SENATE BILL NO. 320

INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH, QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD, PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN

IN THE SENATE

FEBRUARY 5, 1993 INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

FIRST READING.

FEBRUARY 16, 1993 ON MOTION, TAKEN FROM COMMITTEE AND PLACED ON 2ND READING ON THE 40TH LEGISLATIVE DAY.

FEBRUARY 17, 1993 PRINTING REPORT.

FEBRUARY 18, 1993 ON MOTION, CONSIDERATION PASSED FOR THE DAY.

- FEBRUARY 19, 1993 ON MOTION, CONSIDERATION PASSED FOR THE DAY.
- FEBRUARY 20, 1993 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 22, 1993 ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 44; NOES, 4.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993

INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

MARCH 17, 1993 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

- MARCH 27, 1993 SECOND READING, CONCURRED IN AS AMENDED.
- MARCH 30, 1993 THIRD READING, CONCURRED IN. AYES, 64; NOES, 36.

MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.
	IN THE SENATE
APRIL 5, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
APRIL 6, 1993	SECOND READING, AMENDMEN'TS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

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REPORTED CORRECTLY ENROLLED.

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Senatt BILL NO. 320 1 INTRODUCED BY hici Hammyton Mena NDE LL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT CHALLENGE BOARD OF LAND COMMISSIONERS' MINING HICH TO DECISIONS: REQUIRING SECURITY BEFORE CHALLENGING 6 BOARD 7 DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR CHALLENGES: DEFINING AND PROVIDING CRITERIA FOR AMENDMENTS 8 9 AND REVISIONS TO MINE PERMITS: AMENDING SECTIONS 82-4-303. 82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE 10 11 EFFECTIVE DATE."

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

14 <u>NEW SECTION.</u> Section 1. Limitations of actions. Legal 15 actions seeking review of a board decision granting or 16 denying an exploration license or operating permit issued 17 under this part must be filed within the time provided by 18 2-4-702(2)(a) for initiation of proceedings for judicial 19 review under the Montana Administrative Procedure Act.

20 <u>NEW SECTION.</u> Section 2. Injunctions -- security for 21 damages. In actions seeking an injunction or restraining 22 order concerning a board decision granting or denying an 23 exploration license or operating permit issued under this 24 part, the court shall require a written undertaking for the 25 payment of costs and damages incurred by a party who has



1 been wrongfully enjoined or restrained.

2 <u>NEW SECTION.</u> Section 3. Award of costs and attorney 3 fees. The court may require the unsuccessful plaintiff in a 4 legal action challenging the granting or denying of an 5 exploration license or operating permit issued under this 6 part to pay the costs and reasonable attorney fees of other 7 parties to the action.

8 <u>NEW SECTION.</u> Section 4. Amendment or revision of 9 operating permits. (1) During the term of an operating 10 permit issued under this part, an operator may apply for an 11 amendment or revision to the permit. The operator may not 12 apply for an amendment to delete disturbed acreage except 13 following reclamation, as required under 82-4-336, and bond 14 release for the disturbance, as required under 82-4-338.

15 (2) (a) Applications for major amendments must be
16 processed pursuant to 82-4-335.

(b) For the purposes of this section, major amendments
are those amendments that significantly affect the human
environment. Minor amendments are those amendments that will
not significantly affect the human environment.

(c) The department shall by rule establish criteria for
classification of amendments as major and minor. The rules
must establish requirements for the content of applications
for amendments and revisions and procedures for the
processing of minor amendments.

INTRODUCED -2-

1 (3) Revisions are categorically exempt from the 2 provisions of the Montana Environmental Policy Act unless 3 the department determines that the revision will result in a 4 significant environmental impact that was not previously 5 analyzed in an environmental review document. The department 6 determination required under this subsection must be in 7 writing and be based on substantial and credible evidence.

B Section 5. Section 82-4-303, MCA, is amended to read:

9 "82-4-303. Definitions. As used in this part, unless
10 the context indicates otherwise, the following definitions
11 apply:

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

15 (2) "Amendment" means an action to increase or reduce the size of the mine permit area or to engage in the activities identified in 82-4-335(1) outside of a previously permitted area.

19 (2)(3) "Board" means the board of land commissioners or
20 a state employee or state agency as may succeed to its
21 powers and duties under this part.

22 (3)(4) "Commissioner" means the commissioner of state 23 lands provided for in 2-15-3202.

24 (4)(5) "Cyanide ore-processing reagent" means cyanide 25 or a cyanide compound used as a reagent in leaching 1 operations.

2 (5)(6) "Department" means the department of state
3 lands.

+6+(7) "Disturbed land" means that area of land or 4 surface water disturbed, beginning at the date of the 5 issuance of the permit, and it comprises that area from 6 7 which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, 8 conveyor systems, leach dumps, and all similar excavations 9 or covering resulting from the operation and which have not 10 been previously reclaimed under the reclamation plan. 11

12 (7)(8) "Exploration" means all activities conducted on 13 or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining 14 the presence, location, extent, depth, grade, and economic 15 viability of mineralization in those lands, if any, other 16 than mining for production and economic exploitation, as 17 well as all roads made for the purpose of facilitating 18 19 exploration, except as noted in 82-4-310.

t0 t0;(9) "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

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t9t(10) "Mining" commences 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.

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

10 (11)(12) "Person" means any person, corporation, firm, 11 association, partnership, or other legal entity engaged in 12 exploration for or mining of minerals on or below the 13 surface of the earth, reprocessing of tailings or waste 14 materials, or operation of a hard-rock mill.

15 (12)(13) "Placer deposit" means naturally occurring,
16 scattered or unconsolidated valuable minerals in gravel or
17 alluvium lying above bedrock.

18 (13)(14) "Placer or dredge mining" means the mining of 19 minerals from a placer deposit by a person or persons.

20 (14)(15) "Reclamation plan" means the operator's written 21 proposal, as required and approved by the board, for 22 reclamation of the land that will be disturbed. The proposal 23 shall must include, to the extent practical at the time of 24 application for an operating permit:

25 (a) a statement of the proposed subsequent use of the

l 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;

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

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

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

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

16 (g) the method of reclamation of stream channels and
17 stream banks to control erosion, siltation, and pollution;
18 (h) maps and other supporting documents as may be

19 reasonably required by the department; and

20 (i) a time schedule for reclamation that meets the 21 requirements of $\theta 2-4-336$.

(16) "Revision" means a change in the operating plan or
 reclamation plan to extend, continue, or modify an activity

24 within the mine's permit boundary.

25 (15)(17) (a) "Small miner" means a person, firm, or

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1 corporation that engages in the business of mining or 2 reprocessing of tailings or waste materials that does not 3 remove from the earth during any calendar year material in 4 excess of 36,500 tons in the aggregate, that does not hold 5 an operating permit under 82-4-335 except for a permit 6 issued under 82-4-335(2), and that conducts:

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

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

12 (A) the only operations engaged in by the person, firm,13 or corporation;

(B) at least 1 mile apart at their closest point; and
(C) not operated simultaneously except during seasonal

transitional periods not to exceed 30 days.

16

17 (b) For the purpose of this definition only, the department shall, in computing the area covered by the 18 operation, exclude access or haulage roads that are required 19 by a local, state, or federal agency having jurisdiction 20 21 over that road to be constructed to certain specifications if that public agency notifies the department in writing 22 that it desires to have the road remain in use and will 23 24 maintain it after mining ceases.

25 (16) "Surface mining" means all or any part of the

1 process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits 2 exposed, including but not limited to open-pit mining of 3 minerals naturally exposed at the surface of the earth, 4 5 mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the 6 course of mining. Surface mining does not include the 7 extraction of oil. gas, bentonite, clay, coal, sand, gravel, 8 phosphate rock, or uranium or excavation or grading 9 10 conducted for onsite farming, onsite road construction, or other onsite building construction. 11

12 (17)(19) "Underground mining" means all methods of
 13 mining other than surface mining.

14 (18) (20) "Unit of surface-mined area" means that area of land and surface water included within an operating permit 15 actually disturbed by surface mining during each 12-month 16 17 period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which 18 19 overburden or minerals have been removed, the area covered 20 by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of 21 mining use are susceptible to erosion in excess of the 22 surrounding undisturbed portions of land. 23

24 (19)(21) "Vegetative cover" means the type of 25 vegetation, grass, shrubs, trees, or any other form of

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1 natural cover considered suitable at time of reclamation." 2 Section 6. Section 82-4-337, MCA, is amended to read: 3 "82-4-337. Inspection -- issuance of operating permit 4 --modification. (1) (a) The board shall cause all 5 applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall 6 7 notify the applicant concerning completeness as soon as 8 possible. An application is considered complete unless the 9 applicant is notified of any deficiencies within 30 days of 10 receipt.

