

HOUSE BILL NO. 581

INTRODUCED BY IVERSON, WILLIAMS

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE HOUSE

FEBRUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 14, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 15, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 96; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 3, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 48; NOES, 2.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 7, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *581*  
2 INTRODUCED BY *James W. Miller*  
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO METAL MINE RECLAMATION; AND AMENDING  
7 SECTIONS 82-4-303, 82-4-305, 82-4-331, 82-4-335, 82-4-361,  
8 AND 82-4-362, MCA."  
9

10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because  
12 it delegates rulemaking authority to the board of land  
13 commissioners. Under the provisions of this bill, the board  
14 of land commissioners shall adopt rules to implement and  
15 administer a procedure for waiver of a minor violation from  
16 the civil penalty provisions provided in [section 5].

17 It is the intent of the legislature that the waiver be  
18 allowed only if a violation does not represent potential  
19 harm to the public health, public safety, or the environment  
20 and does not otherwise impair administration of the  
21 provisions of Title 84, chapter 4, part 3.  
22

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

24 **Section 1.** Section 82-4-303, MCA, is amended to read:

25 "82-4-303. Definitions. As used in this part, unless

1 the context indicates otherwise, the following definitions  
2 apply:

3 (1) "Abandonment of surface or underground mining" may  
4 be presumed when it is shown that continued operation will  
5 not resume.

6 (2) "Board" means the board of land commissioners or  
7 such state employee or state agency as may succeed to its  
8 powers and duties under this part.

9 (3) "Department" means the department of state lands.

10 (4) "Disturbed land" means that area of land or  
11 surface water disturbed, beginning at the date of the  
12 issuance of the permit, and it comprises that area from  
13 which the overburden, tailings, waste materials, or minerals  
14 have been removed and tailings ponds, waste dumps, roads,  
15 conveyor systems, leach dumps, and all similar excavations  
16 or covering resulting from the operation and which have not  
17 been previously reclaimed under the reclamation plan.

18 (5) "Exploration" means all activities conducted on or  
19 beneath the surface of lands resulting in material  
20 disturbance of the surface for the purpose of determining  
21 the presence, location, extent, depth, grade, and economic  
22 viability of mineralization in those lands, if any, other  
23 than mining for production and economic exploitation, as  
24 well as all roads made for the purpose of facilitating  
25 exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not

1 remove from the earth during any calendar year material in  
2 excess of 36,500 tons in the aggregate, that holds no  
3 operating permit under 82-4-335, and that conducts:

4 (i) operations an operation resulting in not more than  
5 5 acres of the earth's surface being disturbed and  
6 unreclaimed; or

7 (ii) two operations which disturb and leave unreclaimed  
8 less than 5 acres per operation if the respective mining  
9 properties are:

10 (A) the only operations engaged in by the person,  
11 firm, or corporation;

12 (B) at least 1 mile apart at their closest point; and

13 (C) not operated simultaneously except during seasonal  
14 transitional periods not to exceed 30 days.

15 (b) For the purpose of this definition only, the  
16 department shall, in computing the area covered by the  
17 operation, exclude access or haulage roads that are required  
18 by a local, state, or federal agency having jurisdiction  
19 over that road to be constructed to certain specifications  
20 if that public agency notifies the department in writing  
21 that it desires to have the road remain in use and will  
22 maintain it after mining ceases.

23 (12) "Surface mining" means all or any part of the  
24 process involved in mining of minerals by removing the  
25 overburden and mining directly from the mineral deposits

1 thereby exposed, including but not limited to open-pit  
2 mining of minerals naturally exposed at the surface of the  
3 earth, mining by the auger method, and all similar methods  
4 by which earth or minerals exposed at the surface are  
5 removed in the course of mining. Surface mining does not  
6 include the extraction of oil, gas, bentonite, clay, coal,  
7 sand, gravel, phosphate rock, or uranium or excavation or  
8 grading conducted for on-site farming, on-site road  
9 construction, or other on-site building construction.

10 (13) "Underground mining" means all methods of mining  
11 other than surface mining.

12 (14) "Unit of surface-mined area" means that area of  
13 land and surface water included within an operating permit  
14 actually disturbed by surface mining during each 12-month  
15 period of time, beginning at the date of the issuance of the  
16 permit, and it comprises and includes the area from which  
17 overburden or minerals have been removed, the area covered  
18 by mining debris, and all additional areas used in surface  
19 mining or underground mining operations which by virtue of  
20 such use are thereafter susceptible to erosion in excess of  
21 the surrounding undisturbed portions of land.

22 (15) "Vegetative cover" means the type of vegetation,  
23 grass, shrubs, trees, or any other form of natural cover  
24 considered suitable at time of reclamation."

25 **Section 2.** Section 82-4-305, MCA, is amended to read:

1 "82-4-305. Exemption -- small miners -- written  
2 agreement. (1) No The provisions of this part ~~shall~~ do not  
3 apply to any small miner when if the small miner:

4 (a) annually agrees in writing that:

5 ~~(a)(i)~~ that he ~~shall~~ will not pollute or contaminate  
6 any stream; and

7 ~~(b)(ii)~~ that he ~~shall~~ will provide protection for human  
8 and animal life through the installation of bulkheads  
9 installed over safety collars and the installation of doors  
10 on tunnel portals; and

11 ~~(c)(b)~~ he ~~shall provide~~ provides a map locating his  
12 mining operations. Such map shall be to a size and scale as  
13 determined by the department.

