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House BILL NO. 395

INTRODUCED BY

*James Knox Beaudry Grosfeld*  
*Public Service to the Citizens of Montana*

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE VENUE FOR ACTIONS BROUGHT BY THIRD PARTIES TO ENFORCE COMPLIANCE WITH THE METAL MINE RECLAMATION LAWS AND FOR ACTIONS BROUGHT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR RECOVERY OF CIVIL PENALTIES OR INJUNCTIVE RELIEF UNDER THE METAL MINE RECLAMATION LAWS; AND AMENDING SECTIONS 82-4-354 AND 82-4-361, MCA."

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

Section 1. Section 82-4-354, MCA, is amended to read:

**"82-4-354. Mandamus to compel enforcement.** (1) ~~Any~~ A person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform ~~his~~ the duties. If ~~he~~ the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) ~~Any~~ A person having an interest that is or may be adversely affected may commence a civil action ~~on his own behalf~~ to compel compliance with this part against ~~any~~ a person for the violation of this part or any rule, order, or permit issued under it. However, ~~no such~~ an action may not be commenced ~~commenced~~:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the

1 alleged violator; or

2 (b) if the department has commenced and is diligently prosecuting a civil action to require  
3 compliance with the provisions of this part or any rule, order, or permit issued under it. ~~Any~~ A person  
4 having an interest that is or may be adversely affected may intervene as a matter of right in ~~any such~~ the  
5 civil action.

6 (4) Legal actions under subsection (3)(a) must be brought in the district court of the county in  
7 which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial  
8 district, Lewis and Clark County.

9 ~~(4)(5)~~ Nothing in this section restricts any right of any person under any statute or common law  
10 to seek enforcement of this part or the rules adopted under it or to seek any other relief."

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12 **Section 2.** Section 82-4-361, MCA, is amended to read:

13 **"82-4-361. Violation -- penalties -- waiver.** (1) (a) Except as provided in subsections (1)(b) and  
14 (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the following violations, an  
15 additional civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation  
16 continues, and an injunction from continuing the violation may be imposed against:

17 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
18 or a term or condition of a permit; or

19 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
20 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a  
21 permit.

22 (b) If the violation created an imminent danger to the health or safety of the public or caused  
23 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

24 (2) (a) The department may bring an action for a restraining order or a temporary or permanent  
25 injunction against an operator or other person violating or threatening to violate an order adopted under this  
26 part.

27 (b) The civil penalties provided for in this section may be waived for a minor violation if it is  
28 determined that the violation does not represent potential harm to public health, public safety, or the  
29 environment and does not impair the administration of this part. The board shall adopt rules to implement  
30 and administer a procedure for waiver of a penalty under this subsection.

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3 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing  
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16   -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0395, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

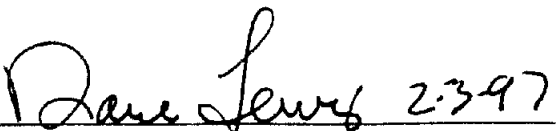
An act specifying the venue for actions brought by third parties to enforce compliance with the metal mine reclamation laws and for actions brought by the Department of Environmental Quality for recovery of civil penalties or injunctive relief under the metal mine reclamation laws.

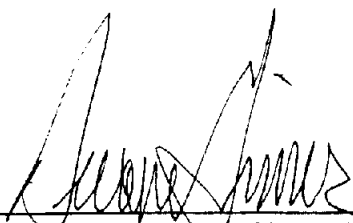
ASSUMPTIONS:

1. The number of compliance actions under the Metal Mine Reclamation Act as a result of this change will not increase.
2. Compliance actions described in this bill do not include appeals of permit decisions and MEPA compliance.
3. Approximately three judicial actions per year, as described in this bill, would take place requiring one week of travel per action for four department personnel (one legal staff, the bureau chief or program supervisor and two technical staff)
4. State travel and per diem at existing rates would be (4\*\$31.20)+ (5\*\$66.00) plus 2 vehicles \* 600 miles\*\$0.31 per mile - assuming no state vehicle available) \$826.80 per trip in additional costs. This would total \$2,480.
5. Funding will be 50.14% reclamation and development (RIT) or \$1,243 and 49.86% general fund or \$1,237.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Costs	2,480	2,480
<u>Funding:</u>		
General Fund (01)	1,237	1,237
Reclamation & Development (RIT) (02)	<u>1,243</u>	<u>1,243</u>
Total	2,480	2,480

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

  
 DUANE GRIMES, PRIMARY SPONSOR      DATE

Fiscal Note for HB0395, as introduced

**HB 395**

## 1 HOUSE BILL NO. 395

2 INTRODUCED BY GRIMES, KNOX, BEAUDRY, GROSFIELD, QUILICI, MCCARTHY, LYNCH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE VENUE FOR ACTIONS BROUGHT BY THIRD  
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7 OR INJUNCTIVE RELIEF UNDER THE METAL MINE RECLAMATION LAWS; AND AMENDING SECTIONS  
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11  
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16 bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts  
17 of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties  
18 prescribed for false swearing, as provided in 45-7-202.

19 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of  
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1 alleged violator; or

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17 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
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19 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
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21 permit.