11 (b) Unless the review period is extended as provided in 12 this section, the board shall review the adequacy of the 13 proposed reclamation plan and plan of operation within 30 14 days of the determination that the application is complete 15 or within 60 days of receipt of the application if the board 16 does not notify the applicant of any deficiencies in the 17 application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation 18 19 plan and plan of operation within such the time period, the 20 operating permit shall must be issued upon receipt of the 21 bond as required in 82-4-338 and pursuant to the 22 requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond 23 24 which will be required.

25 (c) No A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to
 82-4-338;

3 (ii) the information and certification have been
4 submitted pursuant to 82-4-335(9); and

5 (iii) the department has found that permit issuance is
6 not prohibited by 82-4-335(8) or 82-4-341(6).

7 (d) (i) Prior to issuance of a permit, the department 8 shall inspect the site unless the department has failed to 9 act on the application within the time prescribed in 10 subsection (1)(b). If the site is not accessible due to 11 extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by 12 not more than 180 days to allow inspection of the site and 13 14 reasonable review. The department must serve written notice 15 of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the 16 board in accordance with the Montana Administrative 17 18 Procedure Act.

19 (ii) If the department determines that additional time 20 is needed to review the application and reclamation plan for 21 a major operation, the department and the applicant shall 22 negotiate to extend the period prescribed in subsection 23 (1)(b) by not more than 365 days in order to permit 24 reasonable review.

25 {iii) If the department decides to hire a third-party

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1	contractor to prepare an environmental impact statement on
2	the application, the contractor must be selected as follows:
3	(A) The department shall provide the applicant with the
4	names of three contractors acceptable to the department.
5	(B) The applicant shall choose one of the three
6	contractors.
7	<pre>titity(iv) Failure of the board to act upon a complete</pre>
8	application within the extension period constitutes approval
9	of the application, and the permit shall must be issued
10	promptly upon receipt of the bond as required in 82-4-338.
11	(2) The operating permit shall must be granted for the
12	period required to complete the operation and shall-be is
13	valid until the operation authorized by the permit is
14	completed or abandoned unless the permit is suspended or
15	revoked by the board as provided in this part.
16	(3) The operating permit shall must provide that the
17	reclamation plan may be modified by the board, upon proper
18	application of the permittee or department, after timely
19	notice and opportunity for hearing, at any time during the
20	term of the permit and for any of the following reasons:
21	(a) to modify the requirements so they will not
22	conflict with existing laws;

(b) when the previously adopted reclamation plan is
impossible or impracticable to implement and maintain;

25 (c) when significant environmental problem situations

1 are revealed by field inspection."

Section 7. Section 82-4-351, MCA, is amended to read: 2 *82-4-351. Reasons for denial of permit. (1) A permit 3 may be denied for any-of the following reasons if it is 4 established by clear and convincing evidence that: 5 (a) the plan of operation or reclamation conflicts with 6 7 Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted 8 9 pursuant to these laws; (b) the reclamation plan does not provide an acceptable 10 method for accomplishment of reclamation as required by this 11 part. 12 (2) A denial of a permit shall must be in writing and 13 14 state the reasons therefor for denial." NEW SECTION. Section 8. Codification instruction. 15 [Sections 1 through 4] are intended to be codified as an 16 integral part of Title 82, chapter 4, part 3, and the 17 provisions of Title B2, chapter 4, part 3, apply to 18 19 [sections 1 through 4]. NEW SECTION. Section 9. Effective date. [This act] is 20

21 effective on passage and approval.

-End-

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STATE OF MONTANA - FISCAL NOTE Form BD-15 In compliance with a written request, there is hereby submitted a Fiscal Note for <u>SB0320, as introduced</u>.

<u>DESCRIPTION OF PROPOSED LEGISLATION</u>: An act providing a time limit in which to challenge Board of Land Commissioners' mining decisions; requiring security before challenging board decisions; allowing the award of costs and attorney fees for challenges; defining and providing criteria for amendments and revisions to mine permits.

ASSUMPTIONS :

- 1. The 30-day statute of limitations provided in Section 1 may increase the number of permit challenges because persons who question the validity of the permit may file suit to protect their right to challenge the issuance of the permit. It is not possible to determine the increased costs to the Department of State Lands from this section.
- 2. Administrative rule adoption for 20 pages x \$35 = \$700, copying and mailing \$300.

FISCAL IMPACT: Operating expenses of \$1,000 in FY94.

<u>TECHNICAL NOTES</u>: Section 1 provides that an action to challenge a permit decision must be filed within the time frames of 2-4-702(2)(a). That statute requires filing of the action within 30 days of the notice required by 2-4-623(5) to be given to all parties to the administrative proceeding under the Montana Administrative Procedure Act (MAPA). Because MAPA does not apply to hard rock permit decisions, there is no mechanism to trigger the 30-day period under Section 1 of the bill.

DAVID LEWIS, BUDGET DIRECTOR DATE Office of Budget and Program Planning

PRIMARY SPONSOR DATE

Fiscal Note for SB0320, as introduced

53rd Legislature

SB 0320/02

APPROVED BY COMM. ON NATURAL RESOURCES

1	SENATE BILL NO. 320
2	INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,
3	QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,
4	PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT
7	IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING
8	DECISIONS; REQUIRINGSECURITYBEFORE-CHALLENGINGBOARD
9	DECISIONS7 ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR
10	CHALLENGES; DEFINING AND PROVIDING CRITERIA FOR AMENDMENTS
11	AND REVISIONS TO MINE PERMITS; AMENDING SECTIONS 82-4-303,
12	82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE
13	EFFECTIVE DATE."
14	
15	STATEMENT OF INTENT
16	A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
17	[SECTION 3] REQUIRES THE DEPARTMENT OF STATE LANDS TO ADOPT
18	ADMINISTRATIVE RULES. IN ADOPTING RULES, THE DEPARTMENT
19	SHALL ESTABLISH CRITERIA TO DISTINGUISH BETWEEN MAJOR AND
20	MINOR AMENDMENTS AND CRITERIA FOR REVISIONS TO OPERATING
21	PERMITS.
22	
23	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
24	NEW SECTION. Section 1. Limitations of actions. Legal

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 2-4-702(2)(a)--for--initiation--of--proceedings-for-judicial
 review-under-the-Montana--Administrative--Procedure--Act 45
 DAYS AFTER THE DECISION IS MADE.

6 <u>NEW-SECTION-</u>--Section 2.- Injunctions-----security--for--7 damages---In--actions--seeking--an-injunction-or-restraining 8 order-concerning-a-board-decision--granting--or--denying--an .9 exploration--license--or--operating-permit-issued-under-this 10 part7-the-court-shall-require-a-written-undertaking-for--the 11 payment--of--costs--and--damages-incurred-by-a-party-who-has 12 been-wrongfully-enjoined-or-restrained.

13 <u>NEW SECTION.</u> Section 2. Award of costs and attorney 14 fees. The court may require the unsuccessful plaintiff in a 15 legal action challenging the granting or denying of an 16 exploration license or operating permit issued under this 17 part to pay the costs and reasonable attorney fees of other 18 parties to the action.

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> -2- SB 320 SECOND READING

(2) (a) Applications for major amendments must be
 processed pursuant to 82-4-335.

3 (b) For the purposes of this section, major amendments 4 are those amendments that significantly affect the human 5 environment. Minor amendments are those amendments that will 6 not significantly affect the human environment.

7 (c) The department shall by rule establish criteria for 8 classification of amendments as major and minor. The rules 9 must establish requirements for the content of applications 10 for amendments and revisions and procedures for the 11 processing of minor amendments.

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 the context indicates otherwise, the following definitions
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be presumed when it is shown that continued operation will
not resume.

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6 a state employee or state agency as may succeed to its
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23 (7)(8) "Exploration" means all activities conducted on
24 or beneath the surface of lands resulting in material
25 disturbance of the surface for the purpose of determining

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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
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subsequent use or processing or for stockpiling for future
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13 (9)(10) "Mining" commences when the operator first mines
14 ores or minerals in commercial quantities for sale,
15 beneficiation, refining, or other processing or disposition
16 or first takes bulk samples for metallurgical testing in
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11 (a) a statement of the proposed subsequent use of the 12 land after reclamation;

13 (b) plans for surface gradient restoration to a surface 14 suitable for the proposed subsequent use of the land after 15 reclamation is completed and the proposed method of 16 accomplishment;

17 (c) the manner and type of revegetation or other18 surface treatment of disturbed areas;

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of public nuisance, endangerment of public safety, damage to
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1 those waters or unnecessary erosion;

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10 within the mine's permit boundary.

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18 (i) an operation resulting in not more than 5 acres of19 the earth's surface being disturbed and unreclaimed; or

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 less than 5 acres per operation if the respective mining
 properties are:

23 (A) the only operations engaged in by the person, firm,24 or corporation;

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

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

3 (b) For the purpose of this definition only, the 4 department shall, in computing the area covered by the 5 operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction б over that road to be constructed to certain specifications 7 8 if that public agency notifies the department in writing that it desires to have the road remain in use and will 9 10 maintain it after mining ceases.

