

HOUSE BILL NO. 679

INTRODUCED BY GRADY, BECK, O'KEEFE, HARPER,
COHEN, HOFMAN, RANEY, MARKS, D. BROWN

IN THE HOUSE

FEBRUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 14, 1989	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
FEBRUARY 21, 1989	SECOND READING, DO PASS. ENGROSSING REPORT.
FEBRUARY 22, 1989	THIRD READING, PASSED. AYES, 90; NOES, 9. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES. FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 42; NOES, 7. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 15, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 16, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. *679*

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SMALL MINER WHO HAS PLACER OR DREDGE MINING OPERATIONS TO MEET GENERAL METAL MINE RECLAMATION REQUIREMENTS IF HIS OPERATION WOULD DISTURB 2 OR MORE ACRES; REQUIRING A SMALL MINER TO AGREE IN WRITING TO CONSTRUCT FENCES OR BARRIERS AROUND OPENCUTS WITH WALLS STEEPER THAN 45 DEGREES; AMENDING SECTIONS 82-4-303 AND 82-4-305, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

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

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

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

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

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

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

(4) "Disturbed land" means that area of land or surface

water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating 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~~ when 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) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

(11) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~{10}~~(12) "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. The 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}~~(13) (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 remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres, or 2

1 acres if the operations are placer or dredge mining, of the
2 earth's surface being disturbed and unreclaimed; or

3 (ii) two operations which disturb and leave unreclaimed
4 less than 5 acres per operation, or 2 acres if the
5 operations are placer or dredge mining, if the respective
6 mining properties are:

7 (A) the only operations engaged in by the person, firm,
8 or corporation;

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

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

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

20 ~~{12}~~(14) "Surface mining" means all or any part of the
21 process involved in mining of minerals by removing the
22 overburden and mining directly from the mineral deposits
23 thereby exposed, including but not limited to open-pit
24 mining of minerals naturally exposed at the surface of the
25 earth, mining by the auger method, and all similar methods

1 by which earth or minerals exposed at the surface are
2 removed in the course of mining. Surface mining does not
3 include the extraction of oil, gas, bentonite, clay, coal,
4 sand, gravel, phosphate rock, or uranium or excavation or
5 grading conducted for on-site farming, on-site road
6 construction, or other on-site building construction.

7 ~~{13}~~(15) "Underground mining" means all methods of
8 mining other than surface mining.

9 ~~{14}~~(16) "Unit of surface-mined area" means that area of
10 land and surface water included within an operating permit
11 actually disturbed by surface mining during each 12-month
12 period of time, beginning at the date of the issuance of the
13 permit, and it comprises and includes the area from which
14 overburden or minerals have been removed, the area covered
15 by mining debris, and all additional areas used in surface
16 mining or underground mining operations which by virtue of
17 such mining use are thereafter susceptible to erosion in
18 excess of the surrounding undisturbed portions of land.

19 ~~{15}~~(17) "Vegetative cover" means the type of
20 vegetation, grass, shrubs, trees, or any other form of
21 natural cover considered suitable at time of reclamation."

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

23 "82-4-305. Exemption -- small miners -- written
24 agreement. (1) ~~No~~ The provisions of this part ~~shall~~ do not
25 apply to any small miner when the small miner annually

1 agrees in writing:

2 (a) that he ~~shall~~ will not pollute or contaminate any
3 stream;

4 (b) that he shall provide protection for human and
5 animal life through the installation of bulkheads installed
6 over safety collars ~~and~~, the installation of doors on tunnel
7 portals, and the construction of fences or barriers around
8 opencuts with walls steeper than 45 degrees; and

9 (c) he shall provide a map locating his mining
10 operations. ~~Such~~ The map shall must be to a size and scale
11 ~~as~~ determined by the department.

12 (2) For small-miner exemptions obtained after September
13 30, 1985, no small miner may obtain or continue an exemption
14 under subsection (1) unless he annually certifies in
15 writing:

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

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

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

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

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

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

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

7 (i) holds a small-miner exemption;

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

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

13 NEW SECTION. Section 3. Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [this act].

17 NEW SECTION. Section 4. Applicability. [This act]
18 applies to any placer or dredge mining operation for which a
19 small-miner exemption has not been obtained before July 1,
20 1989.

21 NEW SECTION. Section 5. Effective date. [This act] is
22 effective July 1, 1989.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 679

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(2) "Board" means the board of land commissioners or such a state employee or state agency as may succeed to its

powers and duties under this part.

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

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

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating 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.

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 19 minerals from a placer deposit by a person or persons.