14 (2) For small-miner exemptions obtained after  
15 September 30, 1985, no a small miner may not obtain or  
16 continue an exemption under subsection (1) unless he  
17 annually certifies in writing:

18 (a) if the small miner is a natural person, that:

19 (i) no business association or partnership of which he  
20 is a member or partner has a small-miner exemption; and

21 (ii) no corporation of which he is an officer,  
22 director, or owner of record of 25% or more of any class of  
23 voting stock has a small-miner exemption; or

24 (b) if the small miner is a partnership or business  
25 association, that:

1 (i) none of the associates or partners holds a  
2 small-miner exemption; and

3 (ii) none of the associates or partners is an officer,  
4 director, or owner of 25% or more of any class of voting  
5 stock of a corporation that has a small-miner exemption; or

6 (c) if the small miner is a corporation, that no  
7 officer, director, or owner of record of 25% or more of any  
8 class of voting stock of the corporation:

9 (i) holds a small-miner exemption;

10 (ii) is a member or partner in a business association  
11 or partnership that holds a small-miner exemption;

12 (iii) is an officer, director, or owner of record of  
13 25% or more of any class of voting stock of another  
14 corporation that holds a small-miner exemption.

15 (3) The exemption provided in this section does not  
16 apply to a person whose failure to comply with the  
17 provisions of this part, the rules adopted under this part,  
18 or a permit or license issued under this part has resulted  
19 in the forfeiture of a bond unless that person meets the  
20 conditions described under [section 7]."

21 **Section 3.** Section 82-4-331, MCA, is amended to read:

22 "82-4-331. Exploration license required -- employees  
23 included -- limitation. (1) No A person ~~shall~~ may not engage  
24 in exploration in the state without first obtaining an  
25 exploration license from the board. ~~to do so~~ such A license

1 ~~must~~ to be issued for a period of 1 year from date of issue  
 2 and ~~to be~~ is renewable from year to year on application.  
 3 ~~therefor~~ An application for renewal must be filed at any  
 4 time within the 30 days next preceding the expiration of the  
 5 current license and be accompanied by payment of ~~the~~ a fee  
 6 as required for a new license. ~~7-provided-that~~ A license may  
 7 not be renewed if the applicant for renewal is ~~not-then-held~~  
 8 ~~by-the-board-to-be~~ in violation of any provision of this law  
 9 part. Such A license shall-be is subject to suspension and  
 10 revocation as provided by this part.

11 (2) Employees of persons holding a valid license under  
 12 this part ~~shall--be--deemed~~ are included in and covered by  
 13 such the license.

14 (3) A person may not be issued an exploration license  
 15 if that person's failure to comply with the provisions of  
 16 this part, the rules adopted under this part, or a permit or  
 17 license issued under this part has resulted in the  
 18 forfeiture of a bond unless that person meets the conditions  
 19 described in [section 7]."

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

21 "**82-4-335. Operating permit -- limitation.** (1) No A  
 22 person ~~shall~~ may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material or construct or  
 24 operate a hard-rock mill or disturb land in anticipation of  
 25 those activities in the state without first obtaining an

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

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~~ must be conditioned  
21 to provide that activities under the permit may not commence  
22 until the impact plan is approved under 90-6-307 and until  
23 the permittee has provided a written guarantee to the  
24 department and to the hard-rock mining impact board of  
25 compliance within the time schedule with the commitment made

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



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

(5) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7]."

**Section 5.** Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- penalties -- waiver. (1) A person who violates any of the provisions of this part or, the rules or orders adopted under this part, [except 82-4-339], or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties ~~shall be~~ are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

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

**Section 6.** Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, or the rules adopted under this part, or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, ~~where--found~~ if necessary, the commissioner shall order the suspension of the permit. The notice or order ~~shall~~ must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of

1 noncompliance ~~shall~~ must specify in what respects the  
2 operator has failed to comply with this part, the rules  
3 adopted under this part, or the reclamation plan.

4 (2) If the licensee or permittee has not complied with  
5 the requirements set forth in the notice of noncompliance or  
6 order of suspension within the time limits set therein, the  
7 permit may be revoked by order of the board and the  
8 performance bond forfeited to the department. The licensee  
9 or permittee is entitled to a hearing before the department  
10 on the revocation of a permit or license or the forfeiture  
11 of a performance bond if a hearing is requested within 30  
12 days after service of notice as provided in subsection (1).  
13 The notice must state when those measures may be undertaken  
14 and must give notice of opportunity for a hearing. If a  
15 hearing is requested within the 30-day period, the permit or  
16 license may not be revoked and the bond may not be forfeited  
17 until a final decision is made by the department.

18 (3) If a permittee fails to pay the fee or file the  
19 report required under 82-4-339, the department shall serve  
20 notice of this failure, by certified mail or personal  
21 delivery, on the permittee. If the permittee does not comply  
22 within 30 days of receipt of the notice, the commissioner  
23 shall suspend the permit. The commissioner shall reinstate  
24 the permit upon compliance."

