

HOUSE BILL NO. 593

INTRODUCED BY N. MCCONNELL

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METAL MINE RECLAMATION ACT; REQUIRING INDEPENDENT AUDITS TO ENSURE COMPLIANCE WITH STATE LAWS; ESTABLISHING A FEE; REQUIRING ADDITIONAL BONDING FOR CERTAIN MINES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 82-4-338, MCA."

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

NEW SECTION. **Section 1. Independent audit.** (1) Each active operating permit is subject to an independent audit.

(2) (a) The department and the permittee shall each submit the names of two professional auditing entities. The department and the permittee may each disqualify one auditing entity.

(b) The department shall select the auditing entity.

(c) The department shall establish a fee to cover the cost of the audit.

(3) The audit must include:

(a) a determination of department and permittee compliance with the requirements of the operating permit and this chapter;

(b) identification of corrective measures to ensure compliance with the requirements of this chapter;

(c) a determination if bonds required by this chapter are adequate.

(4) (a) Audits required by this section on operating permits active on [the effective date of this act] must be completed within 2 years of [the effective date of this act] and every 3 years after that audit for the term of the operating permit.

(b) For operating permits issued after [the effective date of this act] an audit is required 3 years after the operating permit is issued and every 3 years during the term of the operating permit.

(5) Within 60 days of completing an audit pursuant to this section, the department shall post the audit documents on its website.

**Section 2.** Section 82-4-338, MCA, is amended to read:



1           **"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit shall  
2 file with the department a bond payable to the state of Montana with surety satisfactory to the department in the  
3 sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed  
4 land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the  
5 permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate  
6 of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond:

7           (i) may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2  
8 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and  
9 maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond  
10 liquidation can be effected; and

11           (ii) for an operating permit related to an ore body that contains sulfide mineralization must be 150% of  
12 the bond amount required by subsection (1)(a)(i). The board shall determine by rule the percentage of sulfide  
13 mineralization in an ore body for which the bond is required.

14           (b) A public or governmental agency may not be required to post a bond under the provisions of this part.

15           (c) A blanket performance bond covering two or more operations may be accepted by the department.  
16 A blanket bond must adequately secure the estimated total number of acres of disturbed land.

17           (d) (i) For an exploration license or operating permit authorizing activities on federal land within the state,  
18 the department may accept a bond payable to the state of Montana and the federal agency administering the  
19 land. The bond must provide at least the same amount of financial guarantee as required by this part.

20           (ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal  
21 land management agency. The bond may provide that the federal land management agency may forfeit the bond  
22 without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the  
23 department and may also be payable to the federal land management agency. If the bond is payable to the  
24 department and the federal land management agency, the department, before accepting the bond, shall enter  
25 into an agreement or memorandum of understanding with the federal land management agency providing for  
26 administration of the bond funds in a manner that will allow the department to provide for compliance with the  
27 requirements of this part, the rules adopted under this part, and the permit.

28           (iii) The department may not enter into an agreement or memorandum of understanding with a federal  
29 land management agency that would require the department to impose requirements on an operator that are  
30 more stringent than state law and rules.

1           (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction  
2 with the assistance of one or more third-party contractors selected jointly by the department and the applicant  
3 and compensated by the applicant when, based on relevant past experience, the department determines that  
4 additional expertise is necessary to calculate the bond amount for reclamation plan components. The department  
5 may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for  
6 any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor  
7 services provided under this subsection. The mine owner and the department are each responsible for 50% of  
8 any amount over \$5,000.

9           (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare  
10 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy  
11 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the  
12 department's list. The department shall select its contractor from the list provided by the applicant.

