation or any
21 department, agency, or instrumentality of the state or any
22 governmental subdivision or any other entity whatever.

23 (11) "Processing facilities" means all crushers,
24 screens, and asphalt or concrete plants.

25 ~~†††~~(12) "Progress report" means a report showing the

1 land which the operator has affected by opencut mining
2 during the year. The report shall show the number of acres
3 of affected land and all reclamation accomplished.

4 ~~††~~(13) "Public notice" means notice given by
5 publication in a newspaper in the general area where the
6 affected land is located. The notice shall be given once a
7 week for 3 successive weeks.

8 ~~††~~(14) "Reclamation" means the reconditioning of the
9 area of land affected by opencut-mining operations to make
10 the area suitable for productive use, including but not
11 limited to forestry, agriculture, grazing, wildlife,
12 recreation, or residential and industrial sites.

13 ~~††~~(15) "Reclamation plan" means the description of
14 current land use, topographical data, water data, soils
15 data, leased areas, intended mine areas, and an explanation
16 of proposed reclamation of the land with appropriate maps.

17 ~~††~~(16) "Refuse" means all waste material directly
18 connected with the opencut-mining operations.

19 ~~††~~(17) "Soils materials" are those horizons
20 containing topsoil or other soils leached free of
21 deleterious salts and capable of sustaining plant growth and
22 recognized as such by standard authorities."

23 Section 3. Section 82-4-423, MCA, is amended to read:

24 "82-4-423. Contracts for reclamation. The board is
25 hereby authorized to enter into contracts with operators in

1 the name of the state of Montana which will provide for the
 2 reclamation of lands on which opencut mining of bentonite,
 3 clay,--scoria,--phosphate-rock,--sand,--and-gravel minerals has
 4 been or is to be conducted. The board is authorized to sue
 5 and be sued in the name of the state of Montana to enforce
 6 the provisions of any contract, and the board shall bring
 7 such court actions and take such other steps and actions as
 8 may be necessary to enforce the provisions of such
 9 contracts."

10 Section 4. Section 82-4-431, MCA, is amended to read:

11 "82-4-431. Contract for reclamation required.

12 (1) After March 16, 1973, no operator may conduct
 13 opencut-mining operations which will result in the removal
 14 of 10,000 cubic yards or more of product or overburden until
 15 he has entered into a contract with the board for the
 16 reclamation of the land affected. An operator conducting a
 17 number of operations, each of which results in the removal
 18 of less than 10,000 cubic yards of product or overburden but
 19 which result in the removal of 10,000 cubic yards or more of
 20 product or overburden in the aggregate, is subject to the
 21 provisions of this part, except as provided in this section.

22 (2) An operator who holds a contract for reclamation
 23 may operate an opencut mine without first securing an
 24 additional contract or an amendment to the existing contract
 25 or bond if the mine meets the following criteria:

1 (a) the total amount of material and overburden
 2 removed does not exceed 1,000 cubic yards; and

3 (b) the operator notifies the department of state
 4 lands prior to beginning such operations and, within 30 days
 5 of notifying the department, submits a completed site
 6 information form, salvages and stockpiles all root-bearing
 7 soil materials, regrades the affected area to 3:1 or flatter
 8 slope and blends the reclaimed area into the adjacent
 9 topography, and during the first appropriate growing season
 10 replaces all topsoil and reseeds or revegetates as required
 11 by the department.

12 (3) Opencut mines described in subsection (2) may not
 13 be placed in flowing, ephemeral, or intermittent streams, in
 14 the bottom or head of a confined drainage, in an area where
 15 the operation will intercept ground water or intercept any
 16 slope that is naturally steeper than 3:1, or in any area
 17 where mining would be restricted by other laws."

18 Section 5. Section 82-4-433, MCA, is amended to read:

19 "82-4-433. Bond. (1) A bond required to be filed in
 20 this part by the operator shall be in such form as the board
 21 prescribes, payable to the state of Montana and conditioned
 22 upon the operator's full compliance with all requirements of
 23 this part and all rules of the board. The bond shall be
 24 signed by the landowner or operator, as appropriate, as
 25 principal, and by a good and sufficient corporate surety

1 licensed to do business in the state of Montana, as surety.
 2 The bond shall be in an amount not to exceed the costs of
 3 restoration required by this part as determined by the
 4 board. The amount of the bond may not be less than \$200 or
 5 more than \$1,000 per acre unless the department determines,
 6 in writing, that the cost of restoration of the land exceeds
 7 \$1,000 per acre. Upon such a determination, the bond amount
 8 must be set by the board at the cost of restoring the land.

9 (2) In lieu of the bond, the operator may deposit with
 10 the board cash and government securities or a bond with
 11 property sureties in an amount equal to that of the required
 12 bond on conditions as above prescribed. In the discretion of
 13 the board, surety bond requirements may be fulfilled by the
 14 operator's posting a bond with land and improvements and
 15 facilities thereon as security, in which event no surety may
 16 be required. The penalty of the bond or amount of cash and
 17 securities shall be increased or reduced from time to time
 18 as provided in this part. The bond or security remains in
 19 effect until the ~~mined-acreages-have~~ affected land has been
 20 reclaimed as provided under the contract and the reclamation
 21 has been approved and the bond or security has been released
 22 by the board. The bond or security shall cover only actual
 23 ~~mined-acreages~~ affected land and may be increased or reduced
 24 to cover only such acreages as remain unreclaimed.

25 (3) If the license of a surety upon a bond filed with

1 the board pursuant to this part is suspended or revoked, the
 2 operator, within 30 days after receiving notice thereof from
 3 the board, shall substitute for that surety a good and
 4 sufficient surety licensed to do business in the state. Upon
 5 failure of the operator to make substitution of surety, the
 6 board may suspend the contract of the operator to conduct
 7 operations upon the land described in the contract until the
 8 substitution has been made.

9 (4) The board shall cause the reclamation of any
 10 affected land with respect to which a bond has been
 11 forfeited.

12 (5) Whenever an operator has completed all of the
 13 requirements under the provisions of this part as to any
 14 affected land, he shall notify the board thereof. If the
 15 board releases the operator from further obligation
 16 regarding such affected land, the penalty of the bond shall
 17 be reduced proportionately."