25 NEW SECTION. Section 7. Activity prohibited if bond

1 forfeited -- exception. (1) Except as provided in subsection  
2 (2), a person may not conduct mining or exploration  
3 activities in this state if that person or any firm or  
4 business association of which that person was a principal or  
5 controlling member had a bond forfeited under this part.

6 (2) A person described in subsection (1) may apply for  
7 an operations permit or an exploration license or may  
8 conclude a written agreement under 82-4-305 if that person  
9 first pays to the department:

10 (a) the full amount of the necessary expenses incurred  
11 by the board under 82-4-341(5) for reclamation of the area  
12 for which the bond was forfeited;

13 (b) the full amount of any penalties assessed under  
14 this part; and

15 (c) interest on these amounts and penalties incurred  
16 at the rate of 6% per year.

17 NEW SECTION. Section 8. Extension of authority. Any  
18 existing authority to make rules on the subject of the  
19 provisions of [this act] is extended to the provisions of  
20 [this act].

21 NEW SECTION. Section 9. Codification instruction.  
22 [Section 7] is intended to be codified as an integral part  
23 of Title 82, chapter 4, part 3, and the provisions of Title  
24 82, chapter 4, part 3, apply to [section 7].

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

1 *HOUSE* BILL NO. *581*  
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3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
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19 mining or underground mining operations which by virtue of  
20 such use are thereafter susceptible to erosion in excess of  
21 the surrounding undisturbed portions of land.

22 (15) "Vegetative cover" means the type of vegetation,  
23 grass, shrubs, trees, or any other form of natural cover  
24 considered suitable at time of reclamation."

25 **Section 2.** Section 82-4-305, MCA, is amended to read:

1       "82-4-305. Exemption -- small miners -- written  
 2 agreement. (1) ~~No~~ The provisions of this part ~~shall~~ do not  
 3 apply to any small miner when if the small miner:  
 4       (a) annually agrees in writing that:  
 5       ~~(a)(i)~~ that he ~~shall~~ will not pollute or contaminate  
 6 any stream; and  
 7       ~~(b)(ii)~~ that he ~~shall~~ will provide protection for human  
 8 and animal life through the installation of bulkheads  
 9 installed over safety collars and the installation of doors  
 10 on tunnel portals; and  
 11       ~~(c)(b)~~ he shall provide provides a map locating his  
 12 mining operations. Such map shall be to a size and scale as  
 13 determined by the department.  
 14       (2) For small-miner exemptions obtained after  
 15 September 30, 1985, no a small miner may not obtain or  
 16 continue an exemption under subsection (1) unless he  
 17 annually certifies in writing:  
 18       (a) if the small miner is a natural person, that:  
 19       (i) no business association or partnership of which he  
 20 is a member or partner has a small-miner exemption; and  
 21       (ii) no corporation of which he is an officer,  
 22 director, or owner of record of 25% or more of any class of  
 23 voting stock has a small-miner exemption; or  
 24       (b) if the small miner is a partnership or business  
 25 association, that:

1       (i) none of the associates or partners holds a  
 2 small-miner exemption; and  
 3       (ii) none of the associates or partners is an officer,  
 4 director, or owner of 25% or more of any class of voting  
 5 stock of a corporation that has a small-miner exemption; or  
 6       (c) if the small miner is a corporation, that no  
 7 officer, director, or owner of record of 25% or more of any  
 8 class of voting stock of the corporation:  
 9       (i) holds a small-miner exemption;  
 10       (ii) is a member or partner in a business association  
 11 or partnership that holds a small-miner exemption;  
 12       (iii) is an officer, director, or owner of record of  
 13 25% or more of any class of voting stock of another  
 14 corporation that holds a small-miner exemption.  
 15       (3) The exemption provided in this section does not  
 16 apply to a person whose failure to comply with the  
 17 provisions of this part, the rules adopted under this part,  
 18 or a permit or license issued under this part has resulted  
 19 in the forfeiture of a bond unless that person meets the  
 20 conditions described under [section 7]."

21       **Section 3.** Section 82-4-331, MCA, is amended to read:  
 22       **"82-4-331. Exploration license required -- employees**  
 23 **included -- limitation.** (1) No A person ~~shall~~ may not engage  
 24 in exploration in the state without first obtaining an  
 25 exploration license from the board, ~~to do so, such A~~ license

1 ~~must~~ to be issued for a period of 1 year from date of issue  
 2 and ~~to-be~~ is renewable from year to year on application.  
 3 ~~therefor~~ An application for renewal must be filed at any  
 4 time within the 30 days next preceding the expiration of the  
 5 current license and be accompanied by payment of ~~the~~ a fee  
 6 as required for a new license. ~~7-provided-that~~ A license may  
 7 not be renewed if the applicant for renewal is ~~not-then-held~~  
 8 ~~by-the-board-to-be~~ in violation of any provision of this law  
 9 part. Such A license shall-be is subject to suspension and  
 10 revocation as provided by this part.

11 (2) Employees of persons holding a valid license under  
 12 this part ~~shall-be--deemed~~ are included in and covered by  
 13 such the license.

14 (3) A person may not be issued an exploration license  
 15 if that person's failure to comply with the provisions of  
 16 this part, the rules adopted under this part, or a permit or  
 17 license issued under this part has resulted in the  
 18 forfeiture of a bond unless that person meets the conditions  
 19 described in [section 7]."