11 (18) "Surface mining" means all or any part of the process involved in mining of minerals by removing the 12 13 overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of 14 15 minerals naturally exposed at the surface of the earth, 16 mining by the auger method, and all similar methods by which 17 earth or minerals exposed at the surface are removed in the 18 course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, 19 20 phosphate rock, or uranium or excavation or grading 21 conducted for onsite farming, onsite road construction, or 22 other onsite building construction.

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this section, the board shall review the adequacy of the
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11 (c) No A permit may not be issued until:

12 (i) sufficient bond has been submitted pursuant to 13 82-4-338;

14 (ii) the information and certification have been 15 submitted pursuant to 82-4-335(9); and

16 (iii) the department has found that permit issuance is 17 not prohibited by 82-4-335(8) or 82-4-341(6).

18 (d) (i) Prior to issuance of a permit, the department 19 shall inspect the site unless the department has failed to 20 act on the application within the time prescribed in 21 subsection (1)(b). If the site is not accessible due to 22 extended adverse weather conditions, the department may 23 extend the time period prescribed in subsection (1)(b) by 24 not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice 25

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of extension upon the applicant in person or by certified
 mail, and any such extension is subject to appeal to the
 board in accordance with the Montana Administrative
 Procedure Act.

5 (ii) If the department determines that additional time 6 is needed to review the application and reclamation plan for 7 a major operation, the department and the applicant shall 8 negotiate to extend the period prescribed in subsection 9 (1)(b) by not more than 365 days in order to permit 10 reasonable review.

11 (iii) If the department decides to hire a third-party 12 contractor to prepare an environmental impact statement on 13 the application, the contractor must be selected as follows: 14 (A) The department shall provide the applicant with the 15 names of three contractors acceptable to the department.

16 (B) The applicant shall choose one of the three 17 contractors.

18 (iii) (iv) Pailure of the board to act upon a complete 19 application within the extension period constitutes approval 20 of the application, and the permit shall must be issued 21 promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall <u>must</u> be granted for the period required to complete the operation and shall-be is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or

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1 revoked by the board as provided in this part.

2 (3) The operating permit shall must provide that the 3 reclamation plan may be modified by the board, upon proper 4 application of the permittee or department, after timely 5 notice and opportunity for hearing, at any time during the 6 term of the permit and for any of the following reasons:

7 (a) to modify the requirements so they will not8 conflict with existing laws;

9 (b) when the previously adopted reclamation plan is 10 impossible or impracticable to implement and maintain;

11 (c) when significant environmental problem situations
12 are revealed by field inspection."

13 Section 6. Section 82-4-351, MCA, is amended to read:

14 "82-4-351. Reasons for denial of permit. (1) A permit
 15 may be denied for any-of the following reasons <u>if--it--is</u>
 16 established-by-clear-and-convincing-evidence-that:

17 (a) the plan of operation or reclamation conflicts with
18 Title 75, chapter 2, as amended, Title 75, chapter 5, as
19 amended, Title 75, chapter 6, as amended, or rules adopted
20 pursuant to these laws;

(b) the reclamation plan does not provide an acceptable
method for accomplishment of reclamation as required by this
part.

24 (2) A denial of a permit shall must be in writing and,
25 state the reasons therefor for denial, AND BE BASED ON A

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1 PREPONDERANCE OF THE EVIDENCE."

2 <u>NEW SECTION.</u> Section 7. Codification instruction. 3 [Sections 1 through 4 <u>3</u>] are intended to be codified as an 4 integral part of Title 82, chapter 4, part 3, and the 5 provisions of Title 82, chapter 4, part 3, apply to 6 [sections 1 through 4 <u>3</u>].

7 <u>NEW SECTION.</u> Section 8. Effective date. [This act] is 8 effective on passage and approval.

-End-

SENATE BILL NO. 320 1 INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH, 2 QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD, 3 PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT б IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING 7 DECISIONS; REQUIRING--SECURITY--BEFORE--CHALLENGING---BOARD я BECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR 9 CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR 10 APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING 11 CRITERIA FOR AMENDMENTS AND REVISIONS TO MINE PERMITS; AND 12 AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA; AND 13 PROVIDING-AN-INMEDIATE-EPPECTIVE-DATE." 14 15 STATEMENT OF INTENT 16 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE 17 [SECTION 3] REQUIRES AUTHORIZES THE DEPARTMENT OF STATE 18 LANDS TO ADOPT ADMINISTRATIVE RULES. IN ADOPTING RULES, THE 19 DEPARTMENT SHALL ESTABLISH CRITERIA-TO-DISTINGUISH-BETWEEN 20 MAJOR-AND-MINOR-AMENDMENTS-AND--CRITERIA--FOR--REVISIONS--TO 21 OPERATING--PERMITS APPLICATION CONTENT REQUIREMENTS THAT ARE 22 CONSISTENT WITH THE PERMITTING REQUIREMENTS ESTABLISHED IN 23 THIS BILL. 24

25

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

2 <u>NEW SECTION.</u> Section 1. Limitations of actions. Legal 3 actions seeking review of a board decision granting or 4 denying an exploration license or operating permit issued 5 under this part must be filed within the--time--provided--by 6 2-4-702(2)(a)--for--initiation--of--proceedings-for-judiciał 7 review-under-the-Montana-Administrative-Procedure-Act <u>45</u> <u>180</u> 8 DAYS AFTER THE DECISION IS MADE.

9 <u>NBW-6BCTION</u>--**Section 2**.-Injunctions----security--for--10 damages-In-actions-seeking--an--injunction--or--restraining 11 order--concerning--a--board--decision-granting-or-denying-an 12 exploration-license-or-operating-permit--issued--under--this 13 party--the-court-shall-require-a-written-undertaking-for-the 14 payment-of-costs-and-damages-incurred-by--a--party--who--has 15 been-wrongfully-enjoined-or-restrained;

NEW SECTION. Section 2. Award of costs and attorney 16 17 fees. The-court-may-require-the-unsuccessful-plaintiff-in--a 18 legal--action--challenging--the--granting--or--denying-of-an 19 exploration-license-or-operating-permit--issued--under--this 20 part--to-pay-the-costs-and-reasonable-attorney-fees-of-other parties-to-the-action WHEN ISSUING A FINAL ORDER IN AN 21 22 ACTION CHALLENGING THE GRANT OR DENIAL OF AN EXPLORATION 23 LICENSE OR OPERATING PERMIT ISSUED UNDER THIS PART, THE 24 COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE ATTORNEY FEES, TO A PREVAILING OR SUBSTANTIALLY PREVAILING 25

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1	PARTY WHENEVER, IN ITS DISCHETION, THE COURT DETERMINES THAT
2	THE UNSUCCESSFUL PARTY'S LEGAL ACTION WAS FRIVOLOUS AND
3	WITHOUT NERIT.
4	NEW SECTION. Section 3. Amendment or revision of
5	operating permits. (1) During the term of an operating
6	permit issued under this part, an operator may apply for an
7	amendment or revision to the permit. The operator may not
8	apply for an amendment to delete disturbed acreage except
9	following reclamation, as required under 82-4-336, and bond
10	release for the disturbance, as required under 82-4-338.
11	(2) (a) Applications for major amendments must be
12	processed pursuant to $82-4-335$ <u>82-4-337</u> .
13	(b) For-the-purposes-of-this-sectiony-majoramendments

 14
 are--those--amendments--that--significantly-affect-the-human

 15
 environment--Minor-amendments-are-those-amendments-that-will

 16
 not--significantly--affect---the---human---environment

 17
 DEPARTMENT SHALL REVIEW AN APPLICATION FOR A MINOR AMENDMENT

 18
 AND PROVIDE A NOTICE OF DECISION ON THE ADEQUACY OF THE

 19
 APPLICATION WITHIN 45 DAYS OF RECEIPT OF THE APPLICATION.

 20
 (c) The department shall MAY by rule establish-criteria

21 for-classification-of-amendments-as--major--and--minor--The
22 rules---must establish requirements for the content of
23 applications for amendments and revisions and-procedures-for
24 the-processing-of-minor-amendments.