18 Section 6. Section 82-4-434, MCA, is amended to read:

19 "82-4-434. Reclamation plan part of contract --
 20 requirements. The contract shall meet the following
 21 requirements:

22 (1) The operator shall submit a reclamation plan to
 23 the board before commencing any opencut mining and may not
 24 commence mining before the plan receives approval from the
 25 board. The operator may request and receive a meeting with

1 the board prior to submission of the plan. If the board does
 2 not notify the operator that it has approved or disapproved
 3 a plan within 30 days after the board has received the plan,
 4 the board is considered to have approved the plan. The
 5 board, however, for sufficient cause, may extend its period
 6 of consideration for an additional 30 days if it notifies
 7 the operator prior to the end of the original 30-day period.
 8 The board shall submit each reclamation plan or amendments
 9 to the reclamation plan to the landowner for his
 10 recommendations and shall consider those recommendations in
 11 deciding whether to approve or disapprove any plan or
 12 amendments. The board may seek technical help from any state
 13 or federal agency. The board shall submit the plan
 14 immediately to the director of the university of Montana
 15 statewide archaeological survey for evaluation of possible
 16 archaeological or historical values in the area to be mined.
 17 The board may approve a reclamation plan only if the board
 18 has found that the plan provides for the best possible
 19 reclamation procedures available under the circumstances at
 20 the time, so that after mining operations are completed the
 21 affected land will be reclaimed to a productive use. Once
 22 the reclamation plan is accepted in writing by the board, it
 23 shall become a part of the contract but is subject to annual
 24 review and modification by the board.

25 (2) The board may not approve any reclamation plan

1 unless the plan provides:

2 (a) that the land will be reclaimed for one or more
 3 specified uses, including but not limited to forest,
 4 pasture, orchard, cropland, residence, recreation, industry,
 5 habitat for wildlife, including food, cover, or water, or
 6 other uses;

7 (b) that to the extent reasonable and practicable, the
 8 operator will establish vegetative cover commensurate with
 9 the proposed land use;

10 (c) whenever operations result in a need to prevent
 11 acid drainage or sedimentation on or in adjoining lands or
 12 streams, for the construction of earth dams or other
 13 reasonable devices to control water drainage, provided the
 14 formation of such impoundments or devices will not interfere
 15 with other landowners' rights or contribute to water
 16 pollution;

17 (d) that to accomplish practical utilization of soil
 18 materials, such material will be utilized for placement on
 19 affected areas, if required by the reclamation plan after
 20 completion or termination of that particular phase of the
 21 mining operations, at a depth sufficient for plant growth on
 22 slopes of 3:1 or less;

23 (e) that grading will be commensurate with the
 24 topography sought and land use designated;

25 (f) that metal and other waste will be removed or

1 buried;

2 (g) that all access, haul, and other support roads
3 will be located, constructed, and maintained in such a
4 manner as to control and minimize channeling and other
5 erosion;

6 (h) that the operator will submit a progress report
7 annually to the board;

8 (i) that all operations will be conducted so as to
9 avoid range and forest fires and spontaneous combustion and
10 that open burning of carbonaceous materials will be in
11 accordance with suitable practices for fire prevention and
12 control;

13 (j) that archaeological and historical values in areas
14 to be mined will be given appropriate protection;

15 (k) that except for rock faces, bench faces, and
16 excavations used for water impoundments, each surface area
17 of the mined premises which will be disturbed will be
18 revegetated when its use for extractive purposes is no
19 longer required;

20 (l) that seeding and planting will be done in a manner
21 to achieve a permanent suitable vegetative cover for
22 wildlife, livestock, and retardation of erosion and that all
23 seed will be drilled unless otherwise provided in the plan;

24 (m) that reclamation will be as concurrent with mining
25 operations as feasible and will be completed within a

1 specified length of time; and

2 (n) that surface and ground water will be given
3 appropriate protection from potential significant
4 deterioration of water quality and quantity that may arise
5 as a result of the operation.

6 (3) If reclamation according to the plan has not been
7 completed in the time specified, the board after 30 days'
8 written notice shall order the operator to cease mining and,
9 if the operator does not cease, shall institute an action to
10 enjoin further operation and may sue for damages for breach
11 of contract, for payment of the performance bond, or for
12 both.

13 (4) (a) At any time during the period of reclamation
14 the operator may for good reason submit to the board a new
15 reclamation plan or amendment to the existing plan,
16 including extensions of time.

17 (b) The board may approve the proposed new reclamation
18 plan or amendments to the existing plan if:

19 (i) the operator has in good faith carried on
20 reclamation according to the existing plan and the proposed
21 new plan or amendments to the existing plan will result in
22 reclamation as or more desirable than the reclamation
23 proposed under the existing plan; or

24 (ii) it is highly improbable reclamation will be
25 successful unless the existing plan is replaced or amended.

1 (c) When accepted, the proposed new reclamation plan
2 or the proposed amendments to the existing plan become a
3 part of the contract.

4 (5) The operator shall provide a performance bond or
5 an alternative acceptable to the board in an amount
6 commensurate with the estimated cost of reclamation, but in
7 no case may the bond be less than \$200 per acre. The
8 estimated cost of reclamation shall be set forth in the
9 reclamation plan.

10 (6) The contract, reclamation plan, and amendments
11 accepted by the board shall be a public record and open to
12 inspection.

13 (7) The contract shall become effective when signed by
14 the board and the operator and shall remain in force until
15 terminated by mutual consent or by the board upon 6 months'
16 notice."

17 Section 7. Section 82-4-441, MCA, is amended to read:

18 "82-4-441. Penalty -- enforcement. (1) A person who
19 violates any of the provisions of this part or rules adopted
20 thereunder or provisions of a contract for reclamation shall
21 pay a civil penalty of not less than \$100 or more than
22 \$1,000 for the violation and an additional civil penalty of
23 not less than \$100 or more than \$1,000 for each day during
24 which a violation continues following the service of notice
25 of the violation, and the person may be enjoined from

1 continuing such violation as provided in this section. These
2 penalties are recoverable in an action brought in the name
3 of the state of Montana by the attorney general in the
4 district court having jurisdiction of the defendant or by
5 mutual agreement of the parties involved, in the district
6 court of the first judicial district. Penalty money shall be
7 credited to the general fund.

8 (2) The attorney general shall, upon the request of
9 the department, sue for the recovery of the penalties
10 provided for in this section and bring an action for a
11 restraining order or a temporary or permanent injunction
12 against an operator or other person violating or threatening
13 to violate an order adopted under this part.

14 (3) The civil penalties provided for in this section
15 may be waived for a minor violation if it is determined that
16 the violation does not represent potential harm to public
17 health, public safety, or the environment and does not
18 impair the administration of this part. The board shall
19 adopt rules to implement and administer a procedure for
20 waiver of a penalty under this subsection."

21 NEW SECTION. Section 8. Extension of authority. Any
22 existing authority of the department of state lands and the
23 board of land commissioners to make rules on the subject of
24 the provisions of this act is extended to the provisions of
25 this act.