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

21 **"82-4-335. Operating permit -- limitation.** (1) No A  
 22 person ~~shall~~ may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material or construct or  
 24 operate a hard-rock mill or disturb land in anticipation of  
 25 those activities in the state without first obtaining an

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

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~~ must be conditioned  
21 to provide that activities under the permit may not commence  
22 until the impact plan is approved under 90-6-307 and until  
23 the permittee has provided a written guarantee to the  
24 department and to the hard-rock mining impact board of  
25 compliance within the time schedule with the commitment made

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



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

(5) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7]."

**Section 5.** Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- penalties -- waiver. (1) A person who violates any of the provisions of this part ~~or~~, the rules or orders adopted under this part, ~~(except 82-4-339)~~, or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as ~~hereinafter~~ provided in this section. These penalties ~~shall be~~ are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

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

**Section 6.** Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, ~~or the rules adopted under this part~~, or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, ~~where--found~~ if necessary, the commissioner shall order the suspension of the permit. The notice or order ~~shall~~ must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of

1 noncompliance ~~shall~~ must specify in what respects the  
2 operator has failed to comply with this part, the rules  
3 adopted under this part, or the reclamation plan.

4 (2) If the licensee or permittee has not complied with  
5 the requirements set forth in the notice of noncompliance or  
6 order of suspension within the time limits set therein, the  
7 permit may be revoked by order of the board and the  
8 performance bond forfeited to the department. The licensee  
9 or permittee is entitled to a hearing before the department  
10 on the revocation of a permit or license or the forfeiture  
11 of a performance bond if a hearing is requested within 30  
12 days after service of notice as provided in subsection (1).  
13 The notice must state when those measures may be undertaken  
14 and must give notice of opportunity for a hearing. If a  
15 hearing is requested within the 30-day period, the permit or  
16 license may not be revoked and the bond may not be forfeited  
17 until a final decision is made by the department.

18 (3) If a permittee fails to pay the fee or file the  
19 report required under 82-4-339, the department shall serve  
20 notice of this failure, by certified mail or personal  
21 delivery, on the permittee. If the permittee does not comply  
22 within 30 days of receipt of the notice, the commissioner  
23 shall suspend the permit. The commissioner shall reinstate  
24 the permit upon compliance."

25 NEW SECTION. Section 7. Activity prohibited if bond

1 forfeited -- exception. (1) Except as provided in subsection  
2 (2), a person may not conduct mining or exploration  
3 activities in this state if that person or any firm or  
4 business association of which that person was a principal or  
5 controlling member had a bond forfeited under this part.

6 (2) A person described in subsection (1) may apply for  
7 an operations permit or an exploration license or may  
8 conclude a written agreement under 82-4-305 if that person  
9 first pays to the department:

10 (a) the full amount of the necessary expenses incurred  
11 by the board under 82-4-341(5) for reclamation of the area  
12 for which the bond was forfeited;

13 (b) the full amount of any penalties assessed under  
14 this part; and

15 (c) interest on these amounts and penalties incurred  
16 at the rate of 6% per year.

17 NEW SECTION. Section 8. Extension of authority. Any  
18 existing authority to make rules on the subject of the  
19 provisions of [this act] is extended to the provisions of  
20 [this act].

21 NEW SECTION. Section 9. Codification instruction.  
22 [Section 7] is intended to be codified as an integral part  
23 of Title 82, chapter 4, part 3, and the provisions of Title  
24 82, chapter 4, part 3, apply to [section 7].

-End-

1 *House* BILL NO. *581*  
2 INTRODUCED BY *James W. Miller*  
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO METAL MINE RECLAMATION; AND AMENDING  
7 SECTIONS 82-4-303, 82-4-305, 82-4-331, 82-4-335, 82-4-361,  
8 AND 82-4-362, MCA."

9  
10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because  
12 it delegates rulemaking authority to the board of land  
13 commissioners. Under the provisions of this bill, the board  
14 of land commissioners shall adopt rules to implement and  
15 administer a procedure for waiver of a minor violation from  
16 the civil penalty provisions provided in [section 5].

17 It is the intent of the legislature that the waiver be  
18 allowed only if a violation does not represent potential  
19 harm to the public health, public safety, or the environment  
20 and does not otherwise impair administration of the  
21 provisions of Title 84, chapter 4, part 3.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 Section 1. Section 82-4-303, MCA, is amended to read:  
25 "82-4-303. Definitions. As used in this part, unless

1 the context indicates otherwise, the following definitions  
2 apply:

3 (1) "Abandonment of surface or underground mining" may  
4 be presumed when it is shown that continued operation will  
5 not resume.

6 (2) "Board" means the board of land commissioners or  
7 such state employee or state agency as may succeed to its  
8 powers and duties under this part.

9 (3) "Department" means the department of state lands.

10 (4) "Disturbed land" means that area of land or  
11 surface water disturbed, beginning at the date of the  
12 issuance of the permit, and it comprises that area from  
13 which the overburden, tailings, waste materials, or minerals  
14 have been removed and tailings ponds, waste dumps, roads,  
15 conveyor systems, leach dumps, and all similar excavations  
16 or covering resulting from the operation and which have not  
17 been previously reclaimed under the reclamation plan.