25 (3) Revisions-are--categorically---exempt---from---the

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1 provisions--of--the--Montone-Environmental-Folicy-Act-unless 2 the-department-determines-thet-the-revision-will-result-in-a 3 significant-environmental-impact--that--was--act--previously Δ analyzed in an environmental review document. The demartment 5 determination--required--under--this--subsection--must-be-in 6 writing-and-be-based-on-substantial-and--credible--ewidencer 7 (A) AN APPLICATION FOR A MAJOR REVISION THAT MAY HAVE A SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT 8 9 IS SUBJECT TO THE PROVISIONS OF 82-4-337(1). 10 (B) THE BOARD SHALL CAUSE AN APPLICATION FOR A MAJOR 11 REVISION THAT WOULD NOT RESULT IN A SIGNIFICANT IMPACT ON 12 THE QUALITY OF THE HUMAN ENVIRONMENT TO BE REVIEWED FOR 13 COMPLETENESS WITHIN 30 DAYS OF RECEIPT. AN APPLICATION IS 14 CONSIDERED COMPLETE UNLESS THE APPLICANT IS NOTIFIED OF A 15 DEFICIENCY WITHIN THE 30-DAY PERIGD. THE BOARD SHALL REVIEW 16 THE ADEQUACY OF THE PROPOSED MAJOR REVISION WITHIN 90 DAYS 17 OF THE DETERMINATION THAT THE APPLICATION IS COMPLETE OR 18 WITHIN 120 DAYS OF RECEIPT OF THE APPLICATION IF THE BOARD 19 BOES NOT NOTIFY THE APPLICANT OF A DEFICIENCY IN THE 20 APPLICATION. 21 (C) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A 22 MINOR REVISION AND PROVIDE A NOTICE OF DECISION ON THE 23 ADEQUACY OF THE APPLICATION WITHIN 15 DAYS. IF THE 24 DEPARTMENT DOES NOT RESPOND WITHIN 15 DAYS, THEN THE PERMIT 25 IS REVISED IN ACCORDANCE WITH THE APPLICATION. WITHIN THE

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1 15-DAY PERIOD, THE DEPARTMENT MAY NOTIFY THE APPLICANT THAT

2 THE REVISION APPLIED FOR IS A MAJOR REVISION AND IS SUBJECT

3 TO THE PROVISIONS OF SUBSECTION (3)(A).

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

6 the context indicates otherwise, the following definitions7 apply:

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

 11
 <u>f2}--*Amendment*-means-an-action-to-increase--or--reduce</u>

 12
 <u>the--size--of--the--mine--permit--area--or--to-engage-in-the</u>

 13
 activities-identified-in-B2-4-335(1)-outside-of-a-previously

14 permitted-arear

15 (2)(3)(2) "Board" means the board of land commissioners 16 or a state employee or state agency as may succeed to its 17 powers and duties under this part.

18 (3)(4)(3) "Commissioner" means the commissioner of 19 state lands provided for in 2-15-3202.

20 (47)(57)(4) "Cyanide ore-processing reagent" means 21 cyanide or a cyanide compound used as a reagent in leaching 22 operations.

23 (5)(6)(5) "Department" means the department of state
24 lands.

25 $+6\frac{1}{(7)}(6)$ "Disturbed land" means that area of land or

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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.

8 (7)(6)(() "Exploration" means all activities conducted 9 on or beneath the surface of lands resulting in material 10 disturbance of the surface for the purpose of determining 11 the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other 12 than mining for production and economic exploitation, as 13 well as all roads made for the purpose of facilitating 14 15 exploration, except as noted in 82-4-310.

 16
 (8) "MAJOR AMENDMENT" MEANS AN ACTION THAT INCREASES OR

 17
 REDUCES THE SIZE OF THE MINE PERMIT AREA AND THAT IS NOT A

 18
 MINOR AMENDMENT.

 19
 (9) "MAJOR REVISION" MEANS ANY CHANGE IN THE MINING OR

 20
 RECLAMATION PLAN THAT:

 21
 (A) RESULTS IN A SIGNIFICANT CHANGE IN THE POSTMINING

 22
 DRAINAGE PLAN;

23 (B) RESULTS IN A CHANGE IN THE APPROVED POSTMINING LAND 24 USE;

25 (C) RESULTS IN A SIGNIFICANT CHANGE IN THE BONDING

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1	LEVEL WITHIN THE PERMITTED AREA;
2	(D) RESULTS IN A CHANGE THAT MAY APPECT THE
3	RECLAINABILITY OF THE AREA OR THE HYDROLOGIC BALANCE ON OR
4	OFF THE PERMITTED AREA; GR
5	(E) RESULTS IN A SIGNIFICANT CHANGE IN THE RATE,
6	VOLUME, OR METHOD OF MINERAL EXTRACTION OR PROCESSING.
7	<pre>f0;<u>f9;[10]</u> "Mineral" means any ore, rock, or substance,</pre>
8	other than oil, gas, bentonite, clay, coal, sand, gravel,
9	phosphate rock, or uranium, taken from below the surface or
10	from the surface of the earth for the purpose of milling,
11	concentration, refinement, smelting, manufacturing, or other
12	subsequent use or processing or for stockpiling for future
13	use, refinement, or smelting.
14	(9)<u>(10)</u> "Mining" commences when the operator first
15	mines ores or minerals in commercial quantities for sale,
16	beneficiation, refining, or other processing or disposition
17	or first takes bulk samples for metallurgical testing in
18	excess of aggregate of 10,000 short tons.
19	(12) "MINOR AMENDMENT" MEANS A CHANGE IN THE PERMIT
20	BOUNDARY IN WHICH A FEW ACRES THAT ARE INSIGNIFICANT IN
21	IMPACT RELATIVE TO THE ENTIRE OPERATION, GENERALLY LESS THAN
22	10 ACRES, ARE ADDED TO OR SUBTRACTED FROM THE PERMIT AREA
23	FOR THE PURPOSES OF ASSOCIATED DISTURBANCE. THE TERM DOES
24	NOT INCLUDE CHANGES MADE FOR MINERAL EXTRACTION.
25	(13) "MINOR REVISION" MEANS ANY CHANGE IN THE MINING OR

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1 RECLAMATION PLAN THAT IS NOT A MAJOR REVISION OR A MAJOR OR 2 MINOR AMENDMENT.

3 (10)(11)(14) "Ore processing" means milling, heap
4 leaching, flotation, vat leaching, or other standard
5 hard-rock mineral concentration processes.

6 (11)(12)(15) "Person" means any person, corporation,
7 firm, association, partnership, or other legal entity
8 engaged in exploration for or mining of minerals on or below
9 the surface of the earth, reprocessing of tailings or waste
10 materials, or operation of a hard-rock mill.

11 (12)(13)(16) "Placer deposit" means naturally occurring, 12 scattered or unconsolidated valuable minerals in gravel or 13 alluvium lying above bedrock.

14 (13)(17) "Placer or dredge mining" means the mining
 15 of minerals from a placer deposit by a person or persons.

16 (14)(15)(18) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal shall must include, to the extent practical at the time of application for an operating permit:

21 (a) a statement of the proposed subsequent use of the
22 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

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1 accomplishment; 2 (c) the manner and type of revegetation or other 3 surface treatment of disturbed areas: (d) procedures proposed to avoid foreseeable situations 4 5 of public nuisance, endangerment of public safety, damage to 6 human life or property, or unnecessary damage to flora and 7 fauna in or adjacent to the area; 8 (e) the method of disposal of mining debris; 9 (f) the method of diverting surface waters around the 10 disturbed areas where necessary to prevent pollution of 11 those waters or unnecessary erosion; 12 (g) the method of reclamation of stream channels and 13 stream banks to control erosion, siltation, and pollution; 14 (h) maps and other supporting documents as may be 15 reasonably required by the department; and 16 (i) a time schedule for reclamation that meets the 17 requirements of 82-4-336. (16)-"Revision"--means-a-change-in-the-operating-plan-or 18 19 reclamation-plan-to-extend;-continue;-or-modify-an--activity 20 within-the-mine's-permit-boundary-21 +15+++7+(19) (a) "Small miner" means a person, firm, or 22 corporation that engages in the business of mining or 23 reprocessing of tailings or waste materials that does not 24 remove from the earth during any calendar year material in

excess of 36,500 tons in the aggregate, that does not hold

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25

 (i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or
 (ii) two operations which disturb and leave unreclaimed

issued under 82-4-335(2), and that conducts:

an operating permit under 82-4-335 except for a permit

6 less than 5 acres per operation if the respective mining 7 properties are:

8 (A) the only operations engaged in by the person, firm,9 or corporation;

10 (B) at least 1 mile apart at their closest point; and
11 (C) not operated simultaneously except during seasonal
12 transitional periods not to exceed 30 days.

13 (b) For the purpose of this definition only, the department shall, in computing the area covered by the 14 15 operation, exclude access or haulage roads that are required 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 19 that it desires to have the road remain in use and will 20 maintain it after mining ceases.

21 (16)(18)(20) "Surface mining" means all or any part of 22 the process involved in mining of minerals by removing the 23 overburden and mining directly from the mineral deposits 24 exposed, including but not limited to open-pit mining of 25 minerals naturally exposed at the surface of the earth,

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1 mining by the auger method, and all similar methods by which 2 earth or minerals exposed at the surface are removed in the 3 course of mining. Surface mining does not include the 4 extraction of oil, gas, bentonite, clay, coal, sand, gravel, 5 phosphate rock, or uranium or excavation or grading 6 conducted for onsite farming, onsite road construction, or 7 other onsite building construction.