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 21 written proposal, as required and approved by the board, for
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 24 of application for an operating permit:

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2 (b) plans for surface gradient restoration to a
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 4 after reclamation is completed and the proposed method of
 5 accomplishment;

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

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 9 situations of public nuisance, endangerment of public
 10 safety, damage to human life or property, or unnecessary
 11 damage to flora and fauna in or adjacent to the area;

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 15 those waters or unnecessary erosion;

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 17 stream banks to control erosion, siltation, and pollution;

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 19 reasonably required by the department; and

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

22 ~~†††~~(13) (a) "Small miner" means a person, firm, or
 23 corporation that engages in the business of mining or
 24 reprocessing of tailings or waste materials that does not
 25 remove from the earth during any calendar year material in

1 excess of 36,500 tons in the aggregate, that holds no
2 operating permit under 82-4-335, and that conducts:

3 (i) operations resulting in not more than 5 acres, ~~or~~
4 ~~2--acres--if--the--operations--are--placer--or--dredge--mining,~~ of
5 the earth's surface being disturbed and unreclaimed; or

6 (ii) two operations which disturb and leave unreclaimed
7 less than 5 acres per operation, ~~or--2--acres--if--the~~
8 ~~operations--are--placer--or--dredge--mining,~~ if the respective
9 mining 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.

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3 earth, mining by the auger method, and all similar methods
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9 construction, or other on-site building construction.

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11 mining other than surface mining.

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

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24 vegetation, grass, shrubs, trees, or any other form of
25 natural cover considered suitable at time of reclamation."

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

"82-4-305. Exemption -- small miners -- written agreement. (1) ~~No~~ THE EXCEPT AS PROVIDED IN SUBSECTION (3), THE provisions of this part ~~shall~~ do not apply to any small miner when the small miner annually agrees in writing:

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

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars ~~and~~ AND the installation of doors on tunnel portals ~~--and-the-construction-of-fences-or-barriers-around-opencuts-with-walls-steeper-than-45-degrees;~~ and

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

(D) IF THE SMALL MINER'S OPERATIONS ARE PLACER OR DREDGE MINING, THAT HE SHALL RECLAIM ALL LAND DISTURBED BY THE OPERATIONS TO COMPARABLE UTILITY AND STABILITY AS THAT OF ADJACENT AREAS.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may 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:

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(3) A SMALL MINER WHOSE OPERATIONS ARE PLACER OR DREDGE MINING SHALL POST A PERFORMANCE BOND EQUAL TO THE COST TO THE STATE OF RECLAIMING THE DISTURBED LAND."

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. **Section 4. Applicability.** [This act]
4 applies to any placer or dredge mining operation for which a
5 small-miner exemption has not been obtained before July 1,
6 1989.

7 NEW SECTION. **Section 5. Effective date.** [This act] is
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22 undisturbed portions of land.

23 ~~{15}~~(17) "Vegetative cover" means the type of
24 vegetation, grass, shrubs, trees, or any other form of
25 natural cover considered suitable at time of reclamation."

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

"82-4-305. Exemption -- small miners -- written agreement. (1) ~~No~~ EXCEPT AS PROVIDED IN SUBSECTION (3), ~~THE~~ provisions of this part ~~shall~~ do not apply to any small miner when the small miner annually agrees in writing:

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

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars ~~and~~ AND the installation of doors on tunnel portals ~~and the construction of fences or barriers around open cuts with walls steeper than 45 degrees;~~ and

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

(D) IF THE SMALL MINER'S OPERATIONS ARE PLACER OR DREDGE MINING, THAT HE SHALL RECLAIM ALL LAND DISTURBED BY THE OPERATIONS TO COMPARABLE UTILITY AND STABILITY AS THAT OF ADJACENT AREAS.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may 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) A SMALL MINER WHOSE OPERATIONS ARE PLACER OR DREDGE MINING SHALL POST A PERFORMANCE BOND EQUAL TO THE COST TO THE STATE OF RECLAIMING THE DISTURBED LAND."

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. **Section 4. Applicability.** [This act]
4 applies to any placer or dredge mining operation for which a
5 small-miner exemption has not been obtained before July 1,
6 1989.

