

HOUSE BILL 208

Introduced by Driscoll

1/16	Introduced
117	Referred to Taxation
1/31	Hearing
2/08	Committee Report--Bill Not Passed
2/09	Adverse Committe Report Adopted

1 Hausz BILL NO. 208
2 INTRODUCED BY Drumell
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
5 DEVELOPERS INTENDING TO ENGAGE IN LARGE-SCALE HARD-ROCK
6 MINERAL EXPLORATION MAY PREPAY PROPERTY TAXES TO LOCAL
7 GOVERNMENT UNITS TO MEET INCREASED COSTS OF PROVIDING
8 SERVICES; PROVIDING THAT LOCAL GOVERNMENTS SHALL REPAY
9 PREPAID TAXES IF A MINE IS DEVELOPED; AND AMENDING SECTIONS
10 90-6-302, 90-6-307, AND 90-6-323, MCA."

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

13 **Section 1.** Section 90-6-302, MCA, is amended to read:

14 **"90-6-302. Definitions.** In this part the following
15 definitions apply:

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

18 (2) "Bonds" include bonds, notes, warrants,
19 debentures, certificates of indebtedness, temporary bonds,
20 temporary notes, interim receipts, interim certificates, and
21 all instruments or obligations evidencing or representing
22 indebtedness or evidencing or representing the borrowing of
23 money or evidencing or representing a charge, lien, or
24 encumbrance on specific revenues, special assessments,
25 income, or property of a political subdivision, including

1 all instruments or obligations payable from a special fund.
2 (3) "Local government unit" means a county, city,
3 town, school district, or any of the following independent
4 special districts:

- 5 (a) rural fire district;
6 (b) public hospital district;
7 (c) refuse disposal district;
8 (d) county water and sewer district;
9 (e) county water district; or
10 (f) county sewer district.

11 (4) "Large-scale mineral development" means the
12 construction or operation of a hard-rock mine and the
13 associated milling facility for which a permit is applied
14 for under 82-4-335 on or after May 18, 1981, and for which
15 the average number of persons on the payroll of the mineral
16 developer and of contractors at the mineral development
17 exceeds or is projected to exceed 75 for any consecutive
18 6-month period. A mining operation that would qualify as a
19 large-scale mineral development under this subsection is not
20 a large-scale mineral development if the mine owner and
21 operator are small miners as defined in 82-4-303.

22 (5) "Large-scale mineral exploration" means
23 exploration activities conducted on or beneath the surface
24 of lands for which an exploration license is required under
25 82-4-331 and for which the average number of persons on the

1 payroll of the mineral developer and contractors at the
 2 exploration site exceeds or is projected to exceed 75 for
 3 any consecutive 6-month period."

4 **NEW SECTION. Section 2. Tax prepayment -- large-scale**
 5 **mineral exploration.** (1) A developer intending to engage in
 6 large-scale mineral exploration may prepay property taxes to
 7 assist local governments in meeting the increased capital
 8 and operating costs of providing services that can be
 9 expected as a result of the exploration.

10 (2) If the developer elects to prepay property taxes,
 11 the developer shall provide information to the local
 12 government units identifying the timetable for the
 13 exploration activities, the estimated number of persons
 14 coming into the impacted area as a result of the activities,
 15 and the financial or other assistance the developer will
 16 give to local government units to meet the increased need
 17 for services.

18 (3) If the large-scale mineral exploration activities
 19 result in the construction and operation of a hard-rock mine
 20 and associated facilities that are assessed by the
 21 department of revenue, each local government unit that
 22 received property tax prepayments shall provide for
 23 repayment of the prepaid taxes in the manner provided in
 24 90-6-309(4) and (5) for taxes prepaid under an impact plan.
 25 In the event that large-scale mineral exploration does not

1 result in a producing mine within 5 years after exploration
 2 ceases or within the time period specified in the agreement
 3 provided for in subsection (4), the developer who has
 4 prepaid taxes shall forfeit the money to the local
 5 government unit.

6 (4) If the developer elects to prepay property taxes
 7 as specified in this section, the developer and the
 8 governing body of the local government unit shall enter into
 9 a written agreement specifying:

10 (a) the local government unit's intended uses of the
 11 funds;

12 (b) the schedule and amount of payments; and

13 (c) a plan for tax crediting to repay the prepaid
 14 property taxes.

15 (5) Each local government unit that enters into an
 16 agreement pursuant to subsection (4) shall provide a copy of
 17 the agreement to the board and to the county.

