

HOUSE BILL NO. 201
INTRODUCED BY M. JOPEK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OPENCUT-MINING LAWS; ~~ALLOWING THE BOARD OF ENVIRONMENTAL REVIEW TO SET~~ SETTING ANNUAL FEES FOR OPENCUT-MINING OPERATIONS; ~~REQUIRING CERTAIN GOVERNMENTS TO PAY FEES~~; REQUIRING THAT ANNUAL FEES BE USED TO PAY FOR ADMINISTERING THE OPENