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INTRODUCED BY Burd SENATE BILL NO. 186

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM ABANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to ~~any~~ a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

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

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

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

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

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

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

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

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

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

6 (i) holds a small-miner exemption;

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

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

11 (3) A small miner whose operations are placer or dredge mining shall post a performance bond  
12 equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed \$5,000  
13 per operation. However, if the small miner has posted a bond for reclamation with another government  
14 agency, the small miner is exempt from the requirement of this subsection.

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

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

1 of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6),  
2 before or after it incurs those costs.

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

12 (7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating  
13 permit for that part of the small miner's operation ~~where~~ in which the cyanide ore-processing reagent will  
14 be used or disposed of.

15 (8) The exemption provided in this section does not apply to a person:

16 (a) ~~a person~~ whose failure to comply with the provisions of this part, the rules adopted under this  
17 part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person  
18 meets the conditions described under 82-4-360;

19 (b) ~~a person~~ who has not paid a penalty for which the department has obtained a judgment  
20 pursuant to 82-4-361;

21 (c) ~~a person~~ who has failed to post a reclamation bond required by this section, unless the  
22 department has certified that the area for which the bond should have been posted has been reclaimed by  
23 that person or reclaimed by the department and the person has reimbursed the department for the cost of  
24 the reclamation; or

25 (d) ~~a person~~ who has failed to comply with an abatement order issued pursuant to 82-4-362,  
26 unless the department has completed the abatement and the person has reimbursed the department for the  
27 cost of abatement.

28 (9) The exemption provided in this section does not apply to an area:

29 (a) an area under permit pursuant to 82-4-335;

30 (b) or to an area that has been permitted pursuant to 82-4-335 and reclaimed by the permittee,

1 the department, or any other state or federal agency; or

2 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by  
3 a public agency, under supervision of a public agency, or using public funds."

4  
5 **NEW SECTION. Section 2. Reclamation of abandoned mine sites.** (1) Agents, employees, or  
6 contractors of the department may enter upon property for the purpose of conducting studies or exploratory  
7 work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance  
8 with the requirements of this part and to determine the feasibility of restoration or reclamation of the  
9 property or abatement, control, or prevention of the adverse effects of past mining practices. The  
10 department may bring an injunctive action to restrain interference with the exercise of the right to enter and  
11 inspect granted in this subsection.

12 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding  
13 that:

14 (i) land or water resources on the property have been adversely affected by past mining practices;

15 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the  
16 property or to abate, control, or prevent the adverse effects should be taken; and

17 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the  
18 property or to abate, control, or prevent the adverse effects of past mining practices are not known or  
19 readily available or the owners will not give permission for the department or its agents, employees, or  
20 contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent  
21 the adverse effects of past mining practices.

22 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or  
23 contractors of the department may enter upon property adversely affected by past mining practices and  
24 other property necessary for access to the adversely affected property to do all things necessary or  
25 expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past  
26 mining practices after:

27 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known;

28 or

29 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general  
30 circulation in the county in which the property lies.

1 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of  
2 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana  
3 constitution.

4 (3) The board may acquire the necessary property by gift or purchase, or if the property cannot  
5 be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided  
6 in Title 70, chapter 30, against all nonaccepting landholders if:

7 (a) acquisition of the property is necessary for successful reclamation;

8 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention  
9 of the adverse effects of past mining practices will serve recreation and historic purposes or conservation  
10 and reclamation purposes or provide open space benefits; and

11 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be  
12 constructed on the property for the restoration or reclamation of the property or for abatement, control,  
13 or prevention of the adverse effects of past mining practices; or

14 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part  
15 in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse  
16 effects of past mining practices.

17 (4) The department may record in the office of the clerk and recorder in the county in which  
18 property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property  
19 has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.  
20

21 **NEW SECTION. Section 3. Filing of lien for abandoned mine reclamation project.** (1) Before  
22 commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent  
23 adverse effects of past mining practices on private property, the department may file a notice of the right  
24 to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

25 (2) If the department expends or allocates public funds conducting mine reclamation work under  
26 this part and if the department determines, based on an appraisal by an independent qualified appraiser  
27 chosen by the department, that the work has resulted or will result in a significant increase in the fair  
28 market value of property, the department may file a lien against the property reclaimed.

29 (3) Within 6 months after the completion of the project, the department shall itemize the funds  
30 expended and may file a lien statement. The lien statement must include:

1 (a) the value of the property before commencing the work of restoration or reclamation or  
2 abatement, control, or prevention of adverse effects of the past mining practices;

3 (b) the value of the property after the work has been completed;

4 (c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and  
5 the location where those appraisals may be examined;

6 (d) the amount of public funds spent by the department on the project; and

7 (e) the amount of the lien.