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

19 **"90-6-307. Impact plan to be submitted.** (1) After an
 20 application for a permit for a large-scale mineral
 21 development is made under 82-4-335, the person seeking the
 22 permit shall submit to the affected counties and the board
 23 an impact plan describing the economic impact the
 24 large-scale mineral development will have on local
 25 government units and shall file proof of such submission to

1 the counties with the board. Whenever an environmental
 2 impact statement on the permit application is prepared under
 3 75-1-201, the lead agency shall cooperate to the fullest
 4 extent practicable with the affected local government units
 5 to eliminate duplication of effort in data collection. The
 6 governing bodies of the affected counties shall publish
 7 notice of the submission of an impact plan at least once in
 8 a newspaper of general circulation in the county. The
 9 mineral developer and the affected local government units
 10 shall consider any agreement previously negotiated pursuant
 11 to [section 2] and ensure that the impact plan includes:

- 12 (a) a timetable for development, including the opening
 13 date of the development and the estimated closing date;
- 14 (b) the estimated number of persons coming into the
 15 impacted area as a result of the development;
- 16 (c) the increased capital and operating cost to local
 17 government units for providing services which can be
 18 expected as a result of the development;
- 19 (d) the financial or other assistance the developer
 20 will give to local government units to meet the increased
 21 need for services.

22 (2) In the impact plan, the developer shall commit
 23 itself to pay all of the increased capital and net operating
 24 cost to local government units that will be a result of the
 25 development, as identified in the impact plan, either from

1 tax prepayments, as provided in 90-6-309, special industrial
 2 educational impact bonds, as provided in 90-6-310, or other
 3 funds obtained from the developer, and shall provide a time
 4 schedule within which it will do so. The plan may provide
 5 for funding from other revenue sources or funding mechanisms
 6 if the developer guarantees that the amount to be provided
 7 from these sources will be paid.

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

18 (4) The governing body of the county where the fiscal
 19 impacts on local government units are forecasted in the
 20 impact plan to be most costly shall, within 90 days after
 21 receipt of the impact plan from the developer, conduct a
 22 public hearing on the impact plan.

23 (5) An affected local government unit that has not
 24 been identified in an impact plan submitted to the board as
 25 being likely to experience increased capital and operating

1 costs for providing services which can be expected as a
2 result of the development may object to the impact plan
3 under the provisions of this section if the local government
4 unit clearly demonstrates that it is likely to experience
5 increased capital and operating costs from the mineral
6 development.

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

21 (7) If objections are received from a local government
22 unit, the board shall, within 10 days, notify the developer
23 and forward a copy of the local government unit's objections
24 to the developer. The local government unit and the
25 developer have 30 days, or a longer period if both the local

1 government unit and the developer request an extension, to
2 resolve the objection. If the objections are not resolved,
3 the board shall conduct a hearing on the validity of the
4 objections, which shall be held in the affected county or,
5 if objections are received from local government units in
6 more than one county, shall be held in the county which, in
7 the board's judgment, is more greatly affected. The
8 provisions of the Montana Administrative Procedure Act shall
9 apply to the conduct of the hearing. The impact plan filed
10 by the developer shall carry no presumption of correctness
11 at the hearing.

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

22 (9) The developer shall, within 30 days of receipt of
23 the approved impact plan, provide the board with a written
24 guarantee that the developer will meet the increased costs
25 of public services and facilities as specified in the

1 approved impact plan and according to the time schedule
2 contained in the approved impact plan.

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

13 (11) The board shall notify the department of state
14 lands of its receipt of the written guarantee of payment and
15 of any failure of the developer to comply with this section.

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

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

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

1 permittee and all affected local government units. The board
2 shall notify the board of land commissioners of any waiver
3 that has been revoked.

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

11 **Section 4.** Section 90-6-323, MCA, is amended to read:

12 "90-6-323. Local government budget authority. A local
13 government unit may budget and expend payments received from
14 a mineral developer under this part or part 4 of this
15 chapter or pursuant to a plan or agreement approved under
16 this part. If a payment is requested or received after the
17 adoption of the budget for the fiscal year in which the
18 payment is to be expended, the governing body of the local
19 government unit may by a majority vote amend its budget to
20 provide for the receipt and expenditure of the payment."

21 NEW SECTION. **Section 5.** Codification instruction.

22 [Section 2] is intended to be codified as an integral part
23 of Title 90, chapter 6, part 3, and the provisions of Title
24 90, chapter 6, part 3, apply to [section 2].

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