18 (5) "Exploration" means all activities conducted on or  
19 beneath the surface of lands resulting in material  
20 disturbance of the surface for the purpose of determining  
21 the presence, location, extent, depth, grade, and economic  
22 viability of mineralization in those lands, if any, other  
23 than mining for production and economic exploitation, as  
24 well as all roads made for the purpose of facilitating  
25 exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not

1 remove from the earth during any calendar year material in  
2 excess of 36,500 tons in the aggregate, that holds no  
3 operating permit under 82-4-335, and that conducts:

4 (i) operations an operation resulting in not more than  
5 5 acres of the earth's surface being disturbed and  
6 unreclaimed; or

7 (ii) two operations which disturb and leave unreclaimed  
8 less than 5 acres per operation if the respective mining  
9 properties are:

10 (A) the only operations engaged in by the person,  
11 firm, or corporation;

12 (B) at least 1 mile apart at their closest point; and

13 (C) not operated simultaneously except during seasonal  
14 transitional periods not to exceed 30 days.

15 (b) For the purpose of this definition only, the  
16 department shall, in computing the area covered by the  
17 operation, exclude access or haulage roads that are required  
18 by a local, state, or federal agency having jurisdiction  
19 over that road to be constructed to certain specifications  
20 if that public agency notifies the department in writing  
21 that it desires to have the road remain in use and will  
22 maintain it after mining ceases.

23 (12) "Surface mining" means all or any part of the  
24 process involved in mining of minerals by removing the  
25 overburden and mining directly from the mineral deposits

1 thereby exposed, including but not limited to open-pit  
2 mining of minerals naturally exposed at the surface of the  
3 earth, mining by the auger method, and all similar methods  
4 by which earth or minerals exposed at the surface are  
5 removed in the course of mining. Surface mining does not  
6 include the extraction of oil, gas, bentonite, clay, coal,  
7 sand, gravel, phosphate rock, or uranium or excavation or  
8 grading conducted for on-site farming, on-site road  
9 construction, or other on-site building construction.

10 (13) "Underground mining" means all methods of mining  
11 other than surface mining.

12 (14) "Unit of surface-mined area" means that area of  
13 land and surface water included within an operating permit  
14 actually disturbed by surface mining during each 12-month  
15 period of time, beginning at the date of the issuance of the  
16 permit, and it comprises and includes the area from which  
17 overburden or minerals have been removed, the area covered  
18 by mining debris, and all additional areas used in surface  
19 mining or underground mining operations which by virtue of  
20 such use are thereafter susceptible to erosion in excess of  
21 the surrounding undisturbed portions of land.

22 (15) "Vegetative cover" means the type of vegetation,  
23 grass, shrubs, trees, or any other form of natural cover  
24 considered suitable at time of reclamation."

25 **Section 2.** Section 82-4-305, MCA, is amended to read:

1       "82-4-305. Exemption -- small miners -- written  
2       agreement. (1) ~~No~~ The provisions of this part ~~shall~~ do not  
3       apply to any small miner when if the small miner:

4       (a) annually agrees in writing that:

5       ~~(a)(i)~~ that he ~~shall~~ will not pollute or contaminate  
6       any stream; and

7       ~~(b)(ii)~~ that he ~~shall~~ will provide protection for human  
8       and animal life through the installation of bulkheads  
9       installed over safety collars and the installation of doors  
10      on tunnel portals; and

11      ~~(c)(b)~~ he shall provide provides a map locating his  
12      mining operations. Such map shall be to a size and scale as  
13      determined by the department.

14      (2) For small-miner exemptions obtained after  
15      September 30, 1985, ~~no~~ a small miner may ~~not~~ obtain or  
16      continue an exemption under subsection (1) unless he  
17      annually certifies in writing:

18      (a) if the small miner is a natural person, that:

19      (i) no business association or partnership of which he  
20      is a member or partner has a small-miner exemption; and

21      (ii) no corporation of which he is an officer,  
22      director, or owner of record of 25% or more of any class of  
23      voting stock has a small-miner exemption; or

24      (b) if the small miner is a partnership or business  
25      association, that:

1       (i) none of the associates or partners holds a  
2       small-miner exemption; and

3       (ii) none of the associates or partners is an officer,  
4       director, or owner of 25% or more of any class of voting  
5       stock of a corporation that has a small-miner exemption; or

6       (c) if the small miner is a corporation, that no  
7       officer, director, or owner of record of 25% or more of any  
8       class of voting stock of the corporation:

9       (i) holds a small-miner exemption;

10      (ii) is a member or partner in a business association  
11      or partnership that holds a small-miner exemption;

12      (iii) is an officer, director, or owner of record of  
13      25% or more of any class of voting stock of another  
14      corporation that holds a small-miner exemption.

15      (3) The exemption provided in this section does not  
16      apply to a person whose failure to comply with the  
17      provisions of this part, the rules adopted under this part,  
18      or a permit or license issued under this part has resulted  
19      in the forfeiture of a bond unless that person meets the  
20      conditions described under [section 7]."