8 (4) The amount of the lien must be the lesser of either the increase in the value of the property or  
9 the amount of public funds actually expended by the department.

10 (5) A lien may not be filed under this section against the property of a person who owned the  
11 surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over  
12 the mining operation that necessitated the reclamation performed under this part.

13 (6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address,  
14 copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

15 (7) The lien provided in this section is effective as of the date of expenditure of the public funds  
16 and has priority over all other liens or security interests that have attached to the property that is the  
17 subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon  
18 the property.

19 (8) Within 60 days after the department files the lien, the owner of the property to which the lien  
20 provided for in this section attaches may petition the district court for the county in which the majority of  
21 the property is located asking the district court to resolve disputes regarding the amount of actual funds  
22 spent by the department or to determine the increase in the market value of the property as a result of the  
23 restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining  
24 practices. If it differs from the department's statement, the amount found by the court to be the lesser of  
25 the actual funds spent or the increase in market value is the amount of the lien and that amount must be  
26 recorded with the department's statement.

27 (9) A lien placed on property under this section may be satisfied by payment to the department  
28 of the amount of the lien. The department may accept partial payments on terms and conditions that the  
29 department specifies, but the lien is satisfied only to the extent of the value of the consideration received.  
30 A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of

1 ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly  
2 satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument  
3 releasing the lien in whole or in part.

4 (10) A lien placed on property under this section renews automatically, without a requirement on  
5 the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest  
6 is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be  
7 accumulated at the rate of 10% a year and may not be compounded.

8 (11) Funds derived from the satisfaction of liens established under this part must be deposited in  
9 the abandoned mine reclamation fund account from which the project was funded.

10

11 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified  
12 as an integral part of:

13 (1) Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections  
14 2 and 3];

15 (2) Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections  
16 2 and 3].

17

18 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0186, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing the Department of State Lands (DSL) to file a lien on abandoned mine sites in order to recover reclamation costs or increased land value, whichever is less.

ASSUMPTIONS:

1. Five abandoned mine sites each year will have liens filed.
2. DSL has sufficient contracted services authority available in the Executive Budget recommendation.
3. Abandoned mine sites will have greater value after reclamation.
4. Lien payments will be deposited in the revenue account from which project costs will be expensed.

FISCAL IMPACT:

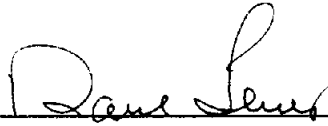
All DSL costs will come from existing budget authority and any lien revenue received will be deposited back into that account from which lien based expenses originated. Any lien related revenue will be offset by a corresponding reduction of the federal abandoned mine reclamation grant.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Abandoned mine sites that are reclaimed will have a higher taxable value which will be reflected in higher county tax revenue. However, the amount of increase is expected to be minimal.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Reclaiming abandoned mine sites should have a positive long range effect due to land and water resources being restored to a beneficial use, e.g., stock water, irrigation, recreation.

 1-28-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0186 as Introduced

SB 186



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*[Handwritten Signature]* SENATE BILL NO. 186

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM ABANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to ~~any~~ a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner's operations are placer or dredge mining, that the small miner shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is ~~a natural person~~ an individual, that:
  - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
  - (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:



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

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

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

6 (i) holds a small-miner exemption;

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

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

11 (3) A small miner whose operations are placer or dredge mining shall post a performance bond  
12 equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed \$5,000  
13 per operation. However, if the small miner has posted a bond for reclamation with another government  
14 agency, the small miner is exempt from the requirement of this subsection.

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

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

1 of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6),  
2 before or after it incurs those costs.

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

12 (7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating  
13 permit for that part of the small miner's operation ~~where~~ in which the cyanide ore-processing reagent will  
14 be used or disposed of.

15 (8) The exemption provided in this section does not apply to a person:

16 (a) ~~a person~~ whose failure to comply with the provisions of this part, the rules adopted under this  
17 part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person  
18 meets the conditions described under 82-4-360;

19 (b) ~~a person~~ who has not paid a penalty for which the department has obtained a judgment  
20 pursuant to 82-4-361;

21 (c) ~~a person~~ who has failed to post a reclamation bond required by this section, unless the  
22 department has certified that the area for which the bond should have been posted has been reclaimed by  
23 that person or reclaimed by the department and the person has reimbursed the department for the cost of  
24 the reclamation; or

25 (d) ~~a person~~ who has failed to comply with an abatement order issued pursuant to 82-4-362,  
26 unless the department has completed the abatement and the person has reimbursed the department for the  
27 cost of abatement.