8 (17)(19)(21) "Underground mining" means all methods of
 9 mining other than surface mining.

10 +i0++20+(22) "Unit of surface-mined area" means that area of land and surface water included within an operating 11 12 permit actually disturbed by surface mining during each 13 12-month period of time, beginning at the date of the 14 issuance of the permit, and it comprises and includes the 15 area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas 16 used in surface mining or underground mining operations 17 which by virtue of mining use are susceptible to erosion in 18 excess of the surrounding undisturbed portions of land. 19

20 (19)(21)(23) "Vegetative cover" means the type of 21 vegetation, grass, shrubs, trees, or any other form of 22 natural cover considered suitable at time of reclamation."

Section 5. Section 82-4-337, MCA, is amended to read:
*82-4-337. Inspection -- issuance of operating permit
-- modification. (1) (a) The board shall cause all

1 applications for operating permits to be reviewed for 2 completeness within 60 DAYS OF RECEIPT OF THE INITIAL APPLICATION AND WITHIN 30 days of receipt OF RESPONSES TO 3 MOTICES OF DEFICIENCIES. The board shall notify the đ. applicant concerning completeness as soon as possible. An 5 application is considered complete unless the applicant is 6 notified of any deficiencies within 30-days-of-receipt THE 7 R APPROPRIATE REVIEW FERIOD.

(b) Unless the review period is extended as provided in 9 this section, the heard shall review the adequacy of the 10 proposed reclamation plan and plan of operation within 30. 11 days of the determination that the application is complete 12 or within 60 days of receipt of the application if the board 13 does not notify the applicant of any deficiencies in the 14 15 application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation 16 plan and plan of operation within such the time period, the 17 operating permit shall must be issued upon receipt of the 18 19 bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall 20 21 promptly notify the applicant of the form and amount of bond which will be required. 22

23 (c) No A permit may not be issued until:

24 (i) sufficient bond has been submitted pursuant to 25 82-4-338;

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(ii) the information and certification have been
 submitted pursuant to 82-4-335(9); and

3 (iii) the department has found that permit issuance is
4 not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department 5 shall inspect the site unless the department has failed to 6 act on the application within the time prescribed in 7 subsection (1)(b). If the site is not accessible due to 8 extended adverse weather conditions, the department may 9 extend the time period prescribed in subsection (1)(b) by 10 not more than 180 days to allow inspection of the site and 11 reasonable review. The department must serve written notice 12 of extension upon the applicant in person or by certified 13 mail, and any such extension is subject to appeal to the 14 board in accordance with the Montana Administrative 15 Procedure Act. 16

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) If the department decides to hire a third-party
 contractor to prepare an environmental impact statement on
 the application, the contractor-must-be-selected-as-follows:

1 (A)--The-department-shall-provide-the-applicant-with-the 2 names-of-three-contractors-acceptable-to-the-department. (B)--The--applicant--shall--choose--one--of--the---three 3 4 contractors. DEPARTMENT SHALL CONSULT WITH THE APPLICANT IN SELECTING THE CONTRACTOR AND CONSIDER AND WEIGH 5 THE APPLICANT'S ARGUMENTS CONCERNING THE ADVANTAGES AND 6 DISADVANTAGES OF HIRING & PARTICULAR CONTRACTOR. 7 (iii) Failure of the board to act upon a complete 8 9 application within the extension period constitutes approval 10 of the application, and the permit shall must be issued promptly upon receipt of the bond as required in 82-4-338. 11 12 (2) The operating permit shall must be granted for the 13 period required to complete the operation and shall-be is 14 valid until the operation authorized by the permit is 15 completed or abandoned unless the permit is suspended or 16 revoked by the board as provided in this part. 17 (3) The operating permit shall must provide that the 18 reclamation plan may be modified by the board, upon proper 19 application of the permittee or department, after timely

notice and opportunity for hearing, at any time during the
term of the permit and for any of the following reasons:

(a) to modify the requirements so they will notconflict with existing laws;

(b) when the previously adopted reclamation plan isimpossible or impracticable to implement and maintain;

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(c) when significant environmental problem situations
 are revealed by field inspection."

3 Section 6. Section 82-4-351, MCA, is amended to read:

4 *82-4-351. Reasons for denial of permit. (1) A- AN 5 APPLICATION FOR A permit OR AN APPLICATION FOR AN AMENDMENT 6 TO OR REVISION OF A PERMIT may be denied for any-of the 7 following reasons <u>if--it--is--established--by--clear---and</u> 8 <u>convincing-evidence-that</u>:

9 (a) the plan of operation or reclamation conflicts with 10 Title 75, chapter 2, as amended, Title 75, chapter 5, as 11 amended, Title 75, chapter 6, as amended, or rules adopted 12 pursuant to these laws;

13 (b) the reclamation plan does not provide an acceptable
14 method for accomplishment of reclamation as required by this
15 part.

16 (2) A denial of a permit shall must be in writing and,
17 state the reasons therefor for denial, AND BE BASED ON A
18 PREPONDERANCE OF THE EVIDENCE."

19NEW SECTION.Section 7.Codificationinstruction.20[Sections 1 through 4 3] are intended to be codified as an21integral part of Title 82, chapter 4, part 3, and the22provisions of Title 82, chapter 4, part 3, apply to23[sections 1 through 4 3].

24 <u>NEW-SECTION-</u>-Section-8.- Effective--date:-{This-act}-is- 25 effective-on-passage-and-approval;

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- 1 NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES
- 2 NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT
- 3 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE
- 4 EFFECTIVE DATE OF THIS ACT).

-End-

HOUSE STANDING COMMITTEE REPORT

March 16, 1993 Page 1 of 4

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 320 {third reading copy -- blue) be concurred in as amended .

Signed:

8-V Chair

Carried by: Rep. D. Brown

And, that such amendments read:

1. Title, line 12. Strike: "AND REVISIONS" Strike: "AND"

2. Title, line 14. Following: "DATE" Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 18. Following: "REQUIRES" Strike: "AUTHORIZES" Insert: "requires"

4. Page 1, line 22. Following: "REQUIREMENTS" Insert: "and amendment processing procedures"

5. Page 2, line 7. Strike: "180" Insert: *90*

6. Page 2, line 25. Following: "ATTORNEY" Insert: "and expert witness"

7. Page 3, lines 1 through 3. Strike: "<u>THAT</u>" on line 1 through "<u>MERIT</u>" on line 3 Insert: "an award is appropriate"

8. Page 3, line 4. Following: "Amendment" Strike: "or revision of" Insert: "to"

Committee Vote: Yes 4, No 4.

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9. Page 3, line 7. Strike: "or revision" 10. Page 3. Following: line 10 Insert: (2) The department may by rule establish criteria for the classification of amendments as major or minor. The department shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments." Renumber: subsequent subsections 11. Page 3, line 11. Strike: "(a)" 12. Page 3, line 13 through page 4, line 20. Strike: "(b)" on page 3, line 13 through "APPLICATION." on page 4, line 20 13. Page 4, line 21. Strike: "(C)" Insert: "(4)" 14. Page 4, line 22. Strike: "REVISION" Insert: "amendment" 15. Page 4, line 25 through page 5, line 3. Strike: "WITHIN" on page 4, line 25 through "(3)(A)." on page 5, line 3 16. Page 5. Following: line 3 Insert: *(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action: (a) actions that gualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1; (b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions; (c) repair or maintenance of the permittee's equipment or facilities; (d) investigation and enforcement actions, such as data collection, inspection of facilities, or

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enforcement of environmental standards;

 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres of 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance."

17. Page 5.

Following: line 14

Insert: "(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment."

Renumber: subsequent subsections

18. Page 6, line 16 through page 7, line 6.

Strike: "(8)" on page 6, line 16 through "PROCESSING." on page 7, line 6

Renumber: subsequent subsections

19. Page 7, line 19 though page 8, line 2.

Strike: "(12)" on page 7, line 19 through "AMENDMENT." on page 8, line 2

Renumber: subsequent subsections

20. Page 12, line 4.

Following: "DEFICIENCIES."

Insert: "The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1) (b)."

21. Page 14, lines 4 through 7. Following: "SHALL" on line 4 Strike: "CONSULT" on line 4 through "CONTRACTOR" on line 7
Insert: "prepare a list of no fewer than four contractors
 acceptable to the department and shall provide the applicant
 with a copy of the list. The applicant shall provide the
 department with a list of at least 50% of the contractors
 from the department's list. The department shall select its
 contractor from the list provided by the applicant"

22. Page 15, line 6. Strike: "OR REVISION OF"

23. Page 16, line 2. Strike: "RIGHTS AND DUTIES THAT MATURED,"

24. Page 16, line 3. Following: "INCURRED" Strike: ","

25. Page 16. Following: line 4 Insert:

> "NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval."

