

HOUSE BILL NO. 645

INTRODUCED BY D. BROWN, ELLISON, MARKS,
KELLER, GRADY, SPAETH, IVERSON, MCLANE, HAMMOND

IN THE HOUSE

FEBRUARY 6, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

STATEMENT OF INTENT ADOPTED.

FEBRUARY 23, 1987 PRINTING REPORT.

FEBRUARY 24, 1987 SECOND READING, DO PASS AS AMENDED.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 87; NOES, 13.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

MARCH 17, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 20, 1987 SECOND READING, CONCURRED IN.

MARCH 23, 1987 THIRD READING, CONCURRED IN.
AYES, 45; NOES, 3.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 23, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 *House* BILL NO. *645*
 2 INTRODUCED BY *Don Bran Ellison Mark Kellen Deal,*
 3 *Spaeth Ineson McJannet Hammond*

4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THAT A
 5 LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF
 6 PEOPLE DIRECTLY RELATED TO THE AREA OF THE DEVELOPMENT;
 7 REQUIRING THAT A MINERAL DEVELOPER IN CONSULTATION WITH
 8 AFFECTED LOCAL GOVERNMENT UNITS SHALL ENSURE THAT THE
 9 HARD-ROCK MINING IMPACT PLAN MEETS STATUTORY REQUIREMENTS;
 10 AND CLARIFYING THAT THE IMPACT PLAN IS APPROVED WITHOUT ANY
 11 REVIEW BY THE HARD-ROCK MINING IMPACT BOARD IF NO OBJECTIONS
 12 ARE FILED WITHIN THE 90-DAY REVIEW PERIOD; AMENDING SECTIONS
 13 82-4-335, 90-6-301, 90-6-307, 90-6-308, AND 90-6-403, MCA,
 14 AND RULE 8.104.203A, ADMINISTRATIVE RULES OF MONTANA; AND
 15 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
 16 DATE."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 Section 1. Section 82-4-335, MCA, is amended to read:
 20 "82-4-335. Operating permit. (1) No person shall
 21 engage in mining, ore processing, or reprocessing of
 22 tailings or waste material or construct or operate a
 23 hard-rock mill or disturb land in anticipation of those
 24 activities in the state without first obtaining an operating
 25 permit from the board to do so. A separate operating permit

1 shall be required for each complex. Prior to receiving an
 2 operating permit from the board, any person must pay the
 3 basic permit fee of \$25 and must submit an application on a
 4 form provided by the board, which shall contain the
 5 following information and any other pertinent data required
 6 by the rules:

- 7 (a) name and address of the operator and, if a
- 8 corporation or other business entity, the name and address
- 9 of its principal officers, partners, and the like and its
- 10 resident agent for service of process, if required by law;
- 11 (b) minerals expected to be mined;
- 12 (c) a proposed reclamation plan;
- 13 (d) expected starting date of operations;
- 14 (e) a map showing the specific area to be mined and
- 15 the boundaries of the land which will be disturbed,
- 16 topographic detail, the location and names of all streams,
- 17 roads, railroads, and utility lines on or immediately
- 18 adjacent to the area, location of proposed access roads to
- 19 be built, and the names and addresses of the surface and
- 20 mineral owners of all lands within the mining area, to the
- 21 extent known to applicant;
- 22 (f) types of access roads to be built and manner of
- 23 reclamation of road sites on abandonment;
- 24 (g) a plan which will provide, within limits of normal
- 25 operating procedures of the industry, for completion of the



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 HB 645

1 operation;

2 (h) ground water and surface water hydrologic data
3 gathered from a sufficient number of sources and length of
4 time to characterize the hydrologic regime;

5 (i) a plan detailing the design, operation, and
6 monitoring of impounding structures, including but not
7 limited to tailings impoundments and water reservoirs,
8 sufficient to ensure that such structures are safe and
9 stable;

10 (j) a plan identifying methods to be used to monitor
11 for the accidental discharge of objectionable materials and
12 remedial action plans to be used to control and mitigate
13 discharges to surface or ground water; and

14 (k) an evaluation of the expected life of any tailings
15 impoundment or waste area and the potential for expansion of
16 the tailings impoundment or waste site.

17 (2) Except as provided in subsection (4), the permit
18 provided for in subsection (1) for a large-scale mineral
19 development as defined in 90-6-302 shall be conditioned to
20 provide that activities under the permit may not commence
21 until the ~~hard-rock-mining-impact-board-approves-the~~ impact
22 plan is approved under 90-6-307 and until the permittee has
23 provided a written guarantee to the department and to the
24 hard-rock mining impact board of compliance within the time
25 schedule with the commitment made in the approved impact

1 plan ~~approved--by--the--hard-rock--mining--impact-board~~, as
2 provided in 90-6-307. If the permittee does not comply with
3 that commitment within the time scheduled, the board, upon
4 receipt of written notice from the hard-rock mining impact
5 board, shall suspend the permit until it receives written
6 notice from the hard-rock mining impact board that the
7 permittee is in compliance.

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

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

4 Section 2. Section 90-6-301, MCA, is amended to read:

5 "90-6-301. Declaration of necessity and purpose. The
6 large-scale development of mineral deposits in the state
7 causes may cause an influx of people ~~into-the-area-of~~
8 directly related to the area of the development many--times
9 ~~larger--than--the--number-of-people-directly-involved-in-the~~
10 ~~mining--operation.~~ This influx of people and the
11 corresponding increase in demand for local government
12 facilities and services creates may create a burden on the
13 local taxpayer. There is a significant lag time between the
14 time when additional facilities and services must be
15 provided and the time when additional tax revenue is
16 available as a result of the increased tax base. In
17 addition, local government units in whatever jurisdiction
18 the development is not located may receive substantial
19 adverse economic impacts without benefit of a major
20 increased tax base in the future. There is therefore a need
21 to provide a system to assist local government units in
22 meeting the initial financial impact of large-scale mineral
23 development."

24 Section 3. Section 90-6-307, MCA, is amended to read:

25 "90-6-307. Impact plan to be submitted. (1) After an

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

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

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

22 (c) the increased capital and operating cost to local
23 government units for providing services which can be
24 expected as a result of the development;

25 (d) the financial or other assistance the developer

1 will give to local government units to meet the increased
2 need for services.

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

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

24 (4) The governing body of the county where the fiscal
25 impacts on local government units are forecasted in the

1 impact plan to be most costly shall, within 90 days after
2 receipt of the impact plan from the developer, conduct a
3 public hearing on the impact plan.