APPROVED BY COMM. ON
NATURAL RESOURCES

STATEMENT OF INTENT

HOUSE BILL 370

House Natural Resources Committee

1 A statement of intent is .required for this bill to
 2 provide guidelines on rules that must be adopted by the
 3 board of land commissioners under the provisions of section
 4 7, which amends 82-4-441. Currently, 82-4-441 requires the
 5 imposition of a penalty regardless of the seriousness of a
 6 violation. A waiver of penalty provision would allow the
 7 department of state lands to serve a notice of
 8 noncompliance, informing the operator of violations of the
 9 act or contract, without imposing a fine for minor
 10 violation.

11 It is anticipated that the rules would set forth those
 12 instances where a violation would not result in a fine.
 13 Under the amendment to 82-4-441, a fine may be waived if the
 14 violation does not represent potential harm to public
 15 health, public safety, or the environment and does not
 16 impair the administration of the Opencut Mining Act. The
 17 adopted rules will set forth a mechanism through which the
 18 department may exercise its discretion in waiving a penalty.
 19 Also, the rules will set forth, within the guidelines of the
 20 statute, those violations that do not warrant the imposition
 21 of a fine. In establishing these rules, the department shall

1 consider:

- 2 (1) whether the violation is inadvertent or
- 3 unavoidable or results from an emergency situation;
- 4 (2) whether the violation will significantly alter or
- 5 hinder reclamation or the approved reclaimed use;
- 6 (3) whether there has been a history of violations by
- 7 the operator;
- 8 (4) whether the operator has shown good faith in
- 9 rectifying the violation; and
- 10 (5) other pertinent factors relating to the
- 11 seriousness of the violation.



HOUSE BILL NO. 370

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BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-423, 82-4-431, 82-4-433, 82-4-434, AND 82-4-441, MCA."

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(2) "Board" means the state board of land commissioners.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

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 4 deposits thereof and mining directly from the natural
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 7 minerals;~~including-the-removal-of~~ or

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 15 data, leased areas, intended mine areas, and an explanation
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 17 number of operations, each of which results in the removal
 18 of less than 10,000 cubic yards of product or overburden but
 19 which result in the removal of 10,000 cubic yards or more of
 20 product or overburden in the aggregate, is subject to the
 21 provisions of this part, except as provided in this section.

22 (2) (A) AN EXCEPT AS PROVIDED IN OR CONDITIONED UNDER
 23 SUBSECTIONS (2)(B) AND (2)(C), AN operator who holds a
 24 contract for reclamation may operate an opencut mine without
 25 first securing an additional contract or an amendment to the

1 existing contract or bond if the mine meets the following
 2 criteria:

3 (a)(I) the total amount of material and overburden
 4 removed does not exceed 1,000 cubic yards; and

5 (b)(II) the operator notifies the department of state
 6 lands prior to beginning such operations and, within 30 days
 7 of notifying the department, submits a completed site
 8 information form, salvages and stockpiles all root-bearing
 9 soil materials, regrades the affected area to 3:1 or flatter
 10 slope and blends the reclaimed area into the adjacent
 11 topography, and during the first appropriate growing season
 12 replaces all topsoil and reseeds or revegetates as required
 13 by the department.

14 (B) THE DEPARTMENT MAY REFUSE TO ALLOW THE OPERATOR TO
 15 OPERATE AN OPENCUT MINE UNDER SUBSECTION (2)(A) IF, AT THE
 16 TIME OF NOTIFICATION BY THE OPERATOR TO THE DEPARTMENT, THE
 17 OPERATOR HAS A PATTERN OF VIOLATIONS OR IS IN CURRENT
 18 VIOLATION OF THIS PART OR RULES ADOPTED UNDER THIS PART OR
 19 PROVISIONS OF A CONTRACT FOR RECLAMATION.

20 (C) THE DEPARTMENT MAY REQUIRE AN ADDITIONAL BOND AS A
 21 CONDITION FOR THE OPERATION OF AN OPENCUT MINE UNDER
 22 SUBSECTION (2)(A).

23 (3) Opencut mines described in subsection (2) may not
 24 be placed in flowing, ephemeral, or intermittent streams, in
 25 the bottom or head of a confined drainage, in an area where

1 the operation will intercept ground water or intercept any
 2 slope that is naturally steeper than 3:1, or in any area
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 6 this part by the operator shall be in such form as the board
 7 prescribes, payable to the state of Montana and conditioned
 8 upon the operator's full compliance with all requirements of
 9 this part and all rules of the board. The bond shall be
 10 signed by the landowner or operator, as appropriate, as
 11 principal, and by a good and sufficient corporate surety
 12 licensed to do business in the state of Montana, as surety.
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 14 restoration required by this part as determined by the
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 16 more than \$1,000 per acre unless the department determines,
 17 in writing, that the cost of restoration of the land exceeds
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 19 must be set by the board at the cost of restoring the land.

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 2 be required. The penalty of the bond or amount of cash and
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 5 effect until the ~~mined-acreages-have~~ affected land has been
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 12 the board pursuant to this part is suspended or revoked, the
 13 operator, within 30 days after receiving notice thereof from
 14 the board, shall substitute for that surety a good and
 15 sufficient surety licensed to do business in the state. Upon
 16 failure of the operator to make substitution of surety, the
 17 board may suspend the contract of the operator to conduct
 18 operations upon the land described in the contract until the
 19 substitution has been made.

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 21 affected land with respect to which a bond has been
 22 forfeited.

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 24 requirements under the provisions of this part as to any
 25 affected land, he shall notify the board thereof. If the

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2 regarding such affected land, the penalty of the bond shall
3 be reduced proportionately."

4 Section 6. Section 82-4-434, MCA, is amended to read:
5 "82-4-434. Reclamation plan part of contract --
6 requirements. The contract shall meet the following
7 requirements:

8 (1) The operator shall submit a reclamation plan to
9 the board before commencing any opencut mining and may not
10 commence mining before the plan receives approval from the
11 board. The operator may request and receive a meeting with
12 the board prior to submission of the plan. If the board does
13 not notify the operator that it has approved or disapproved
14 a plan within 30 days after the board has received the plan,
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16 board, however, for sufficient cause, may extend its period
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20 to the reclamation plan to the landowner for his
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14 specified uses, including but not limited to forest,
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16 habitat for wildlife, including food, cover, or water, or
17 other uses;

18 (b) that to the extent reasonable and practicable, the
19 operator will establish vegetative cover commensurate with
20 the proposed land use;

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22 acid drainage or sedimentation on or in adjoining lands or
23 streams, for the construction of earth dams or other
24 reasonable devices to control water drainage, provided the
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3 (d) that to accomplish practical utilization of soil
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7 mining operations, at a depth sufficient for plant growth on
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23 control;

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1 (k) that except for rock faces, bench faces, and
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7 to achieve a permanent suitable vegetative cover for
8 wildlife, livestock, and retardation of erosion and that all
9 seed will be drilled unless otherwise provided in the plan;

10 (m) that reclamation will be as concurrent with mining
11 operations as feasible and will be completed within a
12 specified length of time; and

13 (n) that surface and ground water will be given
14 appropriate protection, CONSISTENT WITH STATE LAW, from
15 potential--significant deterioration of water quality and
16 quantity that may arise as a result of the operation.

17 (3) If reclamation according to the plan has not been
18 completed in the time specified, the board after 30 days'
19 written notice shall order the operator to cease mining and,
20 if the operator does not cease, shall institute an action to
21 enjoin further operation and may sue for damages for breach
22 of contract, for payment of the performance bond, or for
23 both.

24 (4) (a) At any time during the period of reclamation
25 the operator may for good reason submit to the board a new

1 reclamation plan or amendment to the existing plan,
2 including extensions of time.

3 (b) The board may approve the proposed new reclamation
4 plan or amendments to the existing plan if:

5 (i) the operator has in good faith carried on
6 reclamation according to the existing plan and the proposed
7 new plan or amendments to the existing plan will result in
8 reclamation as or more desirable than the reclamation
9 proposed under the existing plan; or

10 (ii) it is highly improbable reclamation will be
11 successful unless the existing plan is replaced or amended.

12 (c) When accepted, the proposed new reclamation plan
13 or the proposed amendments to the existing plan become a
14 part of the contract.

15 (5) The operator shall provide a performance bond or
16 an alternative acceptable to the board in an amount
17 commensurate with the estimated cost of reclamation, but in
18 no case may the bond be less than \$200 per acre. The
19 estimated cost of reclamation shall be set forth in the
20 reclamation plan.

21 (6) The contract, reclamation plan, and amendments
22 accepted by the board shall be a public record and open to
23 inspection.

24 (7) The contract shall become effective when signed by
25 the board and the operator and shall remain in force until

1 terminated by mutual consent or by the board upon 6 months'
2 notice."

3 Section 7. Section 82-4-441, MCA, is amended to read:

4 "82-4-441. Penalty -- enforcement. (1) A person who
5 violates any of the provisions of this part or rules adopted
6 thereunder or provisions of a contract for reclamation shall
7 pay a civil penalty of not less than \$100 or more than
8 \$1,000 for the violation and an additional civil penalty of
9 not less than \$100 or more than \$1,000 for each day during
10 which a violation continues following the service of notice
11 of the violation, and the person may be enjoined from
12 continuing such violation as provided in this section. These
13 penalties are recoverable in an action brought in the name
14 of the state of Montana by the attorney general in the
15 district court having jurisdiction of the defendant or by
16 mutual agreement of the parties involved, in the district
17 court of the first judicial district. Penalty money shall be
18 credited to the general fund.

19 (2) The attorney general shall, upon the request of
20 the department, sue for the recovery of the penalties
21 provided for in this section and bring an action for a
22 restraining order or a temporary or permanent injunction
23 against an operator or other person violating or threatening
24 to violate an order adopted under this part.

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that
2 the violation does not represent potential harm to public
3 health, public safety, or the environment and does not
4 impair the administration of this part. The board shall
5 adopt rules to implement and administer a procedure for
6 waiver of a penalty under this subsection."

7 NEW SECTION. Section 8. Extension of authority. Any
8 existing authority of the department of state lands and the
9 board of land commissioners to make rules on the subject of
10 the provisions of this act is extended to the provisions of
11 this act.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 370

3 House Natural Resources Committee

4
5 A statement of intent is required for this bill to
6 provide guidelines on rules that must be adopted by the
7 board of land commissioners under the provisions of section
8 7, which amends 82-4-441. Currently, 82-4-441 requires the
9 imposition of a penalty regardless of the seriousness of a
10 violation. A waiver of penalty provision would allow the
11 department of state lands to serve a notice of
12 noncompliance, informing the operator of violations of the
13 act or contract, without imposing a fine for minor
14 violation.

15 It is anticipated that the rules would set forth those
16 instances where a violation would not result in a fine.
17 Under the amendment to 82-4-441, a fine may be waived if the
18 violation does not represent potential harm to public
19 health, public safety, or the environment and does not
20 impair the administration of the Opencut Mining Act. The
21 adopted rules will set forth a mechanism through which the
22 department may exercise its discretion in waiving a penalty.
23 Also, the rules will set forth, within the guidelines of the
24 statute, those violations that do not warrant the imposition
25 of a fine. In establishing these rules, the department shall

1 consider:

- 2 (1) whether the violation is inadvertent or
3 unavoidable or results from an emergency situation;
4 (2) whether the violation will significantly alter or
5 hinder reclamation or the approved reclaimed use;
6 (3) whether there has been a history of violations by
7 the operator;
8 (4) whether the operator has shown good faith in
9 rectifying the violation; and
10 (5) other pertinent factors relating to the
11 seriousness of the violation.

1 HOUSE BILL NO. 370

2 INTRODUCED BY ASAY, GILBERT, POFF, ABRAMS
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO THE OPENCUT MINING ACT; AND AMENDING
7 SECTIONS 82-4-402, 82-4-403, 82-4-423, 82-4-431, 82-4-433,
8 82-4-434, AND 82-4-441, MCA."
9

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

11 Section 1. Section 82-4-402, MCA, is amended to read:

12 "82-4-402. Policy. It is the policy of this state to
13 provide for the reclamation and conservation of land
14 subjected to opencut ~~bentonite, clay, scoria, phosphate~~
15 ~~rock, sand, or gravel~~ mineral mining. Therefore, it is the
16 purpose of this part to preserve natural resources, to aid
17 in the protection of wildlife and aquatic resources, to
18 safeguard and reclaim through effective means and methods
19 all agricultural, recreational, home, and industrial sites
20 subjected to or which may be affected by opencut ~~bentonite,~~
21 ~~clay, scoria, phosphate rock, sand, or gravel~~ mineral mining
22 to protect and perpetuate the taxable value of property, to
23 protect scenic, scientific, historic, or other unique areas,
24 and to promote the health, safety, and general welfare of
25 the people of this state."