HOUSE COMMITTEE OF THE WHOLE AMENDMENT Senate Bill 320 Representative Brown

March 27, 1993 9:25 am Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 320 (third reading copy -- blue).

Signed: Representative Brown

And, that such amendments to Senate Bill 320 read as follows:

1. Page 4, lines 23 and 24. Strike: "15" Insert: "30"

-END-



REJECT

HOUSE 690924CW.Hss 68 # 2-0

1	SENATE BILL NO. 320	1	THIS BILL.
2	INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,	2	
3	QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,	3	BE IT ENACTED
4	PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN	4	NEW SECTION
5		5	actions seek
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT	6	denying an ex
7	IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING	7	under this
8	DECISIONS; REQUIRINGSECURITYBEFORECHALLENGINGBOARD	8	2-4-702 (2) ta)
9	BECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR	9	review-under-
10	CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR	10	90 DAYS AFTER
11	APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING	11	NEW-SECT
12	CRITERIA FOR AMENDMENTS AND-REVISIONS TO MINE PERMITS; AND	12	damagesIn-
13	AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA;-AND	13	order-concern
14	PROVIDING-AN-IMMEDIATEBPFBCTIVEDATE; AND PROVIDING AN	14	exploration
15	IMMEDIATE EFFECTIVE DATE."	15	part7-the-cou
16		16	paymentof
17	STATEMENT OF INTENT	17	been-wrongful
18	A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE	18	NEW SECTI
19	[SECTION 3] REQUIRES AUTHORIGES REQUIRES THE DEPARTMENT OF	19	fees. The-co
20	STATE LANDS TO ADOPT ADMINISTRATIVE RULES. IN ADOPTING	20	legal-action-
21	RULES, THE DEPARTMENT SHALL ESTABLISH CRITERIATO	21	exploration
22	<u>ðistinguishbetween-major-and-minor-amendments-and-criteria</u>	22	part-to-pay-t
23	PORREVISIONSTOOPERATINGPERMITS APPLICATION CONTENT	23	partiesto
24	REQUIREMENTS AND AMENDMENT PROCESSING PROCEDURES THAT ARE	24	ACTION CHALLE
25	CONSISTENT WITH THE PERMITTING REQUIREMENTS ESTABLISHED IN	25	LICENSE OR



THIS	BILL	

D BY THE LEGISLATURE OF THE STATE OF MONTANA:

ION. Section 1. Limitations of actions. Legal king review of a board decision granting or xploration license or operating permit issued part must be filed within the-time-provided-by +-for-initiation--of--proceedings--for--judicial -the-Montana-Administrative-Procedure-Act 45 180 R THE DECISION IS MADE.

10N---Section-2--Injunctions-----security--for----actions--seeking--an-injunction-or-restraining ning-a-board-decision--granting--or--denying--an -license--or--operating-permit-issued-under-this urt-shall-require-a-written-undertaking-for--the -costs--and--damages-incurred-by-a-party-who-has lity-enjoined-or-restrained-ION. Section 2. Award of costs and attorney court-may-require-the-unsuccessful-plaintiff-in-a -challenging--the--granting--or--denying--of--an -license--or--operating-permit-issued-under-this the-costs-and-reasonable-attorney-fees-of--other -- the--action WHEN ISSUING A FINAL ORDER IN AN LENGING THE GRANT OR DENIAL OF AN EXPLORATION

OPERATING PERMIT ISSUED UNDER THIS PART, THE

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SB 320 REFERENCE BILL AS AMENDED

COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE
 ATTORNEY AND EXPERT WITNESS FEES, TO A PREVAILING OR
 SUBSTANTIALLY PREVAILING PARTY WHENEVER, IN ITS DISCRETION,
 THE COURT DETERMINES THAT--THE--UNSUGGESSPUE--PARTY'S--EEGAE
 ACTION---WAS---FRIVOLOUS--AND--WITHOUT--MERIT AN AWARD IS
 APPROPRIATE.

7 <u>NEW SECTION.</u> Section 3. Amendment or revision of <u>ro</u> 8 operating permits. (1) During the term of an operating 9 permit issued under this part, an operator may apply for an 10 amendment or-revision to the permit. The operator may not 11 apply for an amendment to delete disturbed acreage except 12 following reclamation, as required under 82-4-336, and bond 13 release for the disturbance, as required under 82-4-338.

14(2) THE DEPARTMENT MAY BY RULE ESTABLISH CRITERIA FOR15THE CLASSIFICATION OF AMENDMENTS AS MAJOR OR MINOR. THE16DEPARTMENT SHALL ADOPT RULES ESTABLISHING REQUIREMENTS FOR17THE CONTENT OF APPLICATIONS FOR MAJOR AND MINOR AMENDMENTS18AND THE PROCEDURES FOR PROCESSING MINOR AMENDMENTS.

19 (2) - (a)(3) Applications for major amendments must be 20 processed pursuant to $\theta 2 - 4 - 335$ <u>82-4-337</u>.

 21
 (b)--Por--the-purposes-of-this-sectiony-major-amendments

 22
 are-those-amendments-that--significantly--affect--the--human

 23
 environment--Ninor-amendments-are-those-amendments-that-will

 24
 not---significantly--affect---the---human--environment--<u>THE</u>

 25
 DEPARTMENT-SHALL-REVIEW-AN-APPLICATION-POR-A-MINOR-AMENDMENT

1	AND-PROVIDE-A-NOTICE-OF-DECISIONONTHEADEQUACYOFTHE
2	APPLICATION-WITHIN-45-DAYS-OP-RECEIPT-OF-THE-APPLICATION-
3	<pre>(c)The-department-shall-MAY-by-rule-establish-criteria</pre>
4	forclassificationofamendmentsas-major-and-minor:-The
5	rulesmustestablishrequirementsforthecontentof
6	applications-for-amendments-and-revisions-and-procedures-for
7	the-processing-of-minor-amendments.
8	<pre>f3;Revisionsarecategoricallyexemptfromthe</pre>
9	provisions-of-the-Montana-EnvironmentalPolicyActunless
10	the-department-determines-that-the-revision-will-result-in-a
11	significantenvironmentalimpactthatwas-not-previously
12	analyzed-in-an-environmental-review-documentThe-department
13	determination-required-underthissubsectionmustbein
14	writingandbe-based-on-substantial-and-credible-evidence-
15	<u> </u>
16	Significantimpacton-the-quality-of-the-human-environment
17	IS-SUBJECT-TO-THE-PROVISIONS-OP-02-4-337(1)+
18	<u> +B}THE-BOARB-SHALL-CAUSE-AN-APPLICATIONFORAMAJOR</u>
19	<u>REVISIONTHATWOULDNOT-RESULT-IN-A-SIGNIFICANT-IMPACT-ON</u>
20	THE-GUALITY-OF-THE-HUMANENVIRONMENTTOBEREVIEWEDFOR
21	COMPLETENESSWITHIN30DAYS-OF-RECEIPTAN-APPLICATION-IS
22	Considered-Complete-Unless-The-Applicant-isNotifiedOFA
23	DHPICIENCYWITHIN-THB-30-DAY-PERIODTHE-BOARD-SHALL-REVIEW
24	THE-ADBOUACY-OF-THE-PROPOSED-MAJOR-REVISION-WITHIN90DAYS
25	opTheDeterminationThatThe-Application-is-Complete-or