13           (3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct  
14 a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive  
15 bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the  
16 permit area, the department determines that an increase of the bond level may be necessary. The department  
17 shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When  
18 determined by the department that the set bonding level of a permit or license does not represent the present  
19 costs of compliance with this part, the rules, and the permit, the department shall modify the bonding  
20 requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary  
21 bond determination with the department, at the end of which time period the department shall issue the proposed  
22 bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form  
23 the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond  
24 determination in a newspaper of general circulation in the county in which the operation is located. The  
25 department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing  
26 under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented  
27 by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee  
28 or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not  
29 be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

30           (b) The permittee or any person with an interest that may be adversely affected may obtain a contested

1 case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter  
2 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final  
3 bond determination, a written request for hearing stating the reason for the request. The request for hearing must  
4 specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the  
5 reasons that the licensee or permittee considers the department's final bond determination to be excessive. As  
6 a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the  
7 department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the  
8 request for hearing or the amount that is one-half of the increase contained in the department's final bond  
9 determination, whichever amount is greater. If the board determines that additional bond is necessary, the  
10 licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the  
11 board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence,  
12 the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable  
13 extension of the deadline.

14 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the  
15 required amounts by the required deadlines, the license or permit is suspended by operation of law and the  
16 licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted  
17 with and approved by the department.

18 (4) A bond filed in accordance with the provisions of this part may not be released by the department  
19 until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

20 (5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until  
21 the public has been provided an opportunity for a hearing and a hearing has been held if requested. The  
22 department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not  
23 limited to publishing the notice in newspapers of general daily circulation.

24 (6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this  
25 section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply  
26 with conditions of an operating permit or license. Bonds may be required only for anticipated activities as  
27 described in subsection (1). Only those activities that themselves or in conjunction with other activities have a  
28 reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond  
29 or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency  
30 that is not a reasonably foreseeable result of any activity conducted by the applicant.

1 (7) (a) If the department determines, based on unanticipated circumstances that are discovered following  
2 the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the  
3 environment exists or that there is a reasonable probability that a violation of water quality standards will occur,  
4 the department may require an operator to submit an amended reclamation plan to address the danger and to  
5 post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The  
6 temporary bond may only be required if the anticipated costs associated with the plan amendment would increase  
7 the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

8 (b) (i) In determining the need for the temporary bond and the amount of the temporary bond under  
9 subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant  
10 to subsection (7)(b)(ii) to provide:

11 (A) a technical engineering analysis and report on the substantial and imminent danger to public health,  
12 public safety, or the environment identified in subsection (7)(a); and

13 (B) the estimated costs of addressing the potential danger in order to establish the amount of the  
14 temporary bond.

15 (ii) The department shall provide the operator with a list of at least four qualified third-party contractors.  
16 The operator shall select two qualified third-party contractors from that list. The department shall select its  
17 contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable  
18 costs of the third-party contractor.

19 (c) An approved interim amended reclamation plan and interim bond must remain in effect until the  
20 earlier of:

21 (i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for  
22 the revised reclamation plan is submitted and accepted pursuant to this section; or

23 (ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the  
24 reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless  
25 the department approves or denies the complete application within 2 years of submission. The applicant may  
26 agree to an extension of this deadline.

27 (d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject  
28 to the provisions of Title 75, chapter 1.

29 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the  
30 department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan

1 that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an  
2 assessment of the effectiveness of the changes and any potential negative environmental impacts of the  
3 changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only  
4 if the department determines that the changes would not mitigate the condition to an acceptable level or may have  
5 potentially significant negative environmental impacts.

6 (b) If the department determines that preparation of an environmental impact statement is necessary,  
7 the permittee shall pay the department's costs pursuant to 75-1-205.

8 (9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These  
9 unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

10 (10) (a) If the department determines that there exists at an area permitted or licensed under this part  
11 an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules  
12 adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to  
13 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,  
14 and abate the danger. The department may thereafter institute proceedings to revoke the license or permit,  
15 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of  
16 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the  
17 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the  
18 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the  
19 suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest,  
20 for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost  
21 of the surety's expenses in responding to the department's forfeiture demand.

22 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited  
23 under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in  
24 subsection (10)(a).

25 (c) The department shall return to the surety any money received from the surety pursuant to this  
26 subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the  
27 surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

28 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined  
29 in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

30 (11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled

1 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for  
2 the entire amount of the terminated bond within 30 days following the notice of termination provided to the  
3 department, then the license or permit must be immediately suspended without further action by the department."

4  
5 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
6 integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 1].

7 - END -