28 (9) The exemption provided in this section does not apply to an area:

29 (a) ~~an area~~ under permit pursuant to 82-4-335;

30 (b) ~~or to an area~~ that has been permitted pursuant to 82-4-335 and reclaimed by the permittee,

1 the department, or any other state or federal agency; or

2 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by  
3 a public agency, under supervision of a public agency, or using public funds."

4  
5 **NEW SECTION. Section 2. Reclamation of abandoned mine sites.** (1) Agents, employees, or  
6 contractors of the department may enter upon property for the purpose of conducting studies or exploratory  
7 work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance  
8 with the requirements of this part and to determine the feasibility of restoration or reclamation of the  
9 property or abatement, control, or prevention of the adverse effects of past mining practices. The  
10 department may bring an injunctive action to restrain interference with the exercise of the right to enter and  
11 inspect granted in this subsection.

12 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding  
13 that:

14 (i) land or water resources on the property have been adversely affected by past mining practices;

15 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the  
16 property or to abate, control, or prevent the adverse effects should be taken; and

17 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the  
18 property or to abate, control, or prevent the adverse effects of past mining practices are not known or  
19 readily available or the owners will not give permission for the department or its agents, employees, or  
20 contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent  
21 the adverse effects of past mining practices.

22 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or  
23 contractors of the department may enter upon property adversely affected by past mining practices and  
24 other property necessary for access to the adversely affected property to do all things necessary or  
25 expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past  
26 mining practices after:

27 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known;

28 or

29 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general  
30 circulation in the county in which the property lies.

1 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of  
2 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana  
3 constitution.

4 (3) The board may acquire the necessary property by gift or purchase, or if the property cannot  
5 be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided  
6 in Title 70, chapter 30, against all nonaccepting landholders if:

7 (a) acquisition of the property is necessary for successful reclamation;

8 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention  
9 of the adverse effects of past mining practices will serve recreation and historic purposes or conservation  
10 and reclamation purposes or provide open space benefits; and

11 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be  
12 constructed on the property for the restoration or reclamation of the property or for abatement, control,  
13 or prevention of the adverse effects of past mining practices; or

14 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part  
15 in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse  
16 effects of past mining practices.

17 (4) The department may record in the office of the clerk and recorder in the county in which  
18 property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property  
19 has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.  
20

21 **NEW SECTION. Section 3. Filing of lien for abandoned mine reclamation project.** (1) Before  
22 commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent  
23 adverse effects of past mining practices on private property, the department may file a notice of the right  
24 to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

25 (2) If the department expends or allocates public funds conducting mine reclamation work under  
26 this part and if the department determines, based on an appraisal by an independent qualified appraiser  
27 chosen by the department, that the work has resulted or will result in a significant increase in the fair  
28 market value of property, the department may file a lien against the property reclaimed.

29 (3) Within 6 months after the completion of the project, the department shall itemize the funds  
30 expended and may file a lien statement. The lien statement must include:

- 1 (a) the value of the property before commencing the work of restoration or reclamation or  
2 abatement, control, or prevention of adverse effects of the past mining practices;
- 3 (b) the value of the property after the work has been completed;
- 4 (c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and  
5 the location where those appraisals may be examined;
- 6 (d) the amount of public funds spent by the department on the project; and
- 7 (e) the amount of the lien.
- 8 (4) The amount of the lien must be the lesser of either the increase in the value of the property or  
9 the amount of public funds actually expended by the department.
- 10 (5) A lien may not be filed under this section against the property of a person who owned the  
11 surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over  
12 the mining operation that necessitated the reclamation performed under this part.
- 13 (6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address,  
14 copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.
- 15 (7) The lien provided in this section is effective as of the date of expenditure of the public funds  
16 and has priority over all other liens or security interests that have attached to the property that is the  
17 subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon  
18 the property.
- 19 (8) Within 60 days after the department files the lien, the owner of the property to which the lien  
20 provided for in this section attaches may petition the district court for the county in which the majority of  
21 the property is located asking the district court to resolve disputes regarding the amount of actual funds  
22 spent by the department or to determine the increase in the market value of the property as a result of the  
23 restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining  
24 practices. If it differs from the department's statement, the amount found by the court to be the lesser of  
25 the actual funds spent or the increase in market value is the amount of the lien and that amount must be  
26 recorded with the department's statement.
- 27 (9) A lien placed on property under this section may be satisfied by payment to the department  
28 of the amount of the lien. The department may accept partial payments on terms and conditions that the  
29 department specifies, but the lien is satisfied only to the extent of the value of the consideration received.  
30 A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of

1 ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly  
2 satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument  
3 releasing the lien in whole or in part.