4 ~~(4)~~(5) An affected local government unit shall, within
5 90 days after receipt of the impact plan from the developer,
6 notify the board in writing if that local government unit
7 objects to the impact plan, specifying the reasons why the
8 impact plan is objected to. During the 90-day period, an
9 affected local government unit may petition for one 30-day
10 extension by submitting a written request to the board
11 stating the need and justification for the extension. The
12 board shall grant the extension unless it finds there is no
13 reasonable basis for the request. If no objection is
14 received within the 90-day period or any extension thereof,
15 the impact plan ~~shall be~~ is approved without any review by
16 the board. An approved plan is binding and may only be
17 altered under the amendment provisions of 90-6-311.

18 ~~(5)~~(6) If objections are received from a local
19 government unit, the board shall, within 10 days, notify the
20 developer and forward a copy of the local government unit's
21 objections to the developer. The local government unit and
22 the developer have 30 days, or a longer period if both the
23 local government unit and the developer request an
24 extension, to resolve the objection. If the objections are
25 not resolved, the board shall conduct a hearing on the

1 validity of the objections, which shall be held in the
 2 affected county or, if objections are received from local
 3 government units in more than one county, shall be held in
 4 the county which, in the board's judgment, is more greatly
 5 affected. The provisions of the Montana Administrative
 6 Procedure Act shall apply to the conduct of the hearing. The
 7 impact plan filed by the developer shall carry no
 8 presumption of correctness at the hearing.

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

19 ~~7~~8 The developer shall, within 30 days of receipt
 20 of the approved impact plan, provide the board with a
 21 written guarantee that the developer will meet the increased
 22 costs of public services and facilities as specified in the
 23 approved impact plan and according to the time schedule
 24 contained in the approved impact plan.

25 ~~8~~9 The developer may make payments as specified in

1 the approved impact plan directly to a local government unit
 2 or to the board. The governing body of a local government
 3 unit receiving payments shall deposit the payments into an
 4 impact fund. The developer and the affected governing body
 5 shall each issue to the board written verification of each
 6 payment and its intended use in compliance with the impact
 7 plan. The board shall deposit payments received from a
 8 developer into the hard-rock mining impact account
 9 established by 90-6-304.

10 ~~9~~10 The board shall notify the department of state
 11 lands of its receipt of the written guarantee of payment and
 12 of any failure of the developer to comply with this section.

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

24 ~~11~~12 If it is determined that an objection filed by
 25 an affected local government unit under subsection ~~4~~5

1 or 90-6-311(3) is valid and it results in some remedial
 2 order by the board or court of competent jurisdiction, the
 3 local government unit shall be awarded and the developer
 4 shall pay reasonable costs and attorney fees associated with
 5 any administrative or judicial appeals filed under this
 6 section. Any attorney fees and costs awarded shall be in
 7 addition to any amounts paid by the developer under this
 8 part.

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

1 that has been revoked.

2 ~~†13†~~(14) When a person who holds an operating permit
 3 under 82-4-335 and who has filed an impact plan fails to
 4 comply with the review and implementation requirements in
 5 this part and part 4 of this chapter, the board shall
 6 certify to the board of land commissioners that the failure
 7 to comply has occurred and shall certify when a permittee
 8 who has previously failed to comply comes into compliance."

9 Section 4. Section 90-6-308, MCA, is amended to read:
 10 "90-6-308. Permit procedure and review of impact plan
 11 to run concurrently. It is intended that the procedure for
 12 fulfilling the permit requirement of 82-4-335 and the review
 13 of the impact plan by the board under ~~90-6-307~~ 90-6-307(5)
 14 and (6), if review occurs, are to run concurrently."

15 Section 5. Section 90-6-403, MCA, is amended to read:
 16 "90-6-403. Jurisdictional revenue disparity --
 17 conditioned exemption and reallocation of certain taxable
 18 valuation. (1) When an impact plan for a large-scale mineral
 19 development approved by ~~the board~~ pursuant to 90-6-307
 20 identifies a jurisdictional revenue disparity, the board
 21 shall promptly notify the developer, all affected local
 22 government units, and the department of revenue of the
 23 disparity. Except as provided in this section and 90-6-404,
 24 the increase in taxable valuation of the mineral development
 25 that occurs after the issuance and validation of a permit

1 under 82-4-335 is not subject to the usual application of
 2 county and school district property tax mill levies. This
 3 increase in taxable valuation must be allocated to local
 4 government units as provided in 90-6-404. The increase in
 5 taxable valuation allocated as provided in 90-6-404 is
 6 subject to the application of property tax mill levies in
 7 the local government unit to which it is allocated.

8 (2) The total taxable valuation of a large-scale
 9 mineral development remains subject to the statewide mill
 10 levies and basic county levies for elementary and high
 11 school foundation programs as provided in 20-9-331 and
 12 20-9-333.

13 (3) The provisions of subsection (1) remain in effect
 14 until the large-scale mineral development ceases operations
 15 or until the existence of the jurisdictional revenue
 16 disparity ceases, as determined by the board."

17 Section 6. The Hard-Rock Mining Impact Board shall
 18 amend Rule 8.104.203A, Administrative Rules of Montana, to
 19 read:

20 "8.104.203A DEFINITIONS DEFINITION For purposes of
 21 these rules, the following definitions apply:

22 ~~{i}--The estimated number of persons coming into the~~
 23 ~~impact area as a result of the development means:~~

24 ~~{a}--those immigrating persons who are or will be~~
 25 ~~employed in the construction or operation of the development~~

1 ~~and their immigrating family members;~~

2 ~~{b}--those immigrating persons who will provide service~~
 3 ~~or support to the development or to those persons~~
 4 ~~encompassed by {a} and their immigrating family members; and~~

5 ~~{c}--any other persons identified in an approved impact~~
 6 ~~plan as being expected to move into the impact area as a~~
 7 ~~result of the development;~~

8 ~~{2}--The term 'impacted area' means the jurisdictional~~
 9 ~~area or areas of the affected local government units~~
 10 ~~identified in an impact plan or in an amendment to an impact~~
 11 ~~plan."~~

12 NEW SECTION. Section 7. Extension of authority. Any
 13 existing authority of the hard-rock mining impact board to
 14 make rules on the subject of the provisions of this act is
 15 extended to the provisions of this act.

16 NEW SECTION. Section 8. Applicability. This act
 17 applies to all impact plans submitted after the effective
 18 date of this act.

19 NEW SECTION. Section 9. Effective date. This act is
 20 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB645, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act specifying that a large-scale mineral development may cause an influx of people directly related to the area of the development; requiring that a mineral developer, in consultation with affected local government units, shall ensure that the hard-rock mining impact plan meets statutory requirements; and clarifying that the impact plan is approved without any review by the hard-rock mining impact board if no objections are filed within the 90-day review period.

ASSUMPTIONS:

This bill will not affect the current level of operations of the Hard-Rock Mining Impact Board.

FISCAL IMPACT:

None.

 DATE 2/9/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2/9/87

DAVE BROWN, PRIMARY SPONSOR

Fiscal Note for HB645, as introduced.