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1	WITHIN-120-DAYS-OP-RECEIPT-OP-THE-APPLICATION-IPTHEBOARD
2	DobsNotNotipyTheApplicantOpADepiciencyin-The
3	APPLICATION.
4	(C) (4) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A
5	MINOR REVISION AMENDMENT AND PROVIDE A NOTICE OF DECISION ON
6	THE ADEQUACY OF THE APPLICATION WITHIN 15 30 DAYS. IF THE
7	DEPARTMENT DOES NOT RESPOND WITHIN 15 30 DAYS, THEN THE
8	PERMIT IS REVISED IN ACCORDANCE WITH THE APPLICATION. WITHIN
9	THE-15-DAY-PERIOD7-THE-BEPARTMENT-MAY-NOTIFYTHEAPPLICANT
10	THATTHEREVISIONAPPLIEDPOR-IS-A-MAJOR-REVISION-AND-IS
11	SUBJECT-TO-THE-PROVISIONS-OF-SUBSECTION-(3)(A).
12	(5) THE DEPARTMENT IS NOT REQUIRED TO PREPARE AN
13	ENVIRONMENTAL ASSESSMENT OR AN ENVIRONMENTAL IMPACT
14	STATEMENT FOR THE FOLLOWING CATEGORIES OF ACTION:
15	(A) ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION AS
16	DEFINED BY RULE OR JUSTIFIED BY A PROGRAMMATIC REVIEW
17	PURSUANT TO TITLE 75, CHAPTER 1;
18	(B) ADMINISTRATIVE ACTIONS, SUCH AS ROUTINE, CLERICAL,
19	OR SIMILAR FUNCTIONS OF A DEPARTMENT, INCLUDING BUT NOT
20	LIMITED TO ADMINISTRATIVE PROCUREMENT, CONTRACTS FOR
21	CONSULTING SERVICES, AND PERSONNEL ACTIONS;
22	(C) REPAIR OR MAINTENANCE OF THE PERMITTEE'S EQUIPMENT
23	OR FACILITIES;
24	(D) INVESTIGATION AND ENFORCEMENT ACTIONS, SUCH AS DATA
25	COLLECTION, INSPECTION OF FACILITIES, OR ENFORCEMENT OF
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1	ENVIRONMENTAL STANDARDS;
2	(E) MINISTERIAL ACTIONS, SUCH AS ACTIONS IN WHICH THE
3	AGENCY DOES NOT EXERCISE DISCRETION, BUT ACTS UPON A GIVEN
4	STATE OF FACTS IN A PRESCRIBED MANNER;
5	(F) APPROVAL OF ACTIONS THAT ARE PRIMARILY SOCIAL OR
6	ECONOMIC IN NATURE AND THAT DO NOT OTHERWISE AFFECT THE
7	HUMAN ENVIRONMENT;
8	(G) CHANGES IN A PERMIT BOUNDARY THAT INCREASE
9	DISTURBED ACRES THAT ARE INSIGNIFICANT IN IMPACT RELATIVE TO
10	THE ENTIRE OPERATION, PROVIDED THAT THE INCREASE IS LESS
11	THAN 10 ACRES OR 5% OF THE PERMITTED AREA, WHICHEVER IS
12	LESS; AND
13	(H) CHANGES IN AN APPROVED OPERATING PLAN OR
14	RECLAMATION PLAN FOR AN ACTIVITY THAT WAS PREVIOUSLY
15	PERMITTED, PROVIDED THAT THE IMPACTS OF THE CHANGE WILL BE
16	INSIGNIFICANT RELATIVE TO THE IMPACTS OF THE ENTIRE
17	OPERATION AND THERE IS LESS THAN 10 ACRES OF ADDITIONAL
18	DISTURBANCE.
19	Section 4. Section 82-4-303, MCA, is amended to read:
20	82-4-303. Definitions. As used in this part, unless
21	the context indicates otherwise, the following definitions
22	apply:
23	(1) "Abandonment of surface or underground mining" may
24	be presumed when it is shown that continued operation will
25	not resume.

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1 (2)--"Amendment"--means--an-action-to-increase-or-reduce 2 the-size-of-the--mine--permit--area--or--to--engage--in--the 3 activities-identified-in-82-4-335(1)-outside-of-a-previously 4 permitted-area-5 (2) "AMENDMENT" MEANS A CHANGE TO AN APPROVED OPERATING 6 OR RECLAMATION PLAN. A MAJOR AMENDMENT IS AN AMENDMENT THAT 7 MAY SIGNIFICANTLY AFFECT THE HUMAN ENVIRONMENT. A MINOR 8 AMENDMENT IS AN AMENDMENT THAT WILL NOT SIGNIFICANTLY AFFECT

9 THE HUMAN ENVIRONMENT.

10 $(\frac{2}{2})(\frac{3}{2})(3)$ "Board" means the board of land 11 commissioners or a state employee or state agency as may 12 succeed to its powers and duties under this part.

13 (3)(4)(4)(4) "Commissioner" means the commissioner of 14 state lands provided for in 2-15-3202.

15 (4)(5)(4)(5) "Cyanide ore-processing reagent" means
16 cyanide or a cyanide compound used as a reagent in leaching
17 operations.

18 (5)(6)(5)(6) "Department" means the department of state
19 lands.

20 (6)(7)(6)(7) "Disturbed land" means that area of land 21 or surface water disturbed, beginning at the date of the 22 issuance of the permit, and it comprises that area from 23 which the overburden, tailings, waste materials, or minerals 24 have been removed and tailings ponds, waste dumps, roads, 25 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.

3 (7)(8) "Exploration" activities means all 4 conducted on or beneath the surface of lands resulting in 5 material disturbance of the surface for the purpose of 6 determining the presence, location, extent, depth, grade, 7 and economic viability of mineralization in those lands, if 8 any, other than mining for production and economic exploitation, as well as all roads made for the purpose of 9 10 facilitating exploration, except as noted in 82-4-310. 11 (0)--*MAJOR-AMENDMENT*-MEANS-AN-ACTION-THAT-INCREASES-OR

1 2	ReducesTheSibe-OF-The-Mine-Permit-Area-And-That-IS-NOT-A
13	MINOR-AMENDMENT.
14	{9}*MAJOR-REVISION*-MEANS-ANY-CHANGE-IN-THE-MININGOR
15	Reebamation-Plan-That:
16	{A}RESULTSINA-SIGNIFICANT-CHANGE-IN-THE-POSTMINING
17	DRAINAGE-PLAN;
18	<u> +BRESULTS-IN-A-CHANGE-IN-THE-APPROVED-POSTMINING-LAND</u>
19	USE;
20	<u> </u>
21	Level-Within-The-Permitted-Area;
22	{d}ResubesinaChangePhaeMayAffecePhe
23	RECLAIMABILITY-OF-THE-ARBA-OR-THE-HYDROLOGIC-BALANCEONOR
24	<u>OPP-THB-PERMITTED-AREA;-OR</u>

25 <u>+E)--RESULTS-IN-A--SIGNIFICANT--CHANGE--IN--THE--RATE</u>

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1 VOLUME7-OR-METHOD-OF-MINERAL-BETRACTION-OR-PROCESSING

9 (9)(10)(11)(10) "Mining" commences when the operator 10 first mines ores or minerals in commercial quantities for 11 sale, beneficiation, refining, or other processing or 12 disposition or first takes bulk samples for metallurgical 13 testing in excess of aggregate of 10,000 short tons.

 14
 (12)-*MINOR--AMENDMENT*--MEANS--A-CHANGE--IN-THE-PERMIT

 15
 BOUNDARY-IN-WHICH-A-PEW--ACRES--THAT--ARE--INSIGNIFICANT--IN

 16
 IMPACT-RELATIVE-TO-THE-ENTIRE-OPERATION7-GENERALLY-LESS-THAN

 17
 10--ACRES7--ARE--ADDED-TO-OR-SUBTRACTED-PROM-THE-PERMIT-AREA

 18
 POR-THE-FURPOSES-OP-ASSOCIATED-DISTURBANCET--THE--THE--TERM--DOES

 19
 NOT-INCLUDE-CHANGES-MADE-POR-MINERAL-EXTRACTIONT

 20
 (±3)-*MINOR--REVISION*-MEANS-ANY-CHANGE-IN-THE-MINING-OR

 21
 RECLAMATION-PLAN-THAT-IS-NOT-A-MAJOR-REVISION-OR-A-MAJOR-OR

 22
 MINOR-AMENDMENT

23 (10)(11)(11) "Ore processing" means milling, heap
24 leaching, flotation, vat leaching, or other standard
25 hard-rock mineral concentration processes.

1 (+++)(+2+)(+2+)(12) "Person" means any person, corporation,
2 firm, association, partnership, or other legal entity
3 engaged in exploration for or mining of minerals on or below
4 the surface of the earth, reprocessing of tailings or waste
5 materials, or operation of a hard-rock mill.

6 (12)(13)(16)(13) "Placer deposit" means naturally
7 occurring, scattered or unconsolidated valuable minerals in
8 gravel or alluvium lying above bedrock.

9 (13)(14)(14) "Placer or dredge mining" means the 10 mining of minerals from a placer deposit by a person or 11 persons.

12 <u>fi4)fi5)fi8)(15)</u> "Reclamation plan" means the operator's 13 written proposal, as required and approved by the board, for 14 reclamation of the land that will be disturbed. The proposal 15 shall must include, to the extent practical at the time of 16 application for an operating permit:

17 (a) a statement of the proposed subsequent use of the18 land after reclamation;

19 (b) plans for surface gradient restoration to a surface 20 suitable for the proposed subsequent use of the land after 21 reclamation is completed and the proposed method of 22 accomplishment;

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

25 (d) procedures proposed to avoid foreseeable situations

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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;

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

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

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

10 (h) maps and other supporting documents as may be 11 reasonably required by the department; and

12 (i) a time schedule for reclamation that meets the 13 requirements of 82-4-336.