1 Section 2. Section 82-4-403, MCA, is amended to read:

2 "82-4-403. Definitions. When used in this part, unless
3 a different meaning clearly appears from the context, the
4 following definitions apply:

5 (1) "Affected land" means the area of land and land
6 covered by water that is disturbed by opencut mining
7 operations, including the area from which overburden or
8 mineral is to be or has been removed and upon which the
9 overburden is to be or has been deposited, roads constructed
10 to gain access to the mineral, areas of processing
11 facilities on or contiguous to the opencut mine, treatment
12 and sedimentation ponds, and mineral stockpile areas on or
13 contiguous to the opencut mine.

14 (2) "Board" means the state board of land
15 commissioners.

16 (3) "Contract" means a mined land reclamation contract
17 prepared by the board to meet the requirements of this part.

18 (4) "Final cut" means the last pit created in an
19 opencut-mined area.

20 (5) ~~"Highwall" means that side of the pit adjacent to~~
21 ~~unmined land.~~

22 (6) (5) "Landowner" means the owner of land directly or
23 indirectly affected by an opencut-mining operation.

24 (6) "Minerals" means bentonite, clay, scoria,
25 phosphate rock, sand, or gravel.

1 (7) "Opencut mining" means the mining of bentonite,
2 clay, scoria, phosphate rock, sand, or gravel minerals by:

3 (a) removing the overburden lying upon natural
4 deposits thereof and mining directly from the natural
5 deposits thereby exposed;

6 (b) mining directly from natural deposits of such
7 minerals, including the removal of or

8 (c) removing overburden for the purpose of determining
9 the location, quality, or quantity of any natural deposit of
10 bentonite, clay, scoria, phosphate rock, sand, or gravel
11 minerals.

12 (8) "Operator" means a person engaged in and or
13 controlling an opencut-mining operation.

14 (9) "Overburden" means all of the earth and other
15 materials which lie above a natural deposit of bentonite,
16 clay, scoria, phosphate rock, sand, or gravel minerals.

17 "Spoil" is the overburden disturbed from its natural state
18 in the process of opencut mining.

19 (10) "Person" means a natural person or a firm,
20 association, partnership, cooperative, or corporation or any
21 department, agency, or instrumentality of the state or any
22 governmental subdivision or any other entity whatever.

23 (11) "Processing facilities" means all crushers,
24 screens, and asphalt or concrete plants.

25 (12) "Progress report" means a report showing the

1 land which the operator has affected by opencut mining
2 during the year. The report shall show the number of acres
3 of affected land and all reclamation accomplished.

4 (13) "Public notice" means notice given by
5 publication in a newspaper in the general area where the
6 affected land is located. The notice shall be given once a
7 week for 3 successive weeks.

8 (14) "Reclamation" means the reconditioning of the
9 area of land affected by opencut-mining operations to make
10 the area suitable for productive use, including but not
11 limited to forestry, agriculture, grazing, wildlife,
12 recreation, or residential and industrial sites.

13 (15) "Reclamation plan" means the description of
14 current land use, topographical data, water data, soils
15 data, leased areas, intended mine areas, and an explanation
16 of proposed reclamation of the land with appropriate maps.

17 (16) "Refuse" means all waste material directly
18 connected with the opencut-mining operations.

19 (17) "Soils materials" are those horizons
20 containing topsoil or other soils leached free of
21 deleterious salts and capable of sustaining plant growth and
22 recognized as such by standard authorities."

23 Section 3. Section 82-4-423, MCA, is amended to read:

24 "82-4-423. Contracts for reclamation. The board is
25 hereby authorized to enter into contracts with operators in

1 the name of the state of Montana which will provide for the
 2 reclamation of lands on which opencut mining of bentonite,
 3 clay, ~~scoria, phosphate rock, sand, and gravel~~ minerals has
 4 been or is to be conducted. The board is authorized to sue
 5 and be sued in the name of the state of Montana to enforce
 6 the provisions of any contract, and the board shall bring
 7 such court actions and take such other steps and actions as
 8 may be necessary to enforce the provisions of such
 9 contracts."

10 Section 4. Section 82-4-431, MCA, is amended to read:

11 "82-4-431. Contract for reclamation required.

12 (1) After March 16, 1973, no operator may conduct
 13 opencut-mining operations which will result in the removal
 14 of 10,000 cubic yards or more of product or overburden until
 15 he has entered into a contract with the board for the
 16 reclamation of the land affected. An operator conducting a
 17 number of operations, each of which results in the removal
 18 of less than 10,000 cubic yards of product or overburden but
 19 which result in the removal of 10,000 cubic yards or more of
 20 product or overburden in the aggregate, is subject to the
 21 provisions of this part, except as provided in this section.

22 (2) (A) An EXCEPT AS PROVIDED IN OR CONDITIONED UNDER
 23 SUBSECTIONS (2)(B) AND (2)(C), AN operator who holds a
 24 contract for reclamation may operate an opencut mine without
 25 first securing an additional contract or an amendment to the

1 existing contract or bond if the mine meets the following
 2 criteria:

3 (a)(I) the total amount of material and overburden
 4 removed does not exceed 1,000 cubic yards; and

5 (b)(II) the operator notifies the department of state
 6 lands prior to beginning such operations and, within 30 days
 7 of notifying the department, submits a completed site
 8 information form, salvages and stockpiles all root-bearing
 9 soil materials, regrades the affected area to 3:1 or flatter
 10 slope and blends the reclaimed area into the adjacent
 11 topography, and during the first appropriate growing season
 12 replaces all topsoil and reseeds or revegetates as required
 13 by the department.

14 (B) THE DEPARTMENT MAY REFUSE TO ALLOW THE OPERATOR TO
 15 OPERATE AN OPENCUT MINE UNDER SUBSECTION (2)(A) IF, AT THE
 16 TIME OF NOTIFICATION BY THE OPERATOR TO THE DEPARTMENT, THE
 17 OPERATOR HAS A PATTERN OF VIOLATIONS OR IS IN CURRENT
 18 VIOLATION OF THIS PART OR RULES ADOPTED UNDER THIS PART OR
 19 PROVISIONS OF A CONTRACT FOR RECLAMATION.

20 (C) THE DEPARTMENT MAY REQUIRE AN ADDITIONAL BOND AS A
 21 CONDITION FOR THE OPERATION OF AN OPENCUT MINE UNDER
 22 SUBSECTION (2)(A).

23 (3) Opencut mines described in subsection (2) may not
 24 be placed in flowing, ephemeral, or intermittent streams, in
 25 the bottom or head of a confined drainage, in an area where

1 the operation will intercept ground water or intercept any
 2 slope that is naturally steeper than 3:1, or in any area
 3 where mining would be restricted by other laws."