HB 645

APPROVED BY COMM. ON
NATURAL RESOURCES

STATEMENT OF INTENT

HOUSE BILL 645

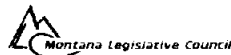
House Natural Resources Committee

1 A statement of intent is required for this bill in
2 order to clarify the role of the hard-rock mining impact
3 board and to provide guidance concerning any rules it may
4 develop. The amendments to section 3 of this bill are
5 designed to ensure that the board is not involved in
6 reviewing the plan unless objections are filed under
7 90-6-307 or amendments are sought under 90-6-311.

8 The amendment of Rule 8.104.203A, Administrative Rules
9 of Montana, does not indicate a legislative intent to define
10 population changes associated with a mineral development.
11 This matter should be determined by the mineral developer
12 and the affected local governments. The amendment further
13 indicates that the legislature desires that the hard-rock
14 mining impact board should not influence this determination
15 by enacting rules on matters that should be the product of
16 discussions between the mineral developer and the affected
17 local governments, except when the board is required to
18 address impact plan concerns during the objections and
19 amendment processes.

20 This bill also attempts to stress the cooperation role
21 of the mineral developer and the affected local governments
22
23
24
25

1 in formulating the impact plan. The impact plan, as a
2 result, should reflect the concerns and agreements among
3 these entities. Furthermore, to ensure public involvement
4 in the planning process, a mandatory public hearing is
5 required.



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2 INTRODUCED BY D. BROWN, ELLISON, MARKS,

3 KELLER, GRADY, SPAETH, IVERSON, MCLANE, HAMMOND

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6 LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF
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2 shall be required for each complex. Prior to receiving an
3 operating permit from the board, any person must pay the
4 basic permit fee of \$25 and must submit an application on a
5 form provided by the board, which shall contain the
6 following information and any other pertinent data required
7 by the rules:

8 (a) name and address of the operator and, if a
9 corporation or other business entity, the name and address
10 of its principal officers, partners, and the like and its
11 resident agent for service of process, if required by law;

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13 (c) a proposed reclamation plan;

14 (d) expected starting date of operations;

15 (e) a map showing the specific area to be mined and
16 the boundaries of the land which will be disturbed,
17 topographic detail, the location and names of all streams,
18 roads, railroads, and utility lines on or immediately
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21 mineral owners of all lands within the mining area, to the
22 extent known to applicant;

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24 reclamation of road sites on abandonment;

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13 governing bodies of the affected counties shall publish
14 notice of the submission of an impact plan at least once in
15 a newspaper of general circulation in the county. The
16 ~~impact-plan-shall-include~~ mineral developer and the affected
17 local government units shall ensure that the impact plan
18 includes:

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

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

23 (c) the increased capital and operating cost to local
24 government units for providing services which can be
25 expected as a result of the development;

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

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

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

25 (4) The governing body of the county where the fiscal

1 impacts on local government units are forecasted in the
 2 impact plan to be most costly shall, within 90 days after
 3 receipt of the impact plan from the developer, conduct a
 4 public hearing on the impact plan.

5 (5) AN AFFECTED LOCAL GOVERNMENT UNIT THAT HAS NOT
 6 BEEN IDENTIFIED IN AN IMPACT PLAN SUBMITTED TO THE BOARD AS
 7 BEING LIKELY TO EXPERIENCE INCREASED CAPITAL AND OPERATING
 8 COSTS FOR PROVIDING SERVICES WHICH CAN BE EXPECTED AS A
 9 RESULT OF THE DEVELOPMENT MAY OBJECT TO THE IMPACT PLAN
 10 UNDER THE PROVISIONS OF THIS SECTION.

11 (4)(5)(6) An affected local government unit shall,
 12 within 90 days after receipt of the impact plan from the
 13 developer, notify the board in writing if that local
 14 government unit objects to the impact plan, specifying the
 15 reasons why the impact plan is objected to. During the
 16 90-day period, an affected local government unit may
 17 petition for one 30-day extension by submitting a written
 18 request to the board stating the need and justification for
 19 the extension. The board shall grant the extension unless
 20 it finds there is no reasonable basis for the request. If
 21 no objection is received within the 90-day period or any
 22 extension thereof, the impact plan shall-be is approved
 23 without-any-review by the board, SUBJECT ONLY TO A TECHNICAL
 24 REVIEW FOR CLARITY AND ENFORCEABILITY OF THE PLAN. An
 25 approved plan is binding and may only be altered under the

1 amendment provisions of 90-6-311.

2 ~~(5)~~~~(6)~~~~(7)~~ If objections are received from a local
3 government unit, the board shall, within 10 days, notify the
4 developer and forward a copy of the local government unit's
5 objections to the developer. The local government unit and
6 the developer have 30 days, or a longer period if both the
7 local government unit and the developer request an
8 extension, to resolve the objection. If the objections are
9 not resolved, the board shall conduct a hearing on the
10 validity of the objections, which shall be held in the
11 affected county or, if objections are received from local
12 government units in more than one county, shall be held in
13 the county which, in the board's judgment, is more greatly
14 affected. The provisions of the Montana Administrative
15 Procedure Act shall apply to the conduct of the hearing. The
16 impact plan filed by the developer shall carry no
17 presumption of correctness at the hearing.

18 ~~(6)~~~~(7)~~~~(8)~~ Following the hearing, the board shall,
19 within 60 days, make findings as to those portions of the
20 impact plan which were objected to and, if appropriate,
21 amend the impact plan accordingly. The findings and impact
22 plan, as amended, shall be served by the board upon all
23 parties. Any local government unit or the developer, if
24 aggrieved by the decision of the board, is entitled to
25 judicial review, as provided by Title 2, chapter 4, part 7,

1 in the district court in and for the judicial district in
2 which the hearing was held.

3 ~~(7)~~~~(8)~~~~(9)~~ The developer shall, within 30 days of
4 receipt of the approved impact plan, provide the board with
5 a written guarantee that the developer will meet the
6 increased costs of public services and facilities as
7 specified in the approved impact plan and according to the
8 time schedule contained in the approved impact plan.

9 ~~(8)~~~~(9)~~~~(10)~~ The developer may make payments as specified
10 in the approved impact plan directly to a local government
11 unit or to the board. The governing body of a local
12 government unit receiving payments shall deposit the
13 payments into an impact fund. The developer and the affected
14 governing body shall each issue to the board written
15 verification of each payment and its intended use in
16 compliance with the impact plan. The board shall deposit
17 payments received from a developer into the hard-rock mining
18 impact account established by 90-6-304.

19 ~~(9)~~~~(10)~~~~(11)~~ The board shall notify the department of
20 state lands of its receipt of the written guarantee of
21 payment and of any failure of the developer to comply with
22 this section.