4 (10) A lien placed on property under this section renews automatically, without a requirement on  
5 the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest  
6 is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be  
7 accumulated at the rate of 10% a year and may not be compounded.

8 (11) Funds derived from the satisfaction of liens established under this part must be deposited in  
9 the abandoned mine reclamation fund account from which the project was funded.

10  
11 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified  
12 as an integral part of:

13 (1) Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections  
14 2 and 3];

15 (2) Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections  
16 2 and 3].

17  
18 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

19 -END-

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INTRODUCED BY *Burd* SENATE BILL NO. 186

---

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM ABANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



1 SENATE BILL NO. 186

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE  
6 LANDS TO RECLAIM ABANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING  
7 OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND  
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 82-4-305, MCA, is amended to read:

13 **"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections  
14 (3) through (9), the provisions of this part do not apply to ~~any~~ a small miner if the small miner annually  
15 agrees in writing:

16 (a) that the small miner will not pollute or contaminate any stream;

17 (b) that the small miner will provide protection for human and animal life through the installation  
18 of bulkheads installed over safety collars and the installation of doors on tunnel portals;

19 (c) that the small miner will provide a map locating the miner's mining operations. The map must  
20 be of a size and scale determined by the department.

21 (d) if the small miner's operations are placer or dredge mining, that the small miner shall reclaim  
22 all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

23 (2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain  
24 or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

25 (a) if the small miner is ~~a natural person~~ an individual, that:

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

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

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

- 1 (i) none of the associates or partners holds a small-miner exemption; and
- 2 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class  
3 of voting stock of a corporation that has a small-miner exemption; or
- 4 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more  
5 of any class of voting stock of the corporation:
- 6 (i) holds a small-miner exemption;
- 7 (ii) is a member or partner in a business association or partnership that holds a small-miner  
8 exemption;
- 9 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of  
10 another corporation that holds a small-miner exemption.
- 11 (3) A small miner whose operations are placer or dredge mining shall post a performance bond  
12 equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed \$5,000  
13 per operation. However, if the small miner has posted a bond for reclamation with another government  
14 agency, the small miner is exempt from the requirement of this subsection.
- 15 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation,  
16 the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable  
17 charge for services performed by state personnel and for state materials and equipment used. If the small  
18 miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small  
19 miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.
- 20 (5) If a small miner who conducts a placer or dredge mining operation fails to commence  
21 reclamation of the operation within 6 months after cessation of mining or within an extended period allowed  
22 by the department for good cause shown or if the small miner fails to diligently complete reclamation, the  
23 department shall notify the small miner by certified mail that it intends to reclaim the operation unless the  
24 small miner commences reclamation within 30 days and diligently completes the reclamation. The notice  
25 must be mailed to the address stated on the small miner exclusion statement or, if the small miner has  
26 notified the department of a different address by letter or in the annual certification form, to the most recent  
27 address given to the department. If the small miner fails to commence reclamation within 30 days or to  
28 diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit  
29 any bond that has been posted with the department, and enter and reclaim the operation. If the small miner  
30 has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount

1 of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6),  
2 before or after it incurs those costs.

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

12 (7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating  
13 permit for that part of the small miner's operation ~~where~~ in which the cyanide ore-processing reagent will  
14 be used or disposed of.

15 (8) The exemption provided in this section does not apply to a person:

16 (a) ~~a person~~ whose failure to comply with the provisions of this part, the rules adopted under this  
17 part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person  
18 meets the conditions described under 82-4-360;

19 (b) ~~a person~~ who has not paid a penalty for which the department has obtained a judgment  
20 pursuant to 82-4-361;

21 (c) ~~a person~~ who has failed to post a reclamation bond required by this section, unless the  
22 department has certified that the area for which the bond should have been posted has been reclaimed by  
23 that person or reclaimed by the department and the person has reimbursed the department for the cost of  
24 the reclamation; or

25 (d) ~~a person~~ who has failed to comply with an abatement order issued pursuant to 82-4-362,  
26 unless the department has completed the abatement and the person has reimbursed the department for the  
27 cost of abatement.

28 (9) The exemption provided in this section does not apply to an area:

29 (a) ~~an area~~ under permit pursuant to 82-4-335;

30 (b) ~~or to an area~~ that has been permitted pursuant to 82-4-335 and reclaimed by the permittee,

1 the department, or any other state or federal agency; or

2 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by  
3 a public agency, under supervision of a public agency, or using public funds."