21      Section 3. Section 82-4-331, MCA, is amended to read:

22      "82-4-331. Exploration license required -- employees  
23      included -- limitation. (1) ~~No~~ A person ~~shall~~ may not engage  
24      in exploration in the state without first obtaining an  
25      exploration license from the board. ~~to do so~~ such A license

1 ~~must~~ to be issued for a period of 1 year from date of issue  
 2 ~~and to-be is~~ renewable from year to year on application.  
 3 ~~therefor~~ An application for renewal must be filed at any  
 4 time within the 30 days next preceding the expiration of the  
 5 current license and be accompanied by payment of ~~like a~~ fee  
 6 as required for a new license. ~~7-provided-that~~ A license may  
 7 not be renewed if the applicant for renewal is ~~not-then-held~~  
 8 ~~by-the-board-to-be~~ in violation of any provision of this law  
 9 part. Such A license shall-be is subject to suspension and  
 10 revocation as provided by this part.

11 (2) Employees of persons holding a valid license under  
 12 this part ~~shall--be--deemed~~ are included in and covered by  
 13 such the license.

14 (3) A person may not be issued an exploration license  
 15 if that person's failure to comply with the provisions of  
 16 this part, the rules adopted under this part, or a permit or  
 17 license issued under this part has resulted in the  
 18 forfeiture of a bond unless that person meets the conditions  
 19 described in [section 7]."

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

21 "**82-4-335. Operating permit -- limitation.** (1) No A  
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 23 reprocessing of tailings or waste material or construct or  
 24 operate a hard-rock mill or disturb land in anticipation of  
 25 those activities in the state without first obtaining an

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

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~~ must be conditioned  
21 to provide that activities under the permit may not commence  
22 until the impact plan is approved under 90-6-307 and until  
23 the permittee has provided a written guarantee to the  
24 department and to the hard-rock mining impact board of  
25 compliance within the time schedule with the commitment made

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



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

(5) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7]."

**Section 5.** Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- penalties -- waiver. (1) A person who violates any of the provisions of this part or, the rules or orders adopted under this part, [except 82-4-339], or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties ~~shall be~~ are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

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

**Section 6.** Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, or the rules adopted under this part, or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where--found if necessary, the commissioner shall order the suspension of the permit. The notice or order ~~shall~~ must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of

1 noncompliance ~~shall~~ must specify in what respects the  
2 operator has failed to comply with this part, the rules  
3 adopted under this part, or the reclamation plan.

4 (2) If the licensee or permittee has not complied with  
5 the requirements set forth in the notice of noncompliance or  
6 order of suspension within the time limits set therein, the  
7 permit may be revoked by order of the board and the  
8 performance bond forfeited to the department. The licensee  
9 or permittee is entitled to a hearing before the department  
10 on the revocation of a permit or license or the forfeiture  
11 of a performance bond if a hearing is requested within 30  
12 days after service of notice as provided in subsection (1).  
13 The notice must state when those measures may be undertaken  
14 and must give notice of opportunity for a hearing. If a  
15 hearing is requested within the 30-day period, the permit or  
16 license may not be revoked and the bond may not be forfeited  
17 until a final decision is made by the department.

18 (3) If a permittee fails to pay the fee or file the  
19 report required under 82-4-339, the department shall serve  
20 notice of this failure, by certified mail or personal  
21 delivery, on the permittee. If the permittee does not comply  
22 within 30 days of receipt of the notice, the commissioner  
23 shall suspend the permit. The commissioner shall reinstate  
24 the permit upon compliance."

25 NEW SECTION. Section 7. Activity prohibited if bond

1 forfeited -- exception. (1) Except as provided in subsection  
2 (2), a person may not conduct mining or exploration  
3 activities in this state if that person or any firm or  
4 business association of which that person was a principal or  
5 controlling member had a bond forfeited under this part.

6 (2) A person described in subsection (1) may apply for  
7 an operations permit or an exploration license or may  
8 conclude a written agreement under 82-4-305 if that person  
9 first pays to the department:

10 (a) the full amount of the necessary expenses incurred  
11 by the board under 82-4-341(5) for reclamation of the area  
12 for which the bond was forfeited;

13 (b) the full amount of any penalties assessed under  
14 this part; and

15 (c) interest on these amounts and penalties incurred  
16 at the rate of 6% per year.

17 NEW SECTION. Section 8. Extension of authority. Any  
18 existing authority to make rules on the subject of the  
19 provisions of [this act] is extended to the provisions of  
20 [this act].

21 NEW SECTION. Section 9. Codification instruction.  
22 [Section 7] is intended to be codified as an integral part  
23 of Title 82, chapter 4, part 3, and the provisions of Title  
24 82, chapter 4, part 3, apply to [section 7].

-End-

## 1 HOUSE BILL NO. 581

2 INTRODUCED BY IVERSON, WILLIAMS

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO METAL MINE RECLAMATION; AND AMENDING  
7 SECTIONS 82-4-303, 82-4-305, 82-4-331, 82-4-335, 82-4-361,  
8 AND 82-4-362, MCA."

9  
10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because  
12 it delegates rulemaking authority to the board of land  
13 commissioners. Under the provisions of this bill, the board  
14 of land commissioners shall adopt rules to implement and  
15 administer a procedure for waiver of a minor violation from  
16 the civil penalty provisions provided in [section 5].

17 It is the intent of the legislature that the waiver be  
18 allowed only if a violation does not represent potential  
19 harm to the public health, public safety, or the environment  
20 and does not otherwise impair administration of the  
21 provisions of Title 84, chapter 4, part 3.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 Section 1. Section 82-4-303, MCA, is amended to read:

25 "82-4-303. Definitions. As used in this part, unless

1 the context indicates otherwise, the following definitions  
2 apply:

3 (1) "Abandonment of surface or underground mining" may  
4 be presumed when it is shown that continued operation will  
5 not resume.