23 ~~(10)~~~~(11)~~~~(12)~~ Upon receipt of evidence that an affected
24 local government unit identified in the approved impact plan
25 is providing or is preparing to provide an additional

1 service or facility provided for in the approved impact
 2 plan, the board shall, if the hard-rock mining impact
 3 account is used to deliver payments to the local government
 4 unit, pay to that local government unit, in one sum or in
 5 parts, the money from the hard-rock mining impact account
 6 identified in the plan as the increased cost to the local
 7 government unit of providing that public service or
 8 facility.

9 ~~{11}{12}~~(13) If it is determined that an objection
 10 filed by an affected local government unit under ~~subsection~~
 11 SUBSECTIONS {4} (5) AND (6) or 90-6-311(3) is valid and it
 12 results in some remedial order by the board or court of
 13 competent jurisdiction, the local government unit shall be
 14 awarded and the developer shall pay reasonable costs and
 15 attorney fees associated with any administrative or judicial
 16 appeals filed under this section. Any attorney fees and
 17 costs awarded shall be in addition to any amounts paid by
 18 the developer under this part.

19 ~~{12}{13}~~(14) Upon a determination by the department of
 20 state lands that a permittee under 82-4-335 has become or
 21 will become a large-scale mineral developer, the permittee
 22 may petition the board for a waiver of the impact plan
 23 requirement. The board may grant a waiver or conditional
 24 waiver of this requirement only if it has provided notice
 25 and opportunity for hearing to the permittee and to all

1 affected local government units. The board shall adopt
 2 criteria under which a waiver may be granted. A waiver
 3 issued by the board may be revoked as provided in the
 4 conditional waiver or if the permittee and contractors at
 5 the mineral development increase their payrolls from the
 6 date of the waiver by 75 or more persons, provided the
 7 revocation is requested by an affected local government unit
 8 and notice and opportunity for hearing are given to the
 9 permittee and all affected local government units. The board
 10 shall notify the board of land commissioners of any waiver
 11 that has been revoked.

12 ~~{13}{14}~~(15) When a person who holds an operating
 13 permit under 82-4-335 and who has filed an impact plan fails
 14 to comply with the review and implementation requirements in
 15 this part and part 4 of this chapter, the board shall
 16 certify to the board of land commissioners that the failure
 17 to comply has occurred and shall certify when a permittee
 18 who has previously failed to comply comes into compliance."

19 Section 4. Section 90-6-308, MCA, is amended to read:
 20 "90-6-308. Permit procedure and review of impact plan
 21 to run concurrently. It is intended that the procedure for
 22 fulfilling the permit requirement of 82-4-335 and the review
 23 of the impact plan by the board under ~~90-6-307~~ 90-6-307(5)
 24 and (6), if review occurs, are to run concurrently."

25 Section 5. Section 90-6-403, MCA, is amended to read:

1 "90-6-403. Jurisdictional revenue disparity --
 2 conditioned exemption and reallocation of certain taxable
 3 valuation. (1) When an impact plan for a large-scale mineral
 4 development approved by--the--board pursuant to 90-6-307
 5 identifies a jurisdictional revenue disparity, the board
 6 shall promptly notify the developer, all affected local
 7 government units, and the department of revenue of the
 8 disparity. Except as provided in this section and 90-6-404,
 9 the increase in taxable valuation of the mineral development
 10 that occurs after the issuance and validation of a permit
 11 under 82-4-335 is not subject to the usual application of
 12 county and school district property tax mill levies. This
 13 increase in taxable valuation must be allocated to local
 14 government units as provided in 90-6-404. The increase in
 15 taxable valuation allocated as provided in 90-6-404 is
 16 subject to the application of property tax mill levies in
 17 the local government unit to which it is allocated.
 18 (2) The total taxable valuation of a large-scale
 19 mineral development remains subject to the statewide mill
 20 levies and basic county levies for elementary and high
 21 school foundation programs as provided in 20-9-331 and
 22 20-9-333.
 23 (3) The provisions of subsection (1) remain in effect
 24 until the large-scale mineral development ceases operations
 25 or until the existence of the jurisdictional revenue

1 disparity ceases, as determined by the board."
 2 Section 6. The Hard-Rock Mining Impact Board shall
 3 amend Rule 8.104.203A, Administrative Rules of Montana, to
 4 read:
 5 "8.104.203A DEFINITIONS DEFINITION For purposes of
 6 these rules, the following definitions apply:
 7 (1)--The--'estimated--number-of-persons-coming-into-the
 8 impact-area-as-a-result-of-the-development'-means:
 9 (a)--those-immigrating--persons--who--are--or--will--be
 10 employed-in-the-construction-or-operation-of-the-development
 11 and-their-immigrating-family-members;
 12 (b)--those-immigrating-persons-who-will-provide-service
 13 or---support---to---the--development--or--to--those--persons
 14 encompassed-by-(a)--and-their-immigrating-family-members;--and
 15 (c)--any-other-persons-identified-in-an-approved-impact
 16 plan-as-being-expected-to-move-into-the--impact--area--as--a
 17 result-of-the-development.
 18 (2)--The term 'impacted area' means the jurisdictional
 19 area or areas of the affected local government units
 20 identified in an impact plan or in an amendment to an impact
 21 plan."
 22 NEW SECTION. Section 7. Extension of authority. Any
 23 existing authority of the hard-rock mining impact board to
 24 make rules on the subject of the provisions of this act is
 25 extended to the provisions of this act.

1 NEW SECTION. Section 8. Applicability. This act
2 applies to all impact plans submitted after the effective
3 date of this act.

4 NEW SECTION. Section 9. Effective date. This act is
5 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 645

3 House Natural Resources Committee
4

5 A statement of intent is required for this bill in
6 order to clarify the role of the hard-rock mining impact
7 board. The amendments to section 3 of this bill are
8 designed to ensure that the board is not involved in
9 reviewing the plan unless objections are filed under
10 90-6-307 or amendments are sought under 90-6-311.

11 The amendment of Rule 8.104.203A, Administrative Rules
12 of Montana, does not indicate a legislative intent to define
13 population changes associated with a mineral development.
14 This matter should be determined by the mineral developer
15 and the affected local governments. The amendment further
16 indicates that the legislature desires that the hard-rock
17 mining impact board should not influence this determination
18 by enacting rules on matters that should be the product of
19 discussions between the mineral developer and the affected
20 local governments, except when the board is required to
21 address impact plan concerns during the objections and
22 amendment processes.

23 This bill also attempts to stress the cooperation role
24 of the mineral developer and the affected local governments
25 in formulating the impact plan. The impact plan, as a

1 result, should reflect the concerns and agreements among
2 these entities. Furthermore, to ensure public involvement
3 in the planning process, a mandatory public hearing is
4 required.

