

SENATE BILL NO. 456  
INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE HARD-ROCK MINING IMPACT BOARD; REVISING BOARD RULEMAKING REQUIREMENTS; REQUIRING THE APPOINTMENT OF A HEARING EXAMINER FOR DISPUTE RESOLUTION; REVISING THE MINE IMPACT PLAN AMENDMENT PROCESS; AMENDING SECTIONS 90-6-305, 90-6-307, AND 90-6-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 90-6-305, MCA, is amended to read:

**"90-6-305. Hard-rock mining impact board -- general powers.** (1) The board may:

- (a) retain professional staff, including its administrative staff, and retain consultants and advisers, notwithstanding the provisions of 2-15-121;
- (b) adopt rules governing its proceedings, determinations, and administration of this part;
- (c) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;
- (d) make determinations as provided in 90-6-307, 90-6-311, and 90-6-403(3); and
- (e) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Negotiated Rulemaking Act in Title 2, chapter 5, part 1, apply to rules adopted by the board pursuant to subsection (1)(b).

~~(2)~~(3) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

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

**"90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of the submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall

cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

- (a) a timetable for development, including the opening date of the development and the estimated closing date;
- (b) the estimated number of persons coming into the impacted area as a result of the development;
- (c) the increased capital and operating cost to local government units for providing services that can be expected as a result of the development;
- (d) the financial or other assistance that the developer will give to local government units to meet the increased need for services.

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

(3) Upon request of the governing body of an affected local government unit ~~of local government~~, the mineral developer, prior to the end of the 90-day review period, shall provide financial, legal, or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county shall contract with the developer to obtain the requested financial assistance for each local government unit ~~of local government~~ within the county. Any disbursements to a local government unit ~~of local government~~ under this subsection must be credited against future tax liabilities, if any.

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

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

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons for the objection. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds that there is no reasonable basis for the request. If an objection is not received within the 90-day period or any extension of the period, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall appoint a hearing examiner pursuant to 2-4-611 to conduct a hearing on the validity of the objections and to prepare a decision proposal for the board. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing. The impact plan filed by the developer does not carry a presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, must be served by the board upon all parties. A local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

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

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

(11) The board shall notify the department of environmental quality of its receipt of the written guaranty

of payment and of any failure of the developer to comply with this section.

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

(13) If it is determined that an objection filed by an affected local government unit under 90-6-311(4) or subsections (5) and (6) ~~or 90-6-311(3)~~ of this section is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit must be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded are in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of environmental quality that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons. However, any revocation must be requested by an affected local government unit, and notice and opportunity for hearing must be given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

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

**Section 3.** Section 90-6-311, MCA, is amended to read:

**"90-6-311. Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county, an affected local government unit, or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) an affected or potentially affected local government unit will incur net impact costs not anticipated in the impact plan;

~~(b)(c)~~ it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

~~(e)(d)~~ the governing body of an affected county or local government unit and the mineral developer join in a petition to amend the impact plan.

(2) For the purpose of this section, the governing body of an affected county is the formal petitioner for an affected local government unit. The filing of a petition on behalf of a local government unit is a procedural act that does not necessarily indicate support or opposition to the petition.

~~(2)(3)~~ Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

- (a) an explanation of the need for an amendment;
- (b) a statement of the facts and circumstances underlying the need for an amendment; and
- (c) a description of the corrective measures proposed by the petitioner.

~~(3)(4)~~ Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if ~~such~~ that person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If ~~no~~ an objection is not received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

~~(4)(5)~~ If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall appoint a hearing examiner pursuant to 2-4-611 to conduct a hearing on the validity of the objections and to prepare a decision proposal for the board. The hearing examiner shall conduct the hearing within ~~30~~ 60 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

~~(5)(6)~~ Following the receipt of the decision proposal from the hearing examiner, the board shall make

findings as to those portions of the amendments ~~which~~ that were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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