6 (2) "Board" means the board of land commissioners or  
7 such state employee or state agency as may succeed to its  
8 powers and duties under this part.

9 (3) "Department" means the department of state lands.

10 (4) "Disturbed land" means that area of land or  
11 surface water disturbed, beginning at the date of the  
12 issuance of the permit, and it comprises that area from  
13 which the overburden, tailings, waste materials, or minerals  
14 have been removed and tailings ponds, waste dumps, roads,  
15 conveyor systems, leach dumps, and all similar excavations  
16 or covering resulting from the operation and which have not  
17 been previously reclaimed under the reclamation plan.

18 (5) "Exploration" means all activities conducted on or  
19 beneath the surface of lands resulting in material  
20 disturbance of the surface for the purpose of determining  
21 the presence, location, extent, depth, grade, and economic  
22 viability of mineralization in those lands, if any, other  
23 than mining for production and economic exploitation, as  
24 well as all roads made for the purpose of facilitating  
25 exploration, except as noted in 82-4-305 and 82-4-310.

1 (6) "Mineral" means any ore, rock, or substance, other  
 2 than oil, gas, bentonite, clay, coal, sand, gravel,  
 3 phosphate rock, or uranium, taken from below the surface or  
 4 from the surface of the earth for the purpose of milling,  
 5 concentration, refinement, smelting, manufacturing, or other  
 6 subsequent use or processing or for stockpiling for future  
 7 use, refinement, or smelting.

8 (7) "Mining" commences at such time as the operator  
 9 first mines ores or minerals in commercial quantities for  
 10 sale, beneficiation, refining, or other processing or  
 11 disposition or first takes bulk samples for metallurgical  
 12 testing in excess of aggregate of 10,000 short tons.

13 (8) "Ore processing" means milling, heap leaching,  
 14 flotation, vat leaching, or other standard hard-rock mineral  
 15 concentration processes.

16 (9) "Person" means any person, corporation, firm,  
 17 association, partnership, or other legal entity engaged in  
 18 exploration for or mining of minerals on or below the  
 19 surface of the earth, reprocessing of tailings or waste  
 20 materials, or operation of a hard-rock mill.

21 (10) "Reclamation plan" means the operator's written  
 22 proposal, as required and approved by the board, for  
 23 reclamation of the land that will be disturbed, which  
 24 proposal shall include, to the extent practical at the time  
 25 of application for an operating permit:

1 (a) a statement of the proposed subsequent use of the  
 2 land after reclamation;

3 (b) plans for surface gradient restoration to a  
 4 surface suitable for the proposed subsequent use of the land  
 5 after reclamation is completed and the proposed method of  
 6 accomplishment;

7 (c) the manner and type of revegetation or other  
 8 surface treatment of disturbed areas;

9 (d) procedures proposed to avoid foreseeable  
 10 situations of public nuisance, endangerment of public  
 11 safety, damage to human life or property, or unnecessary  
 12 damage to flora and fauna in or adjacent to the area;

13 (e) the method of disposal of mining debris;

14 (f) the method of diverting surface waters around the  
 15 disturbed areas where necessary to prevent pollution of  
 16 those waters or unnecessary erosion;

17 (g) the method of reclamation of stream channels and  
 18 stream banks to control erosion, siltation, and pollution;

19 (h) such maps and other supporting documents as may be  
 20 reasonably required by the department; and

21 (i) a time schedule for reclamation that meets the  
 22 requirements of 82-4-336.

23 (11) (a) "Small miner" means a person, firm, or  
 24 corporation that engages in the business of mining or  
 25 reprocessing of tailings or waste materials that does not

1 remove from the earth during any calendar year material in  
2 excess of 36,500 tons in the aggregate, that holds no  
3 operating permit under 82-4-335, and that conducts:

4 (i) operations an operation resulting in not more than  
5 5 acres of the earth's surface being disturbed and  
6 unreclaimed; or

7 (ii) two operations which disturb and leave unreclaimed  
8 less than 5 acres per operation if the respective mining  
9 properties are:

10 (A) the only operations engaged in by the person,  
11 firm, or corporation;

12 (B) at least 1 mile apart at their closest point; and

13 (C) not operated simultaneously except during seasonal  
14 transitional periods not to exceed 30 days.

15 (b) For the purpose of this definition only, the  
16 department shall, in computing the area covered by the  
17 operation, exclude access or haulage roads that are required  
18 by a local, state, or federal agency having jurisdiction  
19 over that road to be constructed to certain specifications  
20 if that public agency notifies the department in writing  
21 that it desires to have the road remain in use and will  
22 maintain it after mining ceases.

23 (12) "Surface mining" means all or any part of the  
24 process involved in mining of minerals by removing the  
25 overburden and mining directly from the mineral deposits

1 thereby exposed, including but not limited to open-pit  
2 mining of minerals naturally exposed at the surface of the  
3 earth, mining by the auger method, and all similar methods  
4 by which earth or minerals exposed at the surface are  
5 removed in the course of mining. Surface mining does not  
6 include the extraction of oil, gas, bentonite, clay, coal,  
7 sand, gravel, phosphate rock, or uranium or excavation or  
8 grading conducted for on-site farming, on-site road  
9 construction, or other on-site building construction.