1 HOUSE BILL NO. 645

2 INTRODUCED BY D. BROWN, ELLISON, MARKS,
3 KELLER, GRADY, SPAETH, IVERSON, MCLANE, HAMMOND
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THAT A
6 LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF
7 PEOPLE DIRECTLY RELATED TO THE AREA OF THE DEVELOPMENT;
8 REQUIRING THAT A MINERAL DEVELOPER IN CONSULTATION WITH
9 AFFECTED LOCAL GOVERNMENT UNITS SHALL ENSURE THAT THE
10 HARD-ROCK MINING IMPACT PLAN MEETS STATUTORY REQUIREMENTS;
11 AND CLARIFYING THAT THE IMPACT PLAN IS APPROVED WITHOUT ANY
12 REVIEW BY THE HARD-ROCK MINING IMPACT BOARD IF NO OBJECTIONS
13 ARE FILED WITHIN THE 90-DAY REVIEW PERIOD; AMENDING SECTIONS
14 82-4-335, 90-6-301, 90-6-307, 90-6-308, AND 90-6-403, MCA,
15 AND RULE 8.104.203A, ADMINISTRATIVE RULES OF MONTANA; AND
16 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
17 DATE."
18

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

20 Section 1. Section 82-4-335, MCA, is amended to read:

21 "82-4-335. Operating permit. (1) No person shall
22 engage in mining, ore processing, or reprocessing of
23 tailings or waste material or construct or operate a
24 hard-rock mill or disturb land in anticipation of those
25 activities in the state without first obtaining an operating

1 permit from the board to do so. A separate operating permit
2 shall be required for each complex. Prior to receiving an
3 operating permit from the board, any person must pay the
4 basic permit fee of \$25 and must submit an application on a
5 form provided by the board, which shall contain the
6 following information and any other pertinent data required
7 by the rules:

8 (a) name and address of the operator and, if a
9 corporation or other business entity, the name and address
10 of its principal officers, partners, and the like and its
11 resident agent for service of process, if required by law;

12 (b) minerals expected to be mined;

13 (c) a proposed reclamation plan;

14 (d) expected starting date of operations;

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

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

25 (g) a plan which will provide, within limits of normal

1 operating procedures of the industry, for completion of the
2 operation;

3 (h) ground water and surface water hydrologic data
4 gathered from a sufficient number of sources and length of
5 time to characterize the hydrologic regime;

6 (i) a plan detailing the design, operation, and
7 monitoring of impounding structures, including but not
8 limited to tailings impoundments and water reservoirs,
9 sufficient to ensure that such structures are safe and
10 stable;

11 (j) a plan identifying methods to be used to monitor
12 for the accidental discharge of objectionable materials and
13 remedial action plans to be used to control and mitigate
14 discharges to surface or ground water; and

15 (k) an evaluation of the expected life of any tailings
16 impoundment or waste area and the potential for expansion of
17 the tailings impoundment or waste site.

18 (2) Except as provided in subsection (4), the permit
19 provided for in subsection (1) for a large-scale mineral
20 development as defined in 90-6-302 shall be conditioned to
21 provide that activities under the permit may not commence
22 until the ~~hard-rock-mining-impact-board-approves-the~~ impact
23 plan is approved under 90-6-307 and until the permittee has
24 provided a written guarantee to the department and to the
25 hard-rock mining impact board of compliance within the time

1. schedule with the commitment made in the approved impact
2 plan ~~approved--by--the--hard-rock--mining--impact-board~~, as
3 provided in 90-6-307. If the permittee does not comply with
4 that commitment within the time scheduled, the board, upon
5 receipt of written notice from the hard-rock mining impact
6 board, shall suspend the permit until it receives written
7 notice from the hard-rock mining impact board that the
8 permittee is in compliance.

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

1 implementation requirements.

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

5 Section 2. Section 90-6-301, MCA, is amended to read:

6 "90-6-301. Declaration of necessity and purpose. The
7 large-scale development of mineral deposits in the state
8 causes may cause an influx of people ~~into-the-area-of~~
9 directly related to the area of the development ~~many--times~~
10 ~~larger--than--the--number-of-people-directly-involved-in-the~~
11 ~~mining--operation.~~ This influx of people and the
12 corresponding increase in demand for local government
13 facilities and services ~~creates~~ may create a burden on the
14 local taxpayer. There is a significant lag time between the
15 time when additional facilities and services must be
16 provided and the time when additional tax revenue is
17 available as a result of the increased tax base. In
18 addition, local government units in whatever jurisdiction
19 the development is not located may receive substantial
20 adverse economic impacts without benefit of a major
21 increased tax base in the future. There is therefore a need
22 to provide a system to assist local government units in
23 meeting the initial financial impact of large-scale mineral
24 development."

25 Section 3. Section 90-6-307, MCA, is amended to read:

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

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

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

23 (c) the increased capital and operating cost to local
24 government units for providing services which can be
25 expected as a result of the development;

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

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

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

25 (4) The governing body of the county where the fiscal

1 impacts on local government units are forecasted in the
2 impact plan to be most costly shall, within 90 days after
3 receipt of the impact plan from the developer, conduct a
4 public hearing on the impact plan.

5 (5) AN AFFECTED LOCAL GOVERNMENT UNIT THAT HAS NOT
6 BEEN IDENTIFIED IN AN IMPACT PLAN SUBMITTED TO THE BOARD AS
7 BEING LIKELY TO EXPERIENCE INCREASED CAPITAL AND OPERATING
8 COSTS FOR PROVIDING SERVICES WHICH CAN BE EXPECTED AS A
9 RESULT OF THE DEVELOPMENT MAY OBJECT TO THE IMPACT PLAN
10 UNDER THE PROVISIONS OF THIS SECTION IF THE LOCAL GOVERNMENT
11 UNIT CLEARLY DEMONSTRATES THAT IT IS LIKELY TO EXPERIENCE
12 INCREASED CAPITAL AND OPERATING COSTS FROM THE MINERAL
13 DEVELOPMENT.

14 ~~(4)~~~~(5)~~~~(6)~~ An affected local government unit shall,
15 within 90 days after receipt of the impact plan from the
16 developer, notify the board in writing if that local
17 government unit objects to the impact plan, specifying the
18 reasons why the impact plan is objected to. During the
19 90-day period, an affected local government unit may
20 petition for one 30-day extension by submitting a written
21 request to the board stating the need and justification for
22 the extension. The board shall grant the extension unless
23 it finds there is no reasonable basis for the request. If
24 no objection is received within the 90-day period or any
25 extension thereof, the impact plan ~~shall be~~ is approved

1 ~~without-any-review~~ WITHOUT ANY REVIEW by the board,--~~SUBJECT~~
 2 ~~ONLY-TO-A-TECHNICAL-REVIEW-FOR-CLARITY-AND-ENFORCEABILITY-OF~~
 3 ~~THE--PLAN.~~ An approved plan is binding and may only be
 4 altered under the amendment provisions of 90-6-311.