7 NEW SECTION. **Section 5. Effective date.** [This act] is
8 effective July 1, 1989.

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 8, 1989

SENATE COMMITTEE ON NATURAL RESOURCES, HB 679
page 2 of 2

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 679 (third reading copy -- blue), respectfully report that HB 679 be amended and as so amended be concurred in:

Sponsor: Grady (Noble)

1. Title, line 9.

Following: "TO THE"

Insert: "STATE'S ACTUAL"

2. Title, line 10.

Following: line 9

Strike: "TO THE STATE"

Following: "LANDS"

Insert: ", ALTHOUGH THE BOND MAY NOT EXCEED \$5,000 PER OPERATION; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO COLLECT ALL ITS REASONABLE COSTS OF RECLAMATION IF A SMALL MINER FAILS TO RECLAIM THE PLACER OR DREDGE MINING OPERATION"

3. Page 7, line 3.

Following: "IN"

Strike: "SUBSECTION"

Insert: "subsections"

Following: "(3)"

Insert: "through (6)"

4. Page 8, line 22.

Following: "TO THE"

Insert: "state's actual"

5. Page 8, line 23.

Following: "COST"

Strike: "TO THE STATE"

Following: "LAND"

Insert: ", although the bond may not exceed \$5,000 per operation"

Following: "."

Insert: "However, if the small miner has posted a bond for reclamation with another government agency, he is exempt from the requirement of this subsection."

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, he is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the

state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail to the address determined under subsection (5) of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department."

AND AS AMENDED BE CONCURRED IN

Signed:

Thomas F. Keating
Thomas F. Keating, Chairman

SENATE

continued

scrhb679.308

HB 679

1 HOUSE BILL NO. 679

2 INTRODUCED BY GRADY, BECK, O'KEEFE, HARPER,

3 COHEN, HOFMAN, RANEY, MARKS, D. BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SMALL MINER
6 WHO HAS PLACER OR DREDGE MINING OPERATIONS TO MEET--GENERAL
7 ~~METAL--MINE--RECLAMATION-REQUIREMENTS-IF-HIS-OPERATION-WOULD~~
8 ~~DISTURB-2-OR-MORE--ACRES~~ RECLAIM LANDS DISTURBED BY THE
9 OPERATIONS AND TO POST A PERFORMANCE BOND EQUAL TO THE
10 STATE'S ACTUAL COST TO THE STATE OF RECLAIMING THE DISTURBED
11 LANDS, ALTHOUGH THE BOND MAY NOT EXCEED \$5,000 PER
12 OPERATION; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO
13 COLLECT ALL ITS REASONABLE COSTS OF RECLAMATION IF A SMALL
14 MINER FAILS TO RECLAIM THE PLACER OR DREDGE MINING
15 OPERATION; REQUIRING A SMALL MINER TO AGREE--IN--WRITING--TO
16 CONSTRUCT--FENCES--OR--BARRIERS--AROUND--OPEN CUTS--WITH--WALLS
17 STEEPER--THAN--45--DEGREES; AMENDING SECTIONS 82-4-303 AND
18 82-4-305, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN
19 EFFECTIVE DATE."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:22 **Section 1.** Section 82-4-303, MCA, is amended to read:

23 **"82-4-303. Definitions.** As used in this part, unless
24 the context indicates otherwise, the following definitions
25 apply:

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

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

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

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

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

24 (6) "Mineral" means any ore, rock, or substance, other
25 than oil, gas, bentonite, clay, coal, sand, gravel,

1 phosphate rock, or uranium, taken from below the surface or
2 from the surface of the earth for the purpose of milling,
3 concentration, refinement, smelting, manufacturing, or other
4 subsequent use or processing or for stockpiling for future
5 use, refinement, or smelting.

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

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

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

20 (10) "Placer deposit" means naturally occurring,
21 scattered or unconsolidated valuable minerals in gravel or
22 alluvium lying above bedrock.

23 (11) "Placer or dredge mining" means the mining of
24 minerals from a placer deposit by a person or persons.

25 (10)(12) "Reclamation plan" means the operator's

1 written proposal, as required and approved by the board, for
2 reclamation of the land that will be disturbed,--which. The
3 proposal shall include, to the extent practical at the time
4 of application for an operating permit:

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

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

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

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

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

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

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

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

25 (i) a time schedule for reclamation that meets the

1 requirements of 82-4-336.

