

SENATE BILL 413

Introduced by Doherty, et al.

2/16	Introduced
2/16	Referred to Natural Resources
2/16	First Reading
2/16	Fiscal Note Requested
2/19	Hearing
2/19	Tabled in Committee
2/22	Fiscal Note Received
2/23	Fiscal Note Printed

1 Senate BILL NO. 413
 2 INTRODUCED BY Debra J. Hagan
 3 McCallister
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE PERIOD FOR
 5 WHICH A METAL MINE PERMIT IS VALID; ESTABLISHING A DUE
 6 DILIGENCE TEST FOR PERMIT RENEWAL OR OTHER PERMIT
 7 MODIFICATION; AMENDING SECTION 82-4-335, MCA; AND PROVIDING
 8 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION."
 9

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

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

12 "82-4-335. Operating permit -- limitation -- fees.

13 (1) (a) A person may not engage in mining, ore processing,
 14 or reprocessing of tailings or waste material, construct or
 15 operate a hard-rock mill, use cyanide ore-processing
 16 reagents, or disturb land ~~in--anticipation--of~~ reasonably
 17 anticipated to be affected by those activities in the state
 18 without first obtaining an operating permit from the board.
 19 A separate operating permit is required for each complex.
 20 The board may not issue a permit under this section for a
 21 period to exceed 5 years.

22 (b) A permit granted under this section may be renewed
 23 after application to the board at least 120 days but not
 24 more than 150 days prior to the permit's expiration date if
 25 the permitholder:

1 (i) is in compliance with the requirements of this part
 2 and administrative rules adopted pursuant to this part;

3 (ii) is in compliance with the reclamation plan required
 4 under 82-4-336;

5 (iii) agrees to comply with all applicable laws and
 6 rules in effect at the time of renewal; and

7 (iv) meets the due diligence requirements of subsection
 8 (1)(e).

9 (c) A renewal granted under this section is subject to
 10 the denial provisions of 82-4-341, 82-4-351, 82-4-352, and
 11 85-4-362 and the release of duty provisions of 82-4-340. On
 12 application for renewal of a permit granted under this
 13 section, the burden is on the opponents of renewal to
 14 demonstrate that the permit should not be renewed.

15 (d) The board shall terminate a permit if, within 3
 16 years of permit issuance, the permitholder has not, with due
 17 diligence, substantively engaged in the activities
 18 identified in subsection (1)(a) for which the permit was
 19 granted. However, the board may grant reasonable extensions
 20 of time after a showing by the permitholder that an
 21 extension is necessary by reason of litigation precluding
 22 commencement of the activities in subsection (1)(a).

23 (e) The board may not extend, modify, or transfer the
 24 permit if the permitholder has not, with due diligence,
 25 substantively engaged in the activities identified in

1 subsection (1)(a) for which the permit was granted.

2 (f) A person failing to meet the due diligence
3 requirements of subsections (1)(d) and (1)(e) shall reapply
4 for a permit as required under subsection (1)(a).

5 (2) A small miner who intends to use a cyanide
6 ore-processing reagent shall obtain an operating permit for
7 that part of his the operation where the cyanide
8 ore-processing reagent will be used or disposed of.

9 (3) Prior to receiving an operating permit from the
10 board, a person shall pay the basic permit fee of \$25. The
11 department may require a person who is applying for a permit
12 pursuant to subsection (1) to pay an additional fee not to
13 exceed the actual amount of contractor and employee expenses
14 beyond the normal operating expenses of the department
15 whenever those expenses are reasonably necessary to provide
16 for timely and adequate review of the application, including
17 any environmental review conducted under Title 75, chapter
18 1, parts 1 and 2. The department may further define these
19 expenses by rule. Whenever the department determines that an
20 additional fee is necessary and the additional fee will
21 exceed \$5,000, the department shall notify the applicant
22 that a fee must be paid and submit to the applicant an
23 itemized estimate of the proposed expenses. The department
24 shall provide the applicant an opportunity to review the
25 department's estimated expenses. The applicant may indicate

1 which proposed expenses the applicant considers duplicative
2 or excessive, if any.

3 (4) The person shall submit an application on a form
4 provided by the board, which must contain the following
5 information and any other pertinent data required by rule:

6 (a) name and address of the operator and, if a
7 corporation or other business entity, the name and address
8 of its officers, directors, owners of 10% or more of any
9 class of voting stock, partners, and the like and its
10 resident agent for service of process, if required by law;

11 (b) minerals expected to be mined;

12 (c) a proposed reclamation plan;

13 (d) expected starting date of operations;

14 (e) a map showing the specific area to be mined and the
15 boundaries of the land which will be disturbed, topographic
16 detail, the location and names of all streams, roads,
17 railroads, and utility lines on or immediately adjacent to
18 the area, and the location of proposed access roads to be
19 built;

20 (f) the names and addresses of the owners of record and
21 any purchasers under contracts for deed of the surface of
22 the land within the permit area and the owners of record and
23 any purchasers under contracts for deed of all surface area
24 within one-half mile of any part of the permit area,
25 provided that the department is not required to verify this

1 information;

2 (g) the names and addresses of the present owners of
3 record and any purchasers under contracts for deed of all
4 minerals in the land within the permit area, provided that
5 the department is not required to verify this information;

6 (h) the source of the applicant's legal right to mine
7 the mineral on the land affected by the permit, provided
8 that the department is not required to verify this
9 information;

10 (i) types of access roads to be built and manner of
11 reclamation of road sites on abandonment;

12 (j) a plan which will provide, within limits of normal
13 operating procedures of the industry, for completion of the
14 operation;

15 (k) ground water and surface water hydrologic data
16 gathered from a sufficient number of sources and length of
17 time to characterize the hydrologic regime;

18 (l) a plan detailing the design, operation, and
19 monitoring of impounding structures, including but not
20 limited to tailings impoundments and water reservoirs,
21 sufficient to ensure that the structures are safe and
22 stable;

23 (m) a plan identifying methods to be used to monitor
24 for the accidental discharge of objectionable materials and
25 remedial action plans to be used to control and mitigate

1 discharges to surface or ground water; and

2 (n) an evaluation of the expected life of any tailings
3 impoundment or waste area and the potential for expansion of
4 the tailings impoundment or waste site.

5 (5) Except as provided in subsection (7), the permit
6 provided for in subsection (1) for a large-scale mineral
7 development as defined in 90-6-302 must be conditioned to
8 provide that activities under the permit may not commence
9 until the impact plan is approved under 90-6-307 and until
10 the permittee has provided a written guarantee to the
11 department and to the hard-rock mining impact board of
12 compliance within the time schedule with the commitment made
13 in the approved impact plan, as provided in 90-6-307. If the
14 permittee does not comply with that commitment within the
15 time scheduled, the board, upon receipt of written notice
16 from the hard-rock mining impact board, shall suspend the
17 permit until it receives written notice from the hard-rock
18 mining impact board that the permittee is in compliance.

19 (6) When the department determines that a permittee has
20 become or will become a large-scale mineral developer
21 pursuant to 82-4-339 and 90-6-302 and provides notice as
22 required under 82-4-339, within 6 months of receiving the
23 notice, the permittee shall provide the board with proof
24 that he the permittee has obtained a waiver of the impact
25 plan requirement from the hard-rock mining impact board or

1 ~~that-he~~ has filed an impact plan with the hard-rock mining
 2 impact board and the appropriate county or counties. If the
 3 permittee does not file the required proof or if the
 4 hard-rock mining impact board certifies to the board that
 5 the permittee has failed to comply with the hard-rock mining
 6 impact review and implementation requirements in Title 90,
 7 chapter 6, parts 3 and 4, the board shall suspend the permit
 8 until the permittee files the required proof or until the
 9 hard-rock mining impact board certifies that the permittee
 10 has complied with the hard-rock mining impact review and
 11 implementation requirements.

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

15 (8) A person may not be issued an operating permit if
 16 that person's failure to comply with the provisions of this
 17 part, the rules adopted under this part, or a permit or
 18 license issued under this part has resulted in the
 19 forfeiture of a bond unless that person meets the conditions
 20 described in 82-4-360.

21 (9) A person may not be issued a permit under this part
 22 unless, at the time of submission of a bond, the person
 23 provides the current information required in subsection
 24 (4)(a) and:

25 (a) (i) certifies that the person is not currently in

1 violation in this state of any law, rule, or regulation of
 2 this state or of the United States pertaining to air
 3 quality, water quality, or mined land reclamation; or

4 (ii) presents a certification by the administering
 5 agency that the violation is in the process of being
 6 corrected to the agency's satisfaction or is the subject of
 7 a bona fide administrative or judicial appeal; and

8 (b) if the person is a partnership, corporation, or
 9 other business association, provides the certification
 10 required by subsection (9)(a)(i) or (9)(a)(ii), as
 11 applicable, for any partners, officers, directors, owners of
 12 10% or more of any class of voting stock, and business
 13 association members."

14 NEW SECTION. Section 2. Applicability. [This act]
 15 applies to all metal mine permits issued under 82-4-335.

16 NEW SECTION. Section 3. Effective date. [This act] is
 17 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0413, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act limiting the period for which a metal mine permit is valid and establishing a due diligence test for permit renewal or other permit modification.

ASSUMPTIONS:

1. Renewal is a standard exercise, coordinated with the timing of bonding updates, administered by the Department of State Lands.
2. Changes in standards are applied to permits as changes occur; precluding the need for massive 5 year updates.
3. Rulemaking is part of routine rulemaking.
4. 1.50 FTE are necessary to accomplish the tasks involved. 0.50 FTE (grade 10) to track timeframes, due dates and implementation of changes in standards and 1.00 FTE (grade 14) to assure each permittee is contacted as standards change, to assure permit revisions are submitted, to coordinate reviews, and to implement and coordinate all due diligence activities. In addition, 4 pages each of draft and final rules will be needed (\$35 per page).
5. The affected program is currently funded by a mix of general fund (34%) and reclamation & development funds (66%), and this ratio would be continued.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	1.50	1.50	0.00	1.50	1.50
Personal Services	0	49,631	49,631	0	44,827	44,827
Operating	0	280	280	0	0	0
Total	0	49,911	49,911	0	44,827	44,827
<u>Funding:</u>						
General Fund	0	16,970	16,970	0	15,251	15,251
Reclamation & Development (02)	0	32,941	32,941	0	29,606	29,606
Total	0	49,911	49,911	0	44,827	44,827

David Lewis 2-20-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Steve Doherty 2/23/93
 STEVE DOHERTY, PRIMARY SPONSOR DATE

Fiscal Note for SB0413, as introduced

SB 413