5 ~~(5)(6)(7)~~ If objections are received from a local
 6 government unit, the board shall, within 10 days, notify the
 7 developer and forward a copy of the local government unit's
 8 objections to the developer. The local government unit and
 9 the developer have 30 days, or a longer period if both the
 10 local government unit and the developer request an
 11 extension, to resolve the objection. If the objections are
 12 not resolved, the board shall conduct a hearing on the
 13 validity of the objections, which shall be held in the
 14 affected county or, if objections are received from local
 15 government units in more than one county, shall be held in
 16 the county which, in the board's judgment, is more greatly
 17 affected. The provisions of the Montana Administrative
 18 Procedure Act shall apply to the conduct of the hearing. The
 19 impact plan filed by the developer shall carry no
 20 presumption of correctness at the hearing.

21 ~~(6)(7)(8)~~ Following the hearing, the board shall,
 22 within 60 days, make findings as to those portions of the
 23 impact plan which were objected to and, if appropriate,
 24 amend the impact plan accordingly. The findings and impact
 25 plan, as amended, shall be served by the board upon all

1 parties. Any local government unit or the developer, if
 2 aggrieved by the decision of the board, is entitled to
 3 judicial review, as provided by Title 2, chapter 4, part 7,
 4 in the district court in and for the judicial district in
 5 which the hearing was held.

6 ~~(7)(8)(9)~~ The developer shall, within 30 days of
 7 receipt of the approved impact plan, provide the board with
 8 a written guarantee that the developer will meet the
 9 increased costs of public services and facilities as
 10 specified in the approved impact plan and according to the
 11 time schedule contained in the approved impact plan.

12 ~~(8)(9)(10)~~ The developer may make payments as specified
 13 in the approved impact plan directly to a local government
 14 unit or to the board. The governing body of a local
 15 government unit receiving payments shall deposit the
 16 payments into an impact fund. The developer and the affected
 17 governing body shall each issue to the board written
 18 verification of each payment and its intended use in
 19 compliance with the impact plan. The board shall deposit
 20 payments received from a developer into the hard-rock mining
 21 impact account established by 90-6-304.

22 ~~(9)(10)(11)~~ The board shall notify the department of
 23 state lands of its receipt of the written guarantee of
 24 payment and of any failure of the developer to comply with
 25 this section.

1 ~~(10)~~~~(11)~~(12) Upon receipt of evidence that an affected
 2 local government unit identified in the approved impact plan
 3 is providing or is preparing to provide an additional
 4 service or facility provided for in the approved impact
 5 plan, the board shall, if the hard-rock mining impact
 6 account is used to deliver payments to the local government
 7 unit, pay to that local government unit, in one sum or in
 8 parts, the money from the hard-rock mining impact account
 9 identified in the plan as the increased cost to the local
 10 government unit of providing that public service or
 11 facility.

12 ~~(11)~~~~(12)~~(13) If it is determined that an objection
 13 filed by an affected local government unit under subsection
 14 SUBSECTIONS ~~(4)~~ (5) AND (6) or 90-6-311(3) is valid and it
 15 results in some remedial order by the board or court of
 16 competent jurisdiction, the local government unit shall be
 17 awarded and the developer shall pay reasonable costs and
 18 attorney fees associated with any administrative or judicial
 19 appeals filed under this section. Any attorney fees and
 20 costs awarded shall be in addition to any amounts paid by
 21 the developer under this part.

22 ~~(12)~~~~(13)~~(14) Upon a determination by the department of
 23 state lands that a permittee under 82-4-335 has become or
 24 will become a large-scale mineral developer, the permittee
 25 may petition the board for a waiver of the impact plan

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

15 ~~(13)~~~~(14)~~(15) When a person who holds an operating
 16 permit under 82-4-335 and who has filed an impact plan fails
 17 to comply with the review and implementation requirements in
 18 this part and part 4 of this chapter, the board shall
 19 certify to the board of land commissioners that the failure
 20 to comply has occurred and shall certify when a permittee
 21 who has previously failed to comply comes into compliance."

22 Section 4. Section 90-6-308, MCA, is amended to read:
 23 "90-6-308. Permit procedure and review of impact plan
 24 to run concurrently. It is intended that the procedure for
 25 fulfilling the permit requirement of 82-4-335 and the review

1 of the impact plan by the board under ~~90-6-307~~ 90-6-307(5)
 2 and (6), if review occurs, are to run concurrently."

3 Section 5. Section 90-6-403, MCA, is amended to read:

4 "90-6-403. Jurisdictional revenue disparity --
 5 conditioned exemption and reallocation of certain taxable
 6 valuation. (1) When an impact plan for a large-scale mineral
 7 development approved ~~by the board~~ pursuant to 90-6-307
 8 identifies a jurisdictional revenue disparity, the board
 9 shall promptly notify the developer, all affected local
 10 government units, and the department of revenue of the
 11 disparity. Except as provided in this section and 90-6-404,
 12 the increase in taxable valuation of the mineral development
 13 that occurs after the issuance and validation of a permit
 14 under 82-4-335 is not subject to the usual application of
 15 county and school district property tax mill levies. This
 16 increase in taxable valuation must be allocated to local
 17 government units as provided in 90-6-404. The increase in
 18 taxable valuation allocated as provided in 90-6-404 is
 19 subject to the application of property tax mill levies in
 20 the local government unit to which it is allocated.

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 22 mineral development remains subject to the statewide mill
 23 levies and basic county levies for elementary and high
 24 school foundation programs as provided in 20-9-331 and
 25 20-9-333.

1 (3) The provisions of subsection (1) remain in effect
 2 until the large-scale mineral development ceases operations
 3 or until the existence of the jurisdictional revenue
 4 disparity ceases, as determined by the board."

5 Section 6. The Hard-Rock Mining Impact Board shall
 6 amend Rule 8.104.203A, Administrative Rules of Montana, to
 7 read:

8 "8.104.203A DEFINITIONS DEFINITION For purposes of
 9 these rules, the following definitions apply:

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 11 ~~impact area as a result of the development means:~~

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 13 ~~employed in the construction or operation of the development~~
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 16 ~~or support to the development or to those persons~~
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18 (c) ~~any other persons identified in an approved impact~~
 19 ~~plan as being expected to move into the impact area as a~~
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25 NEW SECTION. Section 7. Extension of authority. Any

1 existing authority of the hard-rock mining impact board to
2 make rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

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6 date of this act.