4 Section 5. Section 82-4-433, MCA, is amended to read:

5 "82-4-433. Bond. (1) A bond required to be filed in
 6 this part by the operator shall be in such form as the board
 7 prescribes, payable to the state of Montana and conditioned
 8 upon the operator's full compliance with all requirements of
 9 this part and all rules of the board. The bond shall be
 10 signed by the landowner or operator, as appropriate, as
 11 principal, and by a good and sufficient corporate surety
 12 licensed to do business in the state of Montana, as surety.
 13 The bond shall be in an amount not to exceed the costs of
 14 restoration required by this part as determined by the
 15 board. The amount of the bond may not be less than \$200 or
 16 more than \$1,000 per acre unless the department determines,
 17 in writing, that the cost of restoration of the land exceeds
 18 \$1,000 per acre. Upon such a determination, the bond amount
 19 must be set by the board at the cost of restoring the land.

20 (2) In lieu of the bond, the operator may deposit with
 21 the board cash and government securities or a bond with
 22 property sureties in an amount equal to that of the required
 23 bond on conditions as above prescribed. In the discretion of
 24 the board, surety bond requirements may be fulfilled by the
 25 operator's posting a bond with land and improvements and

1 facilities thereon as security, in which event no surety may
 2 be required. The penalty of the bond or amount of cash and
 3 securities shall be increased or reduced from time to time
 4 as provided in this part. The bond or security remains in
 5 effect until the ~~mined-acreages-have~~ affected land has been
 6 reclaimed as provided under the contract and the reclamation
 7 has been approved and the bond or security has been released
 8 by the board. The bond or security shall cover only actual
 9 ~~mined-acreages~~ affected land and may be increased or reduced
 10 to cover only such acreages as remain unreclaimed.

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 12 the board pursuant to this part is suspended or revoked, the
 13 operator, within 30 days after receiving notice thereof from
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 21 of a fine. In establishing these rules, the department shall

1 consider:

- 2 (1) whether the violation is inadvertent or
- 3 unavoidable or results from an emergency situation;
- 4 (2) whether the violation will significantly alter or
- 5 hinder reclamation or the approved reclaimed use;
- 6 (3) whether there has been a history of violations by
- 7 the operator;
- 8 (4) whether the operator has shown good faith in
- 9 rectifying the violation; and
- 10 (5) other pertinent factors relating to the
- 11 seriousness of the violation.



1 HOUSE BILL NO. 370

2 INTRODUCED BY ASAY, GILBERT, POFF, ABRAMS

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO THE OPENCUT MINING ACT; AND AMENDING
7 SECTIONS 82-4-402, 82-4-403, 82-4-423, 82-4-431, 82-4-433,
8 82-4-434, AND 82-4-441, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 82-4-402, MCA, is amended to read:

12 "82-4-402. Policy. It is the policy of this state to
13 provide for the reclamation and conservation of land
14 subjected to opencut bentonite, ~~clay, scoria,~~ phosphate
15 rock, ~~sand, or gravel~~ mineral mining. Therefore, it is the
16 purpose of this part to preserve natural resources, to aid
17 in the protection of wildlife and aquatic resources, to
18 safeguard and reclaim through effective means and methods
19 all agricultural, recreational, home, and industrial sites
20 subjected to or which may be affected by opencut bentonite,
21 ~~clay, scoria,~~ phosphate rock, ~~sand, or gravel~~ mineral mining
22 to protect and perpetuate the taxable value of property, to
23 protect scenic, scientific, historic, or other unique areas,
24 and to promote the health, safety, and general welfare of
25 the people of this state."

1 Section 2. Section 82-4-403, MCA, is amended to read:

2 "82-4-403. Definitions. When used in this part, unless
3 a different meaning clearly appears from the context, the
4 following definitions apply:

5 (1) "Affected land" means the area of land and land
6 covered by water that is disturbed by opencut mining
7 operations, including the area from which overburden or
8 mineral is to be or has been removed and upon which the
9 overburden is to be or has been deposited, roads constructed
10 to gain access to the mineral, areas of processing
11 facilities on or contiguous to the opencut mine, treatment
12 and sedimentation ponds, and mineral stockpile areas on or
13 contiguous to the opencut mine.

14 (2) "Board" means the state board of land
15 commissioners.

16 (3) "Contract" means a mined land reclamation contract
17 prepared by the board to meet the requirements of this part.

18 (4) "Final cut" means the last pit created in an
19 opencut-mined area.

20 ~~(5) "Highwall" means that side of the pit adjacent to~~
21 ~~unmined land.~~

22 ~~(5)~~ (5) "Landowner" means the owner of land directly or
23 indirectly affected by an opencut-mining operation.

24 (6) "Minerals" means bentonite, clay, scoria,
25 phosphate rock, sand, or gravel.

1 (7) "Opencut mining" means the mining of bentonite,
2 clay, scoria, phosphate, rock, sand, or gravel minerals by:

3 (a) removing the overburden lying upon natural
4 deposits thereof and mining directly from the natural
5 deposits thereby exposed;

6 (b) mining directly from natural deposits of such
7 minerals; including the removal of or

8 (c) removing overburden for the purpose of determining
9 the location, quality, or quantity of any natural deposit of
10 bentonite, clay, scoria, phosphate, rock, sand, or gravel
11 minerals.

12 (8) "Operator" means a person engaged in and or
13 controlling an opencut-mining operation.

14 (9) "Overburden" means all of the earth and other
15 materials which lie above a natural deposit of bentonite,
16 clay, scoria, phosphate, rock, sand, or gravel minerals.

17 "Spoil" is the overburden disturbed from its natural state
18 in the process of opencut mining.

19 (10) "Person" means a natural person or a firm,
20 association, partnership, cooperative, or corporation or any
21 department, agency, or instrumentality of the state or any
22 governmental subdivision or any other entity whatever.

23 (11) "Processing facilities" means all crushers,
24 screens, and asphalt or concrete plants.

25 (12) "Progress report" means a report showing the

1 land which the operator has affected by opencut mining
2 during the year. The report shall show the number of acres
3 of affected land and all reclamation accomplished.

4 (13) "Public notice" means notice given by
5 publication in a newspaper in the general area where the
6 affected land is located. The notice shall be given once a
7 week for 3 successive weeks.

8 (14) "Reclamation" means the reconditioning of the
9 area of land affected by opencut-mining operations to make
10 the area suitable for productive use, including but not
11 limited to forestry, agriculture, grazing, wildlife,
12 recreation, or residential and industrial sites.

13 (15) "Reclamation plan" means the description of
14 current land use, topographical data, water data, soils
15 data, leased areas, intended mine areas, and an explanation
16 of proposed reclamation of the land with appropriate maps.

