

1 *Green* House BILL NO. 413 *Smith*
 2 INTRODUCED BY *Storall Miller GRINOE* *Brady*
 3 *Carlson Sullivan Rehbein Simpkins Brainerd*

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TAXABLE VALUATION ALLOCATION UNDER
 5 THE *Taylor* HARD-ROCK MINING IMPACT PROPERTY TAX BASE; AMENDING SECTIONS 90-6-301, 90-6-307,
 6 90-6-309, AND 90-6-404, MCA; AND PROVIDING AN EFFECTIVE DATE."
 7

8 WHEREAS, experience with implementation and enforcement of the Montana hard-rock mining
 9 impact statutes has disclosed deficiencies in the statutes and a need for clarification of the intent of the
 10 statutes; and

11 WHEREAS, enforcement of taxable valuation allocation under the hard-rock mining impact property
 12 tax base sharing program results in multiple taxation.

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

15
 16 **Section 1.** Section 90-6-301, MCA, is amended to read:

17 **"90-6-301. Declaration of necessity and purpose.** The large-scale development of mineral deposits
 18 in the state may cause an influx of people ~~directly related to the area of the development~~ who reside within
 19 the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral
 20 development or its contractors or subcontractors. This influx of people and ~~the~~ their corresponding increase
 21 in demand for local government facilities and services may create a burden on the local taxpayer. There is
 22 a significant lag time between the time when additional facilities and services must be provided and the
 23 time when additional tax revenue is available as a result of the increased tax base. In addition, local
 24 government units in ~~whatever~~ a jurisdiction in which the development is not located may receive substantial
 25 adverse economic impacts without benefit of a major increased tax base in the future. There is, therefore,
 26 a need to provide a system to assist local government units in meeting the initial financial impact ~~of~~ caused
 27 by the influx of people resulting from large-scale mineral development."
 28

29 **Section 2.** Section 90-6-307, MCA, is amended to read:

30 **"90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale

1 mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected
2 counties and the board an impact plan describing the economic impact that the large-scale mineral
3 development will have on local government units and shall file proof of ~~such~~ the submission to the counties
4 with the board. Whenever an environmental impact statement on the permit application is prepared under
5 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local
6 government units to eliminate duplication of effort in data collection. The governing bodies of the affected
7 counties shall publish notice of the submission of an impact plan at least once in a newspaper of general
8 circulation in the county. The mineral developer and the affected local government units shall ensure that
9 the impact plan includes:

10 (a) a timetable for development, including the opening date of the development and the estimated
11 closing date;

12 (b) the estimated number of persons coming into the impacted area as a direct result of the
13 development. In determining the number of people coming into the impacted area, only those people, or
14 their dependents, who reside within the jurisdiction of an affected local government unit as a result of
15 employment with a large-scale mineral development or its contractors or subcontractors are to be
16 considered in this estimated number.

17 (c) the increased capital and operating cost to local government units for providing services ~~which~~
18 that can be expected as a result of the development;

19 (d) the financial or other assistance the developer will give to local government units to meet the
20 increased need for services.

21 (2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net
22 operating cost to local government units that will be a result of the development, as identified in the impact
23 plan, either from tax prepayments, as provided in 90-6-309, special industrial local government facility
24 impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a
25 time schedule within which it will do so. The plan may provide for funding from other revenue sources or
26 funding mechanisms if the developer guarantees that the amount to be provided from these sources will
27 be paid.

28 (3) Upon request of the governing body of an affected unit of local government, the mineral
29 developer, prior to the end of the 90-day review period, shall provide financial or other assistance as
30 necessary to prepare for and evaluate the impact plan. The governing body of the affected county must

1 shall contract with the developer to obtain the requested financial assistance for each unit of local
2 government within the county. Any disbursements to a unit of local government under this subsection ~~shall~~
3 must be credited against future tax liabilities, if any.

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

7 (5) An affected local government unit that has not been identified in an impact plan submitted to
8 the board as being likely to experience increased capital and operating costs for providing services ~~which~~
9 that can be expected as a result of the development may object to the impact plan under the provisions
10 of this section if the local government unit clearly demonstrates that it is likely to experience increased
11 capital and operating costs from the mineral development.

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

20 (7) If objections are received from a local government unit, the board shall, within 10 days, notify
21 the developer and forward a copy of the local government unit's objections to the developer. The local
22 government unit and the developer have 30 days, or a longer period if both the local government unit and
23 the developer request an extension, to resolve the objection. If the objections are not resolved, the board
24 shall conduct a hearing on the validity of the objections, ~~which~~. The hearing shall must be held in the
25 affected county or, if objections are received from local government units in more than one county, ~~shall~~
26 it must be held in the county ~~which~~ that, in the board's judgment, is more greatly affected. The provisions
27 of the Montana Administrative Procedure Act ~~shall~~ must apply to the conduct of the hearing. The impact
28 plan filed by the developer ~~shall~~ may not carry ~~no~~ a presumption of correctness at the hearing.