4  
5 **NEW SECTION. Section 2. Reclamation of abandoned mine sites.** (1) Agents, employees, or  
6 contractors of the department may enter upon property for the purpose of conducting studies or exploratory  
7 work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance  
8 with the requirements of this part and to determine the feasibility of restoration or reclamation of the  
9 property or abatement, control, or prevention of the adverse effects of past mining practices. The  
10 department may bring an injunctive action to restrain interference with the exercise of the right to enter and  
11 inspect granted in this subsection.

12 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding  
13 that:

14 (i) land or water resources on the property have been adversely affected by past mining practices;

15 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the  
16 property or to abate, control, or prevent the adverse effects should be taken; and

17 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the  
18 property or to abate, control, or prevent the adverse effects of past mining practices are not known or  
19 readily available or the owners will not give permission for the department or its agents, employees, or  
20 contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent  
21 the adverse effects of past mining practices.

22 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or  
23 contractors of the department may enter upon property adversely affected by past mining practices and  
24 other property necessary for access to the adversely affected property to do all things necessary or  
25 expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past  
26 mining practices after:

27 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known;

28 or

29 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general  
30 circulation in the county in which the property lies.

1 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of  
2 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana  
3 constitution.

4 (3) The board may acquire the necessary property by gift or purchase, or if the property cannot  
5 be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided  
6 in Title 70, chapter 30, against all nonaccepting landholders if:

7 (a) acquisition of the property is necessary for successful reclamation;

8 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention  
9 of the adverse effects of past mining practices will serve recreation and historic purposes or conservation  
10 and reclamation purposes or provide open space benefits; and

11 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be  
12 constructed on the property for the restoration or reclamation of the property or for abatement, control,  
13 or prevention of the adverse effects of past mining practices; or

14 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part  
15 in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse  
16 effects of past mining practices.

17 (4) The department may record in the office of the clerk and recorder in the county in which  
18 property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property  
19 has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.  
20

21 **NEW SECTION. Section 3. Filing of lien for abandoned mine reclamation project.** (1) Before  
22 commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent  
23 adverse effects of past mining practices on private property, the department may file a notice of the right  
24 to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

25 (2) If the department expends or allocates public funds conducting mine reclamation work under  
26 this part and if the department determines, based on an appraisal by an independent qualified appraiser  
27 chosen by the department, that the work has resulted or will result in a significant increase in the fair  
28 market value of property, the department may file a lien against the property reclaimed.

29 (3) Within 6 months after the completion of the project, the department shall itemize the funds  
30 expended and may file a lien statement. The lien statement must include:

1 (a) the value of the property before commencing the work of restoration or reclamation or  
2 abatement, control, or prevention of adverse effects of the past mining practices;

3 (b) the value of the property after the work has been completed;

4 (c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and  
5 the location where those appraisals may be examined;

6 (d) the amount of public funds spent by the department on the project; and

7 (e) the amount of the lien.

8 (4) The amount of the lien must be the lesser of either the increase in the value of the property or  
9 the amount of public funds actually expended by the department.

10 (5) A lien may not be filed under this section against the property of a person who owned the  
11 surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over  
12 the mining operation that necessitated the reclamation performed under this part.

13 (6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address,  
14 copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

15 (7) The lien provided in this section is effective as of the date of expenditure of the public funds  
16 and has priority over all other liens or security interests that have attached to the property that is the  
17 subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon  
18 the property.

19 (8) Within 60 days after the department files the lien, the owner of the property to which the lien  
20 provided for in this section attaches may petition the district court for the county in which the majority of  
21 the property is located asking the district court to resolve disputes regarding the amount of actual funds  
22 spent by the department or to determine the increase in the market value of the property as a result of the  
23 restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining  
24 practices. If it differs from the department's statement, the amount found by the court to be the lesser of  
25 the actual funds spent or the increase in market value is the amount of the lien and that amount must be  
26 recorded with the department's statement.

27 (9) A lien placed on property under this section may be satisfied by payment to the department  
28 of the amount of the lien. The department may accept partial payments on terms and conditions that the  
29 department specifies, but the lien is satisfied only to the extent of the value of the consideration received.  
30 A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of

1 ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly  
2 satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument  
3 releasing the lien in whole or in part.

4 (10) A lien placed on property under this section renews automatically, without a requirement on  
5 the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest  
6 is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be  
7 accumulated at the rate of 10% a year and may not be compounded.

8 (11) Funds derived from the satisfaction of liens established under this part must be deposited in  
9 the abandoned mine reclamation fund account from which the project was funded.

10

11 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified  
12 as an integral part of:

13 (1) Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections  
14 2 and 3];

15 (2) Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections  
16 2 and 3].

17

18 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

19

-END-