2 ~~{11}~~(13) (a) "Small miner" means a person, firm, or
3 corporation that engages in the business of mining or
4 reprocessing of tailings or waste materials that does not
5 remove from the earth during any calendar year material in
6 excess of 36,500 tons in the aggregate, that holds no
7 operating permit under 82-4-335, and that conducts:

8 (i) operations resulting in not more than 5 acres ~~or~~
9 ~~2-acres-if-the-operations-are-placer-or--dredge--mining,~~ of
10 the earth's surface being disturbed and unreclaimed; or

11 (ii) two operations which disturb and leave unreclaimed
12 less than 5 acres per operation ~~or 2-acres--if--the~~
13 ~~operations-are-placer-or-dredge-mining,~~ if the respective
14 mining properties are:

15 (A) the only operations engaged in by the person,
16 firm, or corporation;

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

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

20 (b) For the purpose of this definition only, the
21 department shall, in computing the area covered by the
22 operation, exclude access or haulage roads that are required
23 by a local, state, or federal agency having jurisdiction
24 over that road to be constructed to certain specifications
25 if that public agency notifies the department in writing

1 that it desires to have the road remain in use and will
2 maintain it after mining ceases.

3 ~~{12}~~(14) "Surface mining" means all or any part of the
4 process involved in mining of minerals by removing the
5 overburden and mining directly from the mineral deposits
6 thereby exposed, including but not limited to open-pit
7 mining of minerals naturally exposed at the surface of the
8 earth, mining by the auger method, and all similar methods
9 by which earth or minerals exposed at the surface are
10 removed in the course of mining. Surface mining does not
11 include the extraction of oil, gas, bentonite, clay, coal,
12 sand, gravel, phosphate rock, or uranium or excavation or
13 grading conducted for on-site farming, on-site road
14 construction, or other on-site building construction.

15 ~~{13}~~(15) "Underground mining" means all methods of
16 mining other than surface mining.

17 ~~{14}~~(16) "Unit of surface-mined area" means that area
18 of land and surface water included within an operating
19 permit actually disturbed by surface mining during each
20 12-month period of time, beginning at the date of the
21 issuance of the permit, and it comprises and includes the
22 area from which overburden or minerals have been removed,
23 the area covered by mining debris, and all additional areas
24 used in surface mining or underground mining operations
25 which by virtue of such mining use are thereafter

1 susceptible to erosion in excess of the surrounding
2 undisturbed portions of land.

3 {15}{17} "Vegetative cover" means the type of
4 vegetation, grass, shrubs, trees, or any other form of
5 natural cover considered suitable at time of reclamation."

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

7 "82-4-305. Exemption -- small miners -- written
8 agreement. (1) No The EXCEPT AS PROVIDED IN SUBSECTION
9 SUBSECTIONS (3) THROUGH (6), THE provisions of this part
10 shall do not apply to any small miner when the small miner
11 annually agrees in writing:

12 (a) that he shall will not pollute or contaminate any
13 stream;

14 (b) that he shall provide protection for human and
15 animal life through the installation of bulkheads installed
16 over safety collars and, AND the installation of doors on
17 tunnel portals and the construction of fences or barriers
18 around opencuts with walls steeper than 45-degrees; and

19 (c) he shall provide a map locating his mining
20 operations. Such The map shall must be to a size and scale
21 as determined by the department; AND

22 (D) IF THE SMALL MINER'S OPERATIONS ARE PLACER OR
23 DREDGE MINING, THAT HE SHALL RECLAIM ALL LAND DISTURBED BY
24 THE OPERATIONS TO COMPARABLE UTILITY AND STABILITY AS THAT
25 OF ADJACENT AREAS.

1 (2) For small-miner exemptions obtained after
2 September 30, 1985, no small miner may obtain or continue an
3 exemption under subsection (1) unless he annually certifies
4 in writing:

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

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

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

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

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

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

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

21 (i) holds a small-miner exemption;

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

24 (iii) is an officer, director, or owner of record of
25 25% or more of any class of voting stock of another

corporation that holds a small-miner exemption.

(3) A SMALL MINER WHOSE OPERATIONS ARE PLACER OR DREDGE MINING SHALL POST A PERFORMANCE BOND EQUAL TO THE STATE'S ACTUAL COST ~~TO THE STATE~~ OF RECLAIMING THE DISTURBED LAND, ALTHOUGH THE BOND MAY NOT EXCEED \$5,000 PER OPERATION. HOWEVER, IF THE SMALL MINER HAS POSTED A BOND FOR RECLAMATION WITH ANOTHER GOVERNMENT AGENCY, HE IS EXEMPT FROM THE REQUIREMENT OF THIS SUBSECTION.

