

SENATE BILL NO. 370

INTRODUCED BY PERRY, COHENOUR, LARSEN, POMNICHOWSKI, TUTVEDT

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN OPENCUT FUND AND ANNUAL FEE;  
 5 ~~EXEMPTING GOVERNMENT OPENCUT OPERATIONS FROM THE OPENCUT FEE; RESTRICTING THE USE~~  
 6 OF THE OPENCUT FUNDS; EXEMPTING OPENCUT OPERATIONS FROM THE RESOURCE INDEMNITY  
 7 AND GROUND WATER ASSESSMENT TAX; AMENDING SECTIONS 15-38-104, 15-38-106, 15-38-113,  
 8 82-4-405, 82-4-424, AND 82-4-437, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE  
 9 APPLICABILITY DATES."

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

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13 NEW SECTION. **Section 1. Opencut fund -- use of fund.** (1) There is an account in the state special  
14 revenue fund established by 17-2-102 to be known as the opencut fund.

15 (2) There must be deposited in the account 85% OF THE money received from the fee established in  
16 82-4-437.

17 ~~(3) (a) Subject to subsection (3)(b), money in the fund may be spent only on processing permit~~  
18 ~~applications and amendments, inspecting opencut operations, and reviewing proposed bond releases.~~

19 ~~(b) The provisions of subsection (3)(a) apply only to opencut operations that pay the fee required by~~  
20 ~~82-4-437.~~

21 (3) MONEY IN THE FUND MUST BE SPENT FOR THE PURPOSES OF ADMINISTERING AND ENFORCING THIS PART.

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23 **Section 2.** Section 15-38-104, MCA, is amended to read:

24 "**15-38-104. Tax on mineral production.** (1) Except as provided in 15-38-113 and subsections (2)  
 25 through (5) of this section, the annual tax to be paid by a person engaged in or carrying on the business of  
 26 mining, extracting, or producing a mineral is \$25, plus an additional amount computed on the gross value of  
 27 product that was derived from the business work or operation within this state during the calendar year  
 28 immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction  
 29 from the ground, if in excess of \$5,000. Unless otherwise provided in a contract or lease, the pro rata share of  
 30 any royalty owner or owners may be deducted from any settlements under the lease or leases or division of

1 proceeds orders or other contracts.

2 (2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
3 or producing:

4 (a) talc is \$25 plus an additional amount computed on the gross value of product for talc derived from  
5 the business work or operation within this state during the calendar year immediately preceding at the rate of 4%  
6 of the gross value of product in excess of \$625; and

7 (b) coal is \$25 plus an additional amount computed on the gross value of product for coal produced in  
8 Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in  
9 excess of \$6,250.

10 (3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
11 or producing vermiculite is \$25 plus an additional amount computed on the gross value of product for vermiculite  
12 derived from the business work or operation within this state during the calendar year immediately preceding at  
13 the rate of 2% of the gross value of product in excess of \$1,250.

14 (4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
15 or producing limestone for the production of quicklime is \$25 plus an additional amount computed on the gross  
16 value of product for limestone derived from the business work or operation within this state during the calendar  
17 year immediately preceding at the rate of 10% of the gross value of product in excess of \$250.

18 (5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
19 or producing industrial garnets and associated byproducts is \$25 plus an additional amount computed on the  
20 gross value of product for industrial garnets and associated byproducts derived from the business work or  
21 operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value  
22 of product in excess of \$2,500."

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24 **SECTION 3. SECTION 15-38-106, MCA, IS AMENDED TO READ:**

25 **"15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by this  
26 chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement  
27 established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is  
28 paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar  
29 year is filed with the department.

30 (2) The department shall, in accordance with the provisions of 17-2-124, deposit the proceeds from the

1 resource indemnity and ground water assessment tax and money deposited pursuant to 82-4-424(3) in the  
2 following order:

3 (a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund  
4 provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after  
5 crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account  
6 established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on  
7 bonds or notes issued pursuant to 75-10-623;

8 (b) \$366,000 of the proceeds from the tax in the ground water assessment account established by  
9 85-2-905;

10 (c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage  
11 state special revenue account established in 85-1-631;

12 (d) 50% of the remaining proceeds from the tax divided equally between the environmental quality  
13 protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established  
14 in 75-10-621; and

15 (e) all remaining proceeds from the tax in the natural resources projects state special revenue account,  
16 established in 15-38-302, for the purpose of making grants to be used for mineral development reclamation  
17 projects and renewable resource projects.