14 <u>(16)-"Revision"--means-a-change-in-the-operating-plan-or</u>
15 <u>reclamation-plan-to-extend;-continue;-or-modify-an-activity</u>
16 within-the-mine's-permit-boundary;

17 (15)(17)(19)(16) (a) "Small miner" means a person, firm, 18 or corporation that engages in the business of mining or 19 reprocessing of tailings or waste materials that does not 20 remove from the earth during any calendar year material in 21 excess of 36,500 tons in the aggregate, that does not hold 22 an operating permit under 82-4-335 except for a permit 23 issued under 82-4-335(2), and that conducts:

(i) an operation resulting in not more than 5 acres ofthe earth's surface being disturbed and unreclaimed; or

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

4 (A) the only operations engaged in by the person, firm, 5 or corporation;

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

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

(b) For the purpose of this definition only, the 9 department shall, in computing the area covered by the 10 11 operation, exclude access or haulage roads that are required 12 by a local, state, or federal agency having jurisdiction 13 over that road to be constructed to certain specifications if that public agency notifies the department in writing 14 15 that it desires to have the road remain in use and will 16 maintain it after mining ceases.

ti6;ti0;t20;(17) "Surface mining" means all or any part 17 of the process involved in mining of minerals by removing 18 the overburden and mining directly from the mineral deposits 19 exposed, including but not limited to open-pit mining of 20 21 minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which 22 earth or minerals exposed at the surface are removed in the 23 course of mining. Surface mining does not include the 24 extraction of oil, gas, bentonite, clay, coal, sand, gravel, 25

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phosphate rock, or uranium or excavation or grading
 conducted for onsite farming, onsite road construction, or
 other onsite building construction.

4 (17)(19)(21)(18) "Underground mining" means all methods
5 of mining other than surface mining.

6 (18)(19) "Unit of surface-mined area" means that area of land and surface water included within an operating 7 8 permit actually disturbed by surface mining during each 9 12-month period of time, beginning at the date of the 10 issuance of the permit, and it comprises and includes the 11 area from which overburden or minerals have been removed, 12 the area covered by mining debris, and all additional areas 13 used in surface mining or underground mining operations 14 which by virtue of mining use are susceptible to erosion in 15 excess of the surrounding undisturbed portions of land.

16 (19)(21)(23)(20) "Vegetative cover" means the type of 17 vegetation, grass, shrubs, trees, or any other form of 18 natural cover considered suitable at time of reclamation."

19 Section 5. Section 82-4-337, MCA, is amended to read:
20 "82-4-337. Inspection -- issuance of operating permit
21 -- modification. (1) (a) The board shall cause all
22 applications for operating permits to be reviewed for
23 completeness within <u>60 DAYS OF RECEIPT OF THE INITIAL</u>
24 <u>APPLICATION AND WITHIN</u> 30 days of receipt <u>OF RESPONSES TO</u>
25 <u>NOTICES OF DEFICIENCIES. THE INITIAL COMPLETENESS NOTICE</u>

MUST NOTE ALL DEFICIENCY ISSUES, AND THE DEPARTMENT MAY NOT 1 IN A LATER COMPLETENESS NOTICE RAISE AN ISSUE PERTAINING TO 2 3 THE INITIAL APPLICATION THAT WAS NOT RAISED IN THE INITIAL 4 NOTICE. THE DEPARTMENT MAY, HOWEVER, RAISE ANY DEFICIENCY 5 DURING THE ADEQUACY REVIEW PURSUANT TO SUBSECTION (1)(B). The board shall notify the applicant concerning completeness 6 7 as soon as possible. An application is considered complete 8 unless the applicant is notified of any deficiencies within 30-days-of-receipt THE APPROPRIATE REVIEW PERIOD. 9

(b) Unless the review period is extended as provided in 10 this section, the board shall review the adequacy of the 11 12 proposed reclamation plan and plan of operation within 30 13 days of the determination that the application is complete or within 60 days of receipt of the application if the board 14 15 does not notify the applicant of any deficiencies in the 16 application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation 17 plan and plan of operation within such the time period, the 18 19 operating permit shall must be issued upon receipt of the 20 bond as required in 82-4-338 and pursuant to the 21 requirements of subsection (1)(c). The department shall 22 promptly notify the applicant of the form and amount of bond 23 which will be required.

24 (c) No <u>A</u> permit may <u>not</u> be issued until:

25 (i) sufficient bond has been submitted pursuant to

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1 82-4-338;

2 (ii) the information and certification have been
3 submitted pursuant to 82-4-335(9); and

4 (iii) the department has found that permit issuance is
5 not prohibited by 82-4-335(8) or 82-4-341(6).

6 (d) (i) Prior to issuance of a permit, the department 7 shall inspect the site unless the department has failed to 8 act on the application within the time prescribed in 9 subsection (1)(b). If the site is not accessible due to 10 extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by 11 12 not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice 13 14 of extension upon the applicant in person or by certified 15 mail, and any such extension is subject to appeal to the 16 board in accordance with the Montana Administrative 17 Procedure Act.

18 (ii) If the department determines that additional time 19 is needed to review the application and reclamation plan for 20 a major operation, the department and the applicant shall 21 negotiate to extend the period prescribed in subsection 22 (1)(b) by not more than 365 days in order to permit 23 reasonable review.

24 (iii) If the department decides to hire a third-party
 25 contractor to prepare an environmental impact statement on

1	the application, the contractor-must-be-selected-as-follows+
2	(A)The-department-shall-provide-the-applicant-with-the
3	names-of-three-contractors-acceptable-to-the-department.
4	<u>{B}Theapplicantshallchooseoneofthethree</u>
5	CONTRACTORST DEPARTMENT SHALL CONSULT-WITH-THB-APPLICANTIN
6	SelectingTheContractorandConsiderandweighThe
7	APPLICANTISARGUMENTSCONCERNINGTHEADVANTAGESAND
8	DISADVANTAGESOPHIRINGA-PARTICULAR-CONTRACTOR PREPARE A
9	LIST OF NO FEWER THAN FOUR CONTRACTORS ACCEPTABLE TO THE
10	DEPARTMENT AND SHALL PROVIDE THE APPLICANT WITH A COPY OF
11	THE LIST. THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH A
12	LIST OF AT LEAST 50% OF THE CONTRACTORS FROM THE
13	DEPARTMENT'S LIST. THE DEPARTMENT SHALL SELECT ITS
14	CONTRACTOR FROM THE LIST PROVIDED BY THE APPLICANT.
15	$\frac{1}{1}$
16	application within the extension period constitutes approval
17	of the application, and the permit shall must be issued
18	promptly upon receipt of the bond as required in 82-4-338.
19	(2) The operating permit shall must be granted for the
20	period required to complete the operation and shallbe is
21	valid until the operation authorized by the permit is
22	completed or abandoned unless the permit is suspended or
23	revoked by the board as provided in this part.

24 (3) The operating permit shall must provide that the
25 reclamation plan may be modified by the board, upon proper

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application of the permittee or department, after timely
 notice and opportunity for hearing, at any time during the
 term of the permit and for any of the following reasons:

4 (a) to modify the requirements so they will not5 conflict with existing laws;

6 (b) when the previously adopted reclamation plan is7 impossible or impracticable to implement and maintain;

8 (c) when significant environmental problem situations9 are revealed by field inspection."

10 Section 6. Section 82-4-351, MCA, is amended to read:

11 *82-4-351. Reasons for denial of permit. (1) A-- AN 12 APPLICATION FOR A permit OR AN APPLICATION FOR AN AMENDMENT 13 TO OR-REVISION-OP A PERMIT may be denied for any--of the 14 following reasons <u>if--it--is--established--by--clear--and</u> 15 convincing-evidence-that:

16 (a) the plan of operation or reclamation conflicts with 17 Title 75, chapter 2, as amended, Title 75, chapter 5, as 18 amended, Title 75, chapter 6, as amended, or rules adopted 19 pursuant to these laws;

(b) the reclamation plan does not provide an acceptable
method for accomplishment of reclamation as required by this
part.

23 (2) A denial of a permit shall must be in writing and,
24 state the reasons therefor for denial, AND BE BASED ON A
25 PREPONDERANCE OF THE EVIDENCE."

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1	NEW SECTION. Section 7. Codification instruction.
2	[Sections 1 through 4 3] are intended to be codified as an
3	integral part of Title 82, chapter 4, part 3, and the
4	provisions of Title 82, chapter 4, part 3, apply to
5	[sections 1 through 4 3].
6	NBW-SBCTIONSection-8Effective-date{This-act}is
7	effective-on-passage-and-approval;
8	NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES
9	NOT AFFECT RIGHTSAND-DUTIES-THAT-MATURED, PENALTIES THAT
10	WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE
11	EFFECTIVE DATE OF THIS ACT].
12	NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF
13	[THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
14	FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
15	ACT) IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
16	REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
17	SEVERABLE FROM THE INVALID APPLICATIONS.
18	NEW SECTION. SECTION 10. EFFECTIVE DATE. [THIS ACT] IS

19 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-