29 (8) Following the hearing, the board shall, within 60 days, make findings as to those portions of
30 the impact plan ~~which~~ that were objected to and, if appropriate, amend the impact plan accordingly. The

1 findings and impact plan, as amended, ~~shall~~ must be served by the board upon all parties. Any local
2 government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review,
3 as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the
4 hearing was held.

5 (9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board
6 with a written guarantee that the developer will meet the increased costs of public services and facilities
7 as specified in the approved impact plan and according to the time schedule contained in the approved
8 impact plan.

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

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

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

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

29 (14) Upon a determination by the department of state lands that a permittee under 82-4-335 has
30 become or will become a large-scale mineral developer, the permittee may petition the board for a waiver

1 of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only
 2 if it has provided notice and opportunity for hearing to the permittee and to all affected local government
 3 units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board
 4 may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral
 5 development increase their payrolls from the date of the waiver by 75 or more persons, provided the
 6 revocation is requested by an affected local government unit and notice and opportunity for hearing are
 7 given to the permittee and all affected local government units. The board shall notify the board of land
 8 commissioners of any waiver that has been revoked.

9 (15) When a person who holds an operating permit under 82-4-335 and who has filed an impact
 10 plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter,
 11 the board shall certify to the board of land commissioners that the failure to comply has occurred and shall
 12 certify when a permittee who has previously failed to comply comes into compliance."
 13

14 **Section 3.** Section 90-6-309, MCA, is amended to read:

15 **"90-6-309. Tax prepayment -- large-scale mineral development.** (1) After permission to commence
 16 operation is granted by the appropriate governmental agency, and upon request of the governing body of
 17 a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral
 18 development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall
 19 must exclude the 6-mill university levy established under 20-25-423 and may exclude the mandatory county
 20 levies for the school BASE funding program established in 20-9-331 and 20-9-333.

21 (2) The person who is to prepay under this section is not obligated to prepay the entire amount
 22 established in subsection (1) at one time. Upon request of the governing body of an affected local
 23 government unit, the person shall prepay the amount shown to be needed from time to time as determined
 24 by the board.

25 (3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an
 26 appropriate financial institution, as may be required by the board, that property tax prepayments will be paid
 27 as needed for expenditures created by the impacts of the large-scale mineral development.

28 (4) When the mineral development facilities are completed and assessed by the department of
 29 revenue, they are subject during the first 3 years and ~~thereafter~~ succeeding years to taxation as all other
 30 property similarly situated, except that in each year after the start of production, the local government unit

1 that received a property tax prepayment shall provide for repayment of prepaid property taxes in
2 accordance with subsection (5).

3 (5) A local, municipal, county, or state government unit that received all or a portion of the
4 property tax prepayment under this section shall provide for tax crediting that results in the ultimate
5 repayment of the entire amount of the prepayment as specified in the impact plan. The tax credit allowed
6 in any year may not, however, exceed the tax obligation of the developer for that year, and the time period
7 for tax crediting is limited to the productive life of the mining operation.”

8

9 **Section 4.** Section 90-6-404, MCA, is amended to read:

10 **"90-6-404. Allocation of taxable valuation for local taxation purposes.** When property of a
11 large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation
12 must be allocated by the department of revenue as follows:

13 (1) If the board determines that the local government unit in which the ore body or the mineral
14 deposit being mined is located is not affected by the development and if this determination is shown on
15 the impact plan, 20% of the total increase in taxable valuation of the gross proceeds must be allocated to
16 that local government unit. This provision is intended to establish a minimum allocation for the units and
17 does not prohibit proof by a unit that actual direct impacts would exceed 20% of the total impacts of the
18 development.

19 (2) The remaining increase in taxable valuation of the mineral development must be allocated
20 between affected counties and affected municipalities according to the following formula based on the place
21 of residence of mineral development employees:

22 (a) A portion, not to exceed 20%, must be distributed to affected municipalities, based on ~~that the~~ the
23 percentage of the total number of mineral development employees that reside within municipal boundaries.
24 The taxable valuation allocated to affected municipalities must be distributed to each municipality according
25 to its percentage of the total number of mineral development employees who reside within municipal
26 boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is
27 not subject at the same time to the ~~same~~ county mill levy ~~as other taxable properties located in the~~
28 ~~municipality.~~

29 (b) The remaining portion of the taxable valuation must be distributed to each affected county
30 according to its percentage of the total number of mineral development employees that reside within the

1 county.

2 (3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro
3 rata among each affected high school district according to the percentage of the total number of mineral
4 development high school students that reside within each district.

5 (4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro
6 rata among each affected elementary school district according to the percentage of the total number of
7 mineral development elementary school students that reside within each district.

8 (5) The distribution formula specified in subsections (2) through (4) may be modified by an impact
9 plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed
10 in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from
11 the mineral development and the allocation of taxable valuation resulting from the mineral development."

12

13 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 1995.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0413, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the taxable valuation allocation under the hard-rock mining impact property tax base; and providing an effective date.

Assumptions:

1. There will be no fiscal impact under this proposed legislation which clarifies current law.

FISCAL IMPACT:

None.

Dave Lewis 2-8-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jay Stovall 2-9-95
JAY STOVALL, PRIMARY SPONSOR DATE
Fiscal Note for HB0413, as introduced

HB 413