18 (3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the  
19 records are subject to inspection by the department upon reasonable notice during normal business hours.

20 (4) The department shall examine the statement and compute the taxes to be imposed, and the amount  
21 computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found  
22 to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30  
23 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax  
24 imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for  
25 subsequent years or refunded if requested by the taxpayer."

26

27 **Section 4.** Section 15-38-113, MCA, is amended to read:

28 **"15-38-113. Exemption from resource indemnity and ground water assessment tax.** The following  
29 persons are exempt from the resource indemnity and ground water assessment tax:

30 (1) ~~A~~ a person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37,

1 part 1, ~~is exempt from the resource indemnity and ground water assessment tax:~~

2 (2) ~~A a person who has paid the tax on oil and natural gas production under the provisions of Title 15,~~  
 3 ~~chapter 36; or, part 3, is exempt from the resource indemnity and ground water assessment tax.~~

4 (3) a person who holds a permit pursuant to Title 84 82, chapter 4, part 4, and is subject to the fee  
 5 provided for in 82-4-437(2); OR

6 (4) A COUNTY, CITY, OR TOWN THAT HOLDS A PERMIT PURSUANT TO TITLE 82, CHAPTER 4, PART 4."

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 8 **SECTION 5. SECTION 82-4-405, MCA, IS AMENDED TO READ:**

9 **"82-4-405. Inapplicability to government.** The (1) Except as provided in subsection (2), the provisions  
 10 of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana,  
 11 counties, cities, or towns.

12 (2) Counties, cities, and towns are responsible for the fee required pursuant to 82-4-437(2)."

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 14 **SECTION 6. SECTION 82-4-424, MCA, IS AMENDED TO READ:**

15 **"82-4-424. Receipt and expenditure of funds -- disposition of penalties and other money.** (1) The  
 16 department may receive any federal funds, state funds, or any other funds for the reclamation of affected land.  
 17 The department may cause the reclamation work to be done by its employees, by employees of other  
 18 governmental agencies, by soil conservation districts, or through contracts with qualified persons.

19 (2) All penalties and other money paid under the provisions of this part, except annual fees, must be  
 20 deposited in the environmental rehabilitation and response account in the state special revenue fund provided  
 21 for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed  
 22 for reclamation and for which the department is not able to locate a surety or other person who owns the funds  
 23 after diligent search must be deposited in the environmental rehabilitation and response account in the state  
 24 special revenue fund.

25 (3) THE DEPARTMENT SHALL DEPOSIT 85% OF PROCEEDS FROM ANNUAL FEES INTO THE OPENCUT FUND  
 26 ESTABLISHED IN [SECTION 1] AND TRANSFER 15% OF THE PROCEEDS FROM THE FEES TO THE DEPARTMENT OF REVENUE  
 27 FOR DISTRIBUTION IN ACCORDANCE WITH 15-38-106."

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 29 **Section 7.** Section 82-4-437, MCA, is amended to read:

30 **"82-4-437. Annual report -- fee.** (1) For each permitted operation, the operator shall file an annual

1 report on a form furnished by the department. The report must contain the information and be submitted at times  
2 provided in rules of the board.

3 ~~(2) (A) Except as provided in 82-4-405, each~~ EACH EXCEPT AS PROVIDED IN SUBSECTION (2)(B), EACH  
4 permitted operation shall submit with the annual report a fee of 2.5 cents per cubic yard of material mined during  
5 the period covered by the report.

6 (B) PERMITTED OPERATIONS THAT MINE, EXTRACT, OR PRODUCE BENTONITE ARE NOT SUBJECT TO THE FEE  
7 PROVIDED IN THIS SECTION."

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9 NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an  
10 integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 1].

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12 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2009.

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14 NEW SECTION. SECTION 10. RETROACTIVE APPLICABILITY. (1) EXCEPT AS PROVIDED IN SUBSECTION (2),  
15 [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31,  
16 2007.

17 (2) THE EXEMPTION PROVIDED FOR IN 15-38-113(4) APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109,  
18 TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2000, FOR COUNTIES, CITIES, AND TOWNS.

19 - END -