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8 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 645

3 House Natural Resources Committee
4

5 A statement of intent is required for this bill in
6 order to clarify the role of the hard-rock mining impact
7 board. The amendments to section 3 of this bill are
8 designed to ensure that the board is not involved in
9 reviewing the plan unless objections are filed under
10 90-6-307 or amendments are sought under 90-6-311.

11 The amendment of Rule 8.104.203A, Administrative Rules
12 of Montana, does not indicate a legislative intent to define
13 population changes associated with a mineral development.
14 This matter should be determined by the mineral developer
15 and the affected local governments. The amendment further
16 indicates that the legislature desires that the hard-rock
17 mining impact board should not influence this determination
18 by enacting rules on matters that should be the product of
19 discussions between the mineral developer and the affected
20 local governments, except when the board is required to
21 address impact plan concerns during the objections and
22 amendment processes.

23 This bill also attempts to stress the cooperation role
24 of the mineral developer and the affected local governments
25 in formulating the impact plan. The impact plan, as a

1 result, should reflect the concerns and agreements among
2 these entities. Furthermore, to ensure public involvement
3 in the planning process, a mandatory public hearing is
4 required.

1 HOUSE BILL NO. 645

2 INTRODUCED BY D. BROWN, ELLISON, MARKS,

3 KELLER, GRADY, SPAETH, IVERSON, MCLANE, HAMMOND

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THAT A
6 LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF
7 PEOPLE DIRECTLY RELATED TO THE AREA OF THE DEVELOPMENT;
8 REQUIRING THAT A MINERAL DEVELOPER IN CONSULTATION WITH
9 AFFECTED LOCAL GOVERNMENT UNITS SHALL ENSURE THAT THE
10 HARD-ROCK MINING IMPACT PLAN MEETS STATUTORY REQUIREMENTS;
11 AND CLARIFYING THAT THE IMPACT PLAN IS APPROVED WITHOUT ANY
12 REVIEW BY THE HARD-ROCK MINING IMPACT BOARD IF NO OBJECTIONS
13 ARE FILED WITHIN THE 90-DAY REVIEW PERIOD; AMENDING SECTIONS
14 82-4-335, 90-6-301, 90-6-307, 90-6-308, AND 90-6-403, MCA,
15 AND RULE 8.104.203A, ADMINISTRATIVE RULES OF MONTANA; AND
16 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
17 DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 82-4-335, MCA, is amended to read:
21 "82-4-335. Operating permit. (1) No person shall
22 engage in mining, ore processing, or reprocessing of
23 tailings or waste material or construct or operate a
24 hard-rock mill or disturb land in anticipation of those
25 activities in the state without first obtaining an operating

1 permit from the board to do so. A separate operating permit
2 shall be required for each complex. Prior to receiving an
3 operating permit from the board, any person must pay the
4 basic permit fee of \$25 and must submit an application on a
5 form provided by the board, which shall contain the
6 following information and any other pertinent data required
7 by the rules:

- 8 (a) name and address of the operator and, if a
9 corporation or other business entity, the name and address
10 of its principal officers, partners, and the like and its
11 resident agent for service of process, if required by law;
12 (b) minerals expected to be mined;
13 (c) a proposed reclamation plan;
14 (d) expected starting date of operations;
15 (e) a map showing the specific area to be mined and
16 the boundaries of the land which will be disturbed,
17 topographic detail, the location and names of all streams,
18 roads, railroads, and utility lines on or immediately
19 adjacent to the area, location of proposed access roads to
20 be built, and the names and addresses of the surface and
21 mineral owners of all lands within the mining area, to the
22 extent known to applicant;
23 (f) types of access roads to be built and manner of
24 reclamation of road sites on abandonment;
25 (g) a plan which will provide, within limits of normal

1 operating procedures of the industry, for completion of the
2 operation;

3 (h) ground water and surface water hydrologic data
4 gathered from a sufficient number of sources and length of
5 time to characterize the hydrologic regime;

6 (i) a plan detailing the design, operation, and
7 monitoring of impounding structures, including but not
8 limited to tailings impoundments and water reservoirs,
9 sufficient to ensure that such structures are safe and
10 stable;

11 (j) a plan identifying methods to be used to monitor
12 for the accidental discharge of objectionable materials and
13 remedial action plans to be used to control and mitigate
14 discharges to surface or ground water; and

15 (k) an evaluation of the expected life of any tailings
16 impoundment or waste area and the potential for expansion of
17 the tailings impoundment or waste site.

18 (2) Except as provided in subsection (4), the permit
19 provided for in subsection (1) for a large-scale mineral
20 development as defined in 90-6-302 shall be conditioned to
21 provide that activities under the permit may not commence
22 until the ~~hard-rock-mining-impact-board-approves-the~~ impact
23 plan is approved under 90-6-307 and until the permittee has
24 provided a written guarantee to the department and to the
25 hard-rock mining impact board of compliance within the time

1 schedule with the commitment made in the approved impact
2 plan ~~approved-by--the--hard-rock--mining--impact-board~~, as
3 provided in 90-6-307. If the permittee does not comply with
4 that commitment within the time scheduled, the board, upon
5 receipt of written notice from the hard-rock mining impact
6 board, shall suspend the permit until it receives written
7 notice from the hard-rock mining impact board that the
8 permittee is in compliance.

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

1 implementation requirements.

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

5 Section 2. Section 90-6-301, MCA, is amended to read:

6 "90-6-301. Declaration of necessity and purpose. The
7 large-scale development of mineral deposits in the state
8 causes may cause an influx of people ~~into-the-area-of~~
9 directly related to the area of the development many--times
10 ~~targer--than--the--number-of-people-directly-involved-in-the~~
11 ~~mining--operation.~~ This influx of people and the
12 corresponding increase in demand for local government
13 facilities and services ~~creates~~ may create a burden on the
14 local taxpayer. There is a significant lag time between the
15 time when additional facilities and services must be
16 provided and the time when additional tax revenue is
17 available as a result of the increased tax base. In
18 addition, local government units in whatever jurisdiction
19 the development is not located may receive substantial
20 adverse economic impacts without benefit of a major
21 increased tax base in the future. There is therefore a need
22 to provide a system to assist local government units in
23 meeting the initial financial impact of large-scale mineral
24 development."

25 Section 3. Section 90-6-307, MCA, is amended to read:

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

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

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

23 (c) the increased capital and operating cost to local
24 government units for providing services which can be
25 expected as a result of the development;

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

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

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

25 (4) The governing body of the county where the fiscal

1 impacts on local government units are forecasted in the
 2 impact plan to be most costly shall, within 90 days after
 3 receipt of the impact plan from the developer, conduct a
 4 public hearing on the impact plan.