(4) IF A SMALL MINER WHO CONDUCTS A PLACER OR DREDGE MINING OPERATION FAILS TO RECLAIM THE OPERATION, HE IS LIABLE TO THE DEPARTMENT FOR ALL ITS REASONABLE COSTS OF RECLAMATION, INCLUDING A REASONABLE CHARGE FOR SERVICES PERFORMED BY STATE PERSONNEL AND STATE MATERIALS AND EQUIPMENT USED. IF THE SMALL MINER POSTS A SURETY BOND, THE SURETY IS LIABLE TO THE STATE TO THE EXTENT OF THE BOND AMOUNT AND THE SMALL MINER IS LIABLE FOR THE REMAINDER OF THE REASONABLE COSTS TO THE STATE OF RECLAIMING THE OPERATION.

(5) IF A SMALL MINER WHO CONDUCTS A PLACER OR DREDGE MINING OPERATION FAILS TO COMMENCE RECLAMATION OF THE OPERATION WITHIN 6 MONTHS AFTER CESSATION OF MINING OR WITHIN AN EXTENDED PERIOD ALLOWED BY THE DEPARTMENT FOR GOOD CAUSE SHOWN OR IF THE SMALL MINER FAILS TO DILIGENTLY COMPLETE RECLAMATION, THE DEPARTMENT SHALL NOTIFY THE SMALL MINER BY CERTIFIED MAIL THAT IT INTENDS TO RECLAIM THE

OPERATION UNLESS THE SMALL MINER COMMENCES RECLAMATION WITHIN 30 DAYS AND DILIGENTLY COMPLETES THE RECLAMATION. THE NOTICE MUST BE MAILED TO THE ADDRESS STATED ON THE SMALL MINER EXCLUSION STATEMENT OR, IF THE SMALL MINER HAS NOTIFIED THE DEPARTMENT OF A DIFFERENT ADDRESS BY LETTER OR IN THE ANNUAL CERTIFICATION FORM, TO THE MOST RECENT ADDRESS GIVEN TO THE DEPARTMENT. IF THE SMALL MINER FAILS TO COMMENCE RECLAMATION WITHIN 30 DAYS OR TO DILIGENTLY COMPLETE RECLAMATION, THE DEPARTMENT MAY REVOKE THE SMALL MINER EXCLUSION STATEMENT, FORFEIT ANY BOND THAT HAS BEEN POSTED WITH THE DEPARTMENT, AND ENTER AND RECLAIM THE OPERATION. IF THE SMALL MINER HAS NOT POSTED A BOND WITH THE DEPARTMENT OR IF THE REASONABLE COSTS OF RECLAMATION EXCEED THE AMOUNT OF THE BOND, THE DEPARTMENT MAY ALSO COLLECT ADDITIONAL RECLAMATION COSTS, AS SET FORTH IN SUBSECTION (6), BEFORE OR AFTER IT INCURS THOSE COSTS.

(6) TO COLLECT ADDITIONAL RECLAMATION COSTS, THE DEPARTMENT SHALL NOTIFY THE SMALL MINER BY CERTIFIED MAIL TO THE ADDRESS DETERMINED UNDER SUBSECTION (5) OF THE ADDITIONAL REASONABLE RECLAMATION COSTS AND REQUEST PAYMENT WITHIN 30 DAYS. IF THE SMALL MINER DOES NOT PAY THE ADDITIONAL RECLAMATION COSTS WITHIN 30 DAYS, THE DEPARTMENT MAY BRING AN ACTION IN DISTRICT COURT FOR PAYMENT OF THE ESTIMATED FUTURE COSTS AND, IF THE DEPARTMENT HAS PERFORMED ANY RECLAMATION, OF ITS REASONABLE ACTUAL COSTS. THE COURT

1 SHALL ORDER PAYMENT OF COSTS IT DETERMINES TO BE REASONABLE
2 AND SHALL RETAIN JURISDICTION UNTIL RECLAMATION OF THE
3 OPERATION IS COMPLETED. UPON COMPLETION OF RECLAMATION, THE
4 COURT SHALL ORDER PAYMENT OF ANY ADDITIONAL COSTS IT DEEMS
5 REASONABLE OR THE REFUND OF ANY PORTION OF ANY PAYMENT FOR
6 ESTIMATED COSTS THAT EXCEEDS THE ACTUAL REASONABLE COSTS
7 INCURRED BY THE DEPARTMENT."

8 NEW SECTION. Section 3. Extension of authority. Any
9 existing authority to make rules on the subject of the
10 provisions of [this act] is extended to the provisions of
11 [this act].

12 NEW SECTION. Section 4. Applicability. [This act]
13 applies to any placer or dredge mining operation for which a
14 small-miner exemption has not been obtained before July 1,
15 1989.

16 NEW SECTION. Section 5. Effective date. [This act] is
17 effective July 1, 1989.

-End-