17 (16) "Refuse" means all waste material directly
18 connected with the opencut-mining operations.

19 (17) "Soils materials" are those horizons
20 containing topsoil or other soils leached free of
21 deleterious salts and capable of sustaining plant growth and
22 recognized as such by standard authorities."

23 Section 3. Section 82-4-423, MCA, is amended to read:
24 "82-4-423. Contracts for reclamation. The board is
25 hereby authorized to enter into contracts with operators in

1 the name of the state of Montana which will provide for the
 2 reclamation of lands on which opencut mining of bentonite,
 3 clay, scoria, phosphate-rocky-sand, and-gravel minerals has
 4 been or is to be conducted. The board is authorized to sue
 5 and be sued in the name of the state of Montana to enforce
 6 the provisions of any contract, and the board shall bring
 7 such court actions and take such other steps and actions as
 8 may be necessary to enforce the provisions of such
 9 contracts."

10 Section 4. Section 82-4-431, MCA, is amended to read:

11 "82-4-431. Contract for reclamation required.

12 (1) After March 16, 1973, no operator may conduct
 13 opencut-mining operations which will result in the removal
 14 of 10,000 cubic yards or more of product or overburden until
 15 he has entered into a contract with the board for the
 16 reclamation of the land affected. An operator conducting a
 17 number of operations, each of which results in the removal
 18 of less than 10,000 cubic yards of product or overburden but
 19 which result in the removal of 10,000 cubic yards or more of
 20 product or overburden in the aggregate, is subject to the
 21 provisions of this part, except as provided in this section.

22 (2) (A) AN EXCEPT AS PROVIDED IN OR CONDITIONED UNDER
 23 SUBSECTIONS (2)(B) AND (2)(C), AN operator who holds a
 24 contract for reclamation may operate an opencut mine without
 25 first securing an additional contract or an amendment to the

1 existing contract or bond if the mine meets the following
 2 criteria:

3 (a)(I) the total amount of material and overburden
 4 removed does not exceed 1,000 cubic yards; and

5 (b)(II) the operator notifies the department of state
 6 lands prior to beginning such operations and, within 30 days
 7 of notifying the department, submits a completed site
 8 information form, salvages and stockpiles all root-bearing
 9 soil materials, regrades the affected area to 3:1 or flatter
 10 slope and blends the reclaimed area into the adjacent
 11 topography, and during the first appropriate growing season
 12 replaces all topsoil and reseeds or revegetates as required
 13 by the department.

14 (B) THE DEPARTMENT MAY REFUSE TO ALLOW THE OPERATOR TO
 15 OPERATE AN OPENCUT MINE UNDER SUBSECTION (2)(A) IF, AT THE
 16 TIME OF NOTIFICATION BY THE OPERATOR TO THE DEPARTMENT, THE
 17 OPERATOR HAS A PATTERN OF VIOLATIONS OR IS IN CURRENT
 18 VIOLATION OF THIS PART OR RULES ADOPTED UNDER THIS PART OR
 19 PROVISIONS OF A CONTRACT FOR RECLAMATION.

20 (C) THE DEPARTMENT MAY REQUIRE AN ADDITIONAL BOND AS A
 21 CONDITION FOR THE OPERATION OF AN OPENCUT MINE UNDER
 22 SUBSECTION (2)(A).

23 (3) Opencut mines described in subsection (2) may not
 24 be placed in flowing, ephemeral, or intermittent streams, in
 25 the bottom or head of a confined drainage, in an area where

1 the operation will intercept ground water or intercept any
 2 slope that is naturally steeper than 3:1, or in any area
 3 where mining would be restricted by other laws."

4 Section 5. Section 82-4-433, MCA, is amended to read:

5 "82-4-433. Bond. (1) A bond required to be filed in
 6 this part by the operator shall be in such form as the board
 7 prescribes, payable to the state of Montana and conditioned
 8 upon the operator's full compliance with all requirements of
 9 this part and all rules of the board. The bond shall be
 10 signed by the landowner or operator, as appropriate, as
 11 principal, and by a good and sufficient corporate surety
 12 licensed to do business in the state of Montana, as surety.
 13 The bond shall be in an amount not to exceed the costs of
 14 restoration required by this part as determined by the
 15 board. The amount of the bond may not be less than \$200 or
 16 more than \$1,000 per acre unless the department determines,
 17 in writing, that the cost of restoration of the land exceeds
 18 \$1,000 per acre. Upon such a determination, the bond amount
 19 must be set by the board at the cost of restoring the land.

20 (2) In lieu of the bond, the operator may deposit with
 21 the board cash and government securities or a bond with
 22 property sureties in an amount equal to that of the required
 23 bond on conditions as above prescribed. In the discretion of
 24 the board, surety bond requirements may be fulfilled by the
 25 operator's posting a bond with land and improvements and

1 facilities thereon as security, in which event no surety may
 2 be required. The penalty of the bond or amount of cash and
 3 securities shall be increased or reduced from time to time
 4 as provided in this part. The bond or security remains in
 5 effect until the mined-acreages-have affected land has been
 6 reclaimed as provided under the contract and the reclamation
 7 has been approved and the bond or security has been released
 8 by the board. The bond or security shall cover only actual
 9 mined-acreages affected land and may be increased or reduced
 10 to cover only such acreages as remain unreclaimed.

11 (3) If the license of a surety upon a bond filed with
 12 the board pursuant to this part is suspended or revoked, the
 13 operator, within 30 days after receiving notice thereof from
 14 the board, shall substitute for that surety a good and
 15 sufficient surety licensed to do business in the state. Upon
 16 failure of the operator to make substitution of surety, the
 17 board may suspend the contract of the operator to conduct
 18 operations upon the land described in the contract until the
 19 substitution has been made.

20 (4) The board shall cause the reclamation of any
 21 affected land with respect to which a bond has been
 22 forfeited.

23 (5) Whenever an operator has completed all of the
 24 requirements under the provisions of this part as to any
 25 affected land, he shall notify the board thereof. If the

1 board releases the operator from further obligation
 2 regarding such affected land, the penalty of the bond shall
 3 be reduced proportionately."