10 (13) "Underground mining" means all methods of mining  
11 other than surface mining.

12 (14) "Unit of surface-mined area" means that area of  
13 land and surface water included within an operating permit  
14 actually disturbed by surface mining during each 12-month  
15 period of time, beginning at the date of the issuance of the  
16 permit, and it comprises and includes the area from which  
17 overburden or minerals have been removed, the area covered  
18 by mining debris, and all additional areas used in surface  
19 mining or underground mining operations which by virtue of  
20 such use are thereafter susceptible to erosion in excess of  
21 the surrounding undisturbed portions of land.

22 (15) "Vegetative cover" means the type of vegetation,  
23 grass, shrubs, trees, or any other form of natural cover  
24 considered suitable at time of reclamation."

25 **Section 2.** Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption -- small miners -- written agreement. (1) No ~~The~~ provisions of this part ~~shall~~ do not apply to any small miner when if the small miner:

(a) annually agrees in writing that:

~~(a)(i)~~ that he ~~shall~~ will not pollute or contaminate any stream; and

~~(b)(ii)~~ that he ~~shall~~ will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

~~(c)(b)~~ ~~he shall provide~~ provides a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, ~~no a~~ small miner may not obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) The exemption provided in this section does not apply to a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described under [section 7]."

**Section 3.** Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required -- employees included -- limitation. (1) No ~~A~~ person ~~shall~~ may not engage in exploration in the state without first obtaining an exploration license from the board. ~~to do so~~ such A license

1 must to be issued for a period of 1 year from date of issue  
 2 and ~~to-be~~ is renewable from year to year on application.  
 3 ~~therefor~~ An application for renewal must be filed at any  
 4 time within the 30 days next preceding the expiration of the  
 5 current license and be accompanied by payment of like a fee  
 6 as required for a new license. ~~r-provided-that~~ A license may  
 7 not be renewed if the applicant for renewal is ~~not-then-held~~  
 8 ~~by-the-board-to-be~~ in violation of any provision of this law  
 9 part. Such A license shall-be is subject to suspension and  
 10 revocation as provided by this part.

11 (2) Employees of persons holding a valid license under  
 12 this part ~~shall-be-deemed~~ are included in and covered by  
 13 such the license.

14 (3) A person may not be issued an exploration license  
 15 if that person's failure to comply with the provisions of  
 16 this part, the rules adopted under this part, or a permit or  
 17 license issued under this part has resulted in the  
 18 forfeiture of a bond unless that person meets the conditions  
 19 described in [section 7]."

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

21 **"82-4-335. Operating permit -- limitation.** (1) No A  
 22 person shall may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material or construct or  
 24 operate a hard-rock mill or disturb land in anticipation of  
 25 those activities in the state without first obtaining an

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

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~~ must be conditioned  
21 to provide that activities under the permit may not commence  
22 until the impact plan is approved under 90-6-307 and until  
23 the permittee has provided a written guarantee to the  
24 department and to the hard-rock mining impact board of  
25 compliance within the time schedule with the commitment made

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



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

(5) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7]."

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

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

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1 noncompliance ~~shall~~ must specify in what respects the  
 2 operator has failed to comply with this part, the rules  
 3 adopted under this part, or the reclamation plan.

4 (2) If the licensee or permittee has not complied with  
 5 the requirements set forth in the notice of noncompliance or  
 6 order of suspension within the time limits set therein, the  
 7 permit may be revoked by order of the board and the  
 8 performance bond forfeited to the department. The licensee  
 9 or permittee is entitled to a hearing before the department  
 10 on the revocation of a permit or license or the forfeiture  
 11 of a performance bond if a hearing is requested within 30  
 12 days after service of notice as provided in subsection (1).  
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 14 and must give notice of opportunity for a hearing. If a  
 15 hearing is requested within the 30-day period, the permit or  
 16 license may not be revoked and the bond may not be forfeited  
 17 until a final decision is made by the department.

18 (3) If a permittee fails to pay the fee or file the  
 19 report required under 82-4-339, the department shall serve  
 20 notice of this failure, by certified mail or personal  
 21 delivery, on the permittee. If the permittee does not comply  
 22 within 30 days of receipt of the notice, the commissioner  
 23 shall suspend the permit. The commissioner shall reinstate  
 24 the permit upon compliance."

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 2 (2), a person may not conduct mining or exploration  
 3 activities in this state if that person or any firm or  
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 5 controlling member had a bond forfeited under this part.

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 8 conclude a written agreement under 82-4-305 if that person  
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10 (a) the full amount of the necessary expenses incurred  
 11 by the board under 82-4-341(5) for reclamation of the area  
 12 for which the bond was forfeited;

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 14 this part; and

15 (c) interest on these amounts and penalties incurred  
 16 at the rate of 6% per year.

17 NEW SECTION. Section 8. Extension of authority. Any  
 18 existing authority to make rules on the subject of the  
 19 provisions of [this act] is extended to the provisions of  
 20 [this act].

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 22 [Section 7] is intended to be codified as an integral part  
 23 of Title 82, chapter 4, part 3, and the provisions of Title  
 24 82, chapter 4, part 3, apply to [section 7].

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