5 (5) AN AFFECTED LOCAL GOVERNMENT UNIT THAT HAS NOT
 6 BEEN IDENTIFIED IN AN IMPACT PLAN SUBMITTED TO THE BOARD AS
 7 BEING LIKELY TO EXPERIENCE INCREASED CAPITAL AND OPERATING
 8 COSTS FOR PROVIDING SERVICES WHICH CAN BE EXPECTED AS A
 9 RESULT OF THE DEVELOPMENT MAY OBJECT TO THE IMPACT PLAN
 10 UNDER THE PROVISIONS OF THIS SECTION IF THE LOCAL GOVERNMENT
 11 UNIT CLEARLY DEMONSTRATES THAT IT IS LIKELY TO EXPERIENCE
 12 INCREASED CAPITAL AND OPERATING COSTS FROM THE MINERAL
 13 DEVELOPMENT.

14 ~~(4)~~(5)(6) An affected local government unit shall,
 15 within 90 days after receipt of the impact plan from the
 16 developer, notify the board in writing if that local
 17 government unit objects to the impact plan, specifying the
 18 reasons why the impact plan is objected to. During the
 19 90-day period, an affected local government unit may
 20 petition for one 30-day extension by submitting a written
 21 request to the board stating the need and justification for
 22 the extension. The board shall grant the extension unless
 23 it finds there is no reasonable basis for the request. If
 24 no objection is received within the 90-day period or any
 25 extension thereof, the impact plan shall be is approved

1 ~~without-any-review~~ WITHOUT ANY REVIEW by the board, ~~--SUBJECT~~
 2 ~~ONLY TO A TECHNICAL REVIEW FOR CLARITY AND ENFORCEABILITY OF~~
 3 ~~THE--PLAN.~~ An approved plan is binding and may only be
 4 altered under the amendment provisions of 90-6-311.

5 {5}{6}{7} If objections are received from a local
 6 government unit, the board shall, within 10 days, notify the
 7 developer and forward a copy of the local government unit's
 8 objections to the developer. The local government unit and
 9 the developer have 30 days, or a longer period if both the
 10 local government unit and the developer request an
 11 extension, to resolve the objection. If the objections are
 12 not resolved, the board shall conduct a hearing on the
 13 validity of the objections, which shall be held in the
 14 affected county or, if objections are received from local
 15 government units in more than one county, shall be held in
 16 the county which, in the board's judgment, is more greatly
 17 affected. The provisions of the Montana Administrative
 18 Procedure Act shall apply to the conduct of the hearing. The
 19 impact plan filed by the developer shall carry no
 20 presumption of correctness at the hearing.

21 {6}{7}{8} Following the hearing, the board shall,
 22 within 60 days, make findings as to those portions of the
 23 impact plan which were objected to and, if appropriate,
 24 amend the impact plan accordingly. The findings and impact
 25 plan, as amended, shall be served by the board upon all

1 parties. Any local government unit or the developer, if
 2 aggrieved by the decision of the board, is entitled to
 3 judicial review, as provided by Title 2, chapter 4, part 7,
 4 in the district court in and for the judicial district in
 5 which the hearing was held.

6 {7}{8}{9} The developer shall, within 30 days of
 7 receipt of the approved impact plan, provide the board with
 8 a written guarantee that the developer will meet the
 9 increased costs of public services and facilities as
 10 specified in the approved impact plan and according to the
 11 time schedule contained in the approved impact plan.

12 {8}{9}{10} The developer may make payments as specified
 13 in the approved impact plan directly to a local government
 14 unit or to the board. The governing body of a local
 15 government unit receiving payments shall deposit the
 16 payments into an impact fund. The developer and the affected
 17 governing body shall each issue to the board written
 18 verification of each payment and its intended use in
 19 compliance with the impact plan. The board shall deposit
 20 payments received from a developer into the hard-rock mining
 21 impact account established by 90-6-304.

22 {9}{10}{11} The board shall notify the department of
 23 state lands of its receipt of the written guarantee of
 24 payment and of any failure of the developer to comply with
 25 this section.

1 ~~(10)~~~~(11)~~(12) Upon receipt of evidence that an affected
 2 local government unit identified in the approved impact plan
 3 is providing or is preparing to provide an additional
 4 service or facility provided for in the approved impact
 5 plan, the board shall, if the hard-rock mining impact
 6 account is used to deliver payments to the local government
 7 unit, pay to that local government unit, in one sum or in
 8 parts, the money from the hard-rock mining impact account
 9 identified in the plan as the increased cost to the local
 10 government unit of providing that public service or
 11 facility.

12 ~~(11)~~~~(12)~~(13) If it is determined that an objection
 13 filed by an affected local government unit under ~~subsection~~
 14 SUBSECTIONS ~~(4)~~ (5) AND (6) or 90-6-311(3) is valid and it
 15 results in some remedial order by the board or court of
 16 competent jurisdiction, the local government unit shall be
 17 awarded and the developer shall pay reasonable costs and
 18 attorney fees associated with any administrative or judicial
 19 appeals filed under this section. Any attorney fees and
 20 costs awarded shall be in addition to any amounts paid by
 21 the developer under this part.

22 ~~(12)~~~~(13)~~(14) Upon a determination by the department of
 23 state lands that a permittee under 82-4-335 has become or
 24 will become a large-scale mineral developer, the permittee
 25 may petition the board for a waiver of the impact plan

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

15 ~~(13)~~~~(14)~~(15) When a person who holds an operating
 16 permit under 82-4-335 and who has filed an impact plan fails
 17 to comply with the review and implementation requirements in
 18 this part and part 4 of this chapter, the board shall
 19 certify to the board of land commissioners that the failure
 20 to comply has occurred and shall certify when a permittee
 21 who has previously failed to comply comes into compliance."

22 Section 4. Section 90-6-308, MCA, is amended to read:
 23 "90-6-308. Permit procedure and review of impact plan
 24 to run concurrently. It is intended that the procedure for
 25 fulfilling the permit requirement of 82-4-335 and the review

1 of the impact plan by the board under ~~90-6-307~~ 90-6-307(5)
2 and (6), if review occurs, are to run concurrently."

3 Section 5. Section 90-6-403, MCA, is amended to read:

4 "90-6-403. Jurisdictional revenue disparity --
5 conditioned exemption and reallocation of certain taxable
6 valuation. (1) When an impact plan for a large-scale mineral
7 development approved ~~by the board~~ pursuant to 90-6-307
8 identifies a jurisdictional revenue disparity, the board
9 shall promptly notify the developer, all affected local
10 government units, and the department of revenue of the
11 disparity. Except as provided in this section and 90-6-404,
12 the increase in taxable valuation of the mineral development
13 that occurs after the issuance and validation of a permit
14 under 82-4-335 is not subject to the usual application of
15 county and school district property tax mill levies. This
16 increase in taxable valuation must be allocated to local
17 government units as provided in 90-6-404. The increase in
18 taxable valuation allocated as provided in 90-6-404 is
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