4 Section 6. Section 82-4-434, MCA, is amended to read:
 5 "82-4-434. Reclamation plan part of contract --
 6 requirements. The contract shall meet the following
 7 requirements:

8 (1) The operator shall submit a reclamation plan to
 9 the board before commencing any opencut mining and may not
 10 commence mining before the plan receives approval from the
 11 board. The operator may request and receive a meeting with
 12 the board prior to submission of the plan. If the board does
 13 not notify the operator that it has approved or disapproved
 14 a plan within 30 days after the board has received the plan,
 15 the board is considered to have approved the plan. The
 16 board, however, for sufficient cause, may extend its period
 17 of consideration for an additional 30 days if it notifies
 18 the operator prior to the end of the original 30-day period.
 19 The board shall submit each reclamation plan or amendments
 20 to the reclamation plan to the landowner for his
 21 recommendations and shall consider those recommendations in
 22 deciding whether to approve or disapprove any plan or
 23 amendments. The board may seek technical help from any state
 24 or federal agency. The board shall submit the plan
 25 immediately to the director of the university of Montana

1 statewide archaeological survey for evaluation of possible
 2 archaeological or historical values in the area to be mined.
 3 The board may approve a reclamation plan only if the board
 4 has found that the plan provides for the best possible
 5 reclamation procedures available under the circumstances at
 6 the time, so that after mining operations are completed the
 7 affected land will be reclaimed to a productive use. Once
 8 the reclamation plan is accepted in writing by the board, it
 9 shall become a part of the contract but is subject to annual
 10 review and modification by the board.

11 (2) The board may not approve any reclamation plan
 12 unless the plan provides:

13 (a) that the land will be reclaimed for one or more
 14 specified uses, including but not limited to forest,
 15 pasture, orchard, cropland, residence, recreation, industry,
 16 habitat for wildlife, including food, cover, or water, or
 17 other uses;

18 (b) that to the extent reasonable and practicable, the
 19 operator will establish vegetative cover commensurate with
 20 the proposed land use;

21 (c) whenever operations result in a need to prevent
 22 acid drainage or sedimentation on or in adjoining lands or
 23 streams, for the construction of earth dams or other
 24 reasonable devices to control water drainage, provided the
 25 formation of such impoundments or devices will not interfere

1 with other landowners' rights or contribute to water
2 pollution;

3 (d) that to accomplish practical utilization of soil
4 materials, such material will be utilized for placement on
5 affected areas, if required by the reclamation plan after
6 completion or termination of that particular phase of the
7 mining operations, at a depth sufficient for plant growth on
8 slopes of 3:1 or less;

9 (e) that grading will be commensurate with the
10 topography sought and land use designated;

11 (f) that metal and other waste will be removed or
12 buried;

13 (g) that all access, haul, and other support roads
14 will be located, constructed, and maintained in such a
15 manner as to control and minimize channeling and other
16 erosion;

17 (h) that the operator will submit a progress report
18 annually to the board;

19 (i) that all operations will be conducted so as to
20 avoid range and forest fires and spontaneous combustion and
21 that open burning of carbonaceous materials will be in
22 accordance with suitable practices for fire prevention and
23 control;

24 (j) that archaeological and historical values in areas
25 to be mined will be given appropriate protection;

1 (k) that except for rock faces, bench faces, and
2 excavations used for water impoundments, each surface area
3 of the mined premises which will be disturbed will be
4 revegetated when its use for extractive purposes is no
5 longer required;

6 (l) that seeding and planting will be done in a manner
7 to achieve a permanent suitable vegetative cover for
8 wildlife, livestock, and retardation of erosion and that all
9 seed will be drilled unless otherwise provided in the plan;

10 (m) that reclamation will be as concurrent with mining
11 operations as feasible and will be completed within a
12 specified length of time; and

13 (n) that surface and ground water will be given
14 appropriate protection, CONSISTENT WITH STATE LAW, from
15 potential--significant deterioration of water quality and
16 quantity that may arise as a result of the operation.

17 (3) If reclamation according to the plan has not been
18 completed in the time specified, the board after 30 days'
19 written notice shall order the operator to cease mining and,
20 if the operator does not cease, shall institute an action to
21 enjoin further operation and may sue for damages for breach
22 of contract, for payment of the performance bond, or for
23 both.

24 (4) (a) At any time during the period of reclamation
25 the operator may for good reason submit to the board a new

1 reclamation plan or amendment to the existing plan,
2 including extensions of time.

3 (b) The board may approve the proposed new reclamation
4 plan or amendments to the existing plan if:

5 (i) the operator has in good faith carried on
6 reclamation according to the existing plan and the proposed
7 new plan or amendments to the existing plan will result in
8 reclamation as or more desirable than the reclamation
9 proposed under the existing plan; or

10 (ii) it is highly improbable reclamation will be
11 successful unless the existing plan is replaced or amended.

12 (c) When accepted, the proposed new reclamation plan
13 or the proposed amendments to the existing plan become a
14 part of the contract.

15 (5) The operator shall provide a performance bond or
16 an alternative acceptable to the board in an amount
17 commensurate with the estimated cost of reclamation, but in
18 no case may the bond be less than \$200 per acre. The
19 estimated cost of reclamation shall be set forth in the
20 reclamation plan.

21 (6) The contract, reclamation plan, and amendments
22 accepted by the board shall be a public record and open to
23 inspection.

24 (7) The contract shall become effective when signed by
25 the board and the operator and shall remain in force until

1 terminated by mutual consent or by the board upon 6 months'
2 notice."

3 Section 7. Section 82-4-441, MCA, is amended to read:

4 "82-4-441. Penalty -- enforcement. (1) A person who
5 violates any of the provisions of this part or rules adopted
6 thereunder or provisions of a contract for reclamation shall
7 pay a civil penalty of not less than \$100 or more than
8 \$1,000 for the violation and an additional civil penalty of
9 not less than \$100 or more than \$1,000 for each day during
10 which a violation continues following the service of notice
11 of the violation, and the person may be enjoined from
12 continuing such violation as provided in this section. These
13 penalties are recoverable in an action brought in the name
14 of the state of Montana by the attorney general in the
15 district court having jurisdiction of the defendant or by
16 mutual agreement of the parties involved, in the district
17 court of the first judicial district. Penalty money shall be
18 credited to the general fund.

19 (2) The attorney general shall, upon the request of
20 the department, sue for the recovery of the penalties
21 provided for in this section and bring an action for a
22 restraining order or a temporary or permanent injunction
23 against an operator or other person violating or threatening
24 to violate an order adopted under this part.

25 (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that
2 the violation does not represent potential harm to public
3 health, public safety, or the environment and does not
4 impair the administration of this part. The board shall
5 adopt rules to implement and administer a procedure for
6 waiver of a penalty under this subsection."

7 NEW SECTION. Section 8. Extension of authority. Any
8 existing authority of the department of state lands and the
9 board of land commissioners to make rules on the subject of
10 the provisions of this act is extended to the provisions of
11 this act.

-End-