22 (b) If the violation created an imminent danger to the health or safety of the public or caused  
23 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

24 (2) (a) The department may bring an action for a restraining order or a temporary or permanent  
25 injunction against an operator or other person violating or threatening to violate an order adopted under this  
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2 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by  
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16 OR FOR RECOVERY OF PENALTIES MUST BE BROUGHT IN THE DISTRICT COURT IN THE FIRST JUDICIAL  
17 DISTRICT, LEWIS AND CLARK COUNTY."

18 -END-

## HOUSE BILL NO. 395

INTRODUCED BY GRIMES, KNOX, BEAUDRY, GROSFIELD, QUILICI, MCCARTHY, LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE VENUE FOR ACTIONS BROUGHT BY THIRD PARTIES TO ENFORCE COMPLIANCE WITH THE METAL MINE RECLAMATION LAWS AND FOR ACTIONS BROUGHT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR RECOVERY OF CIVIL PENALTIES OR INJUNCTIVE RELIEF UNDER THE METAL MINE RECLAMATION LAWS; AND AMENDING SECTIONS 82-4-354 AND 82-4-361, MCA."

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(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform ~~his~~ the duties. If ~~he~~ the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) ~~Any~~ A person having an interest that is or may be adversely affected may commence a civil action ~~on his own behalf~~ to compel compliance with this part against ~~any~~ a person for the violation of this part or any rule, order, or permit issued under it. However, ~~no such an~~ an action may ~~not be commenced~~ commenced:

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1 alleged violator; or

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22 (b) If the violation created an imminent danger to the health or safety of the public or caused  
23 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

24 (2) (a) The department may bring an action for a restraining order or a temporary or permanent  
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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0395, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

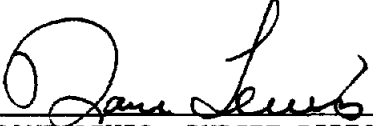
This bill specifies the venue for actions brought by third parties to enforce compliance with the metal mine reclamation laws and for actions brought by the Department of Environmental Quality for recovery of penalties or injunctive relief under the metal mine reclamation laws.

ASSUMPTIONS:

1. The number of compliance actions under the Metal Mine Reclamation Act as a result of this change will not increase.
2. Compliance actions described in this bill do not include appeals of permit decisions and MEPA compliance.
3. As amended, the bill provides that injunctive actions filed by DEQ and third party enforcement actions against mines must be filed in the county in which the alleged violation occurred or, upon agreement of the parties, in Lewis and Clark County.
4. The injunction portion of HB 395 would have no fiscal impact on DEQ because, under current law, most injunction actions initiated by DEQ must be brought in the county where the mine is located.
5. DEQ participation in third party enforcement actions will be minimal and any associated costs would be absorbed in the DEQ existing budget.
6. As amended, this bill provides that judicial review of DEQ penalty assessments will be in Lewis and Clark County. No travel costs will be incurred from these actions.

FISCAL IMPACT:

There will be no significant fiscal impact to DEQ from this bill.

 3-12-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

DUANE GRIMES, PRIMARY SPONSOR      DATE

Fiscal Note for HB0395, third reading

Am HB 395 #2

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18

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2 (b) if the department has commenced and is diligently prosecuting a civil action to require  
3 compliance with the provisions of this part or any rule, order, or permit issued under it. ~~Any~~ A person  
4 having an interest that is or may be adversely affected may intervene as a matter of right in ~~any such~~ the  
5 civil action.

6 (4) Legal actions under subsection (3)(a) must be brought in the district court of the county in  
7 which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial  
8 district, Lewis and Clark County IN ANY OTHER JUDICIAL DISTRICT.

9 ~~(4)(5)~~ Nothing in this section restricts any right of any person under any statute or common law  
10 to seek enforcement of this part or the rules adopted under it or to seek any other relief."

11

12 **Section 2.** Section 82-4-361, MCA, is amended to read:

13 **"82-4-361. Violation -- penalties -- waiver.** (1) (a) Except as provided in subsections (1)(b) and  
14 (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the following violations, an  
15 additional civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation  
16 continues, and an injunction from continuing the violation may be imposed against:

17 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
18 or a term or condition of a permit; or

19 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
20 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a  
21 permit.

22 (b) If the violation created an imminent danger to the health or safety of the public or caused  
23 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

24 (2) (a) The department may bring an action for a restraining order or a temporary or permanent  
25 injunction against an operator or other person violating or threatening to violate an order adopted under this  
26 part.

27 (b) The civil penalties provided for in this section may be waived for a minor violation if it is  
28 determined that the violation does not represent potential harm to public health, public safety, or the  
29 environment and does not impair the administration of this part. The board shall adopt rules to implement  
30 and administer a procedure for waiver of a penalty under this subsection.



1 (3) The department shall notify the person or operator of the violation. The department shall issue  
2 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by  
3 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing  
4 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be  
5 assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall  
6 make findings of fact and issue a written decision as to the occurrence of the violation and whether the  
7 amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The person  
8 or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt  
9 of the order. A person or operator who fails to request the hearing provided for in this subsection or who  
10 fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's  
11 right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in  
12 an action brought by the department.

13 (4) Legal actions FOR INJUNCTIVE RELIEF under this section must be brought in the district court  
14 of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action,  
15 in the first judicial district, Lewis and Clark County IN ANY OTHER JUDICIAL DISTRICT. LEGAL ACTIONS  
16 FOR REVIEW OF PENALTY ORDERS OR FOR RECOVERY OF PENALTIES MUST BE BROUGHT IN THE  
17 DISTRICT COURT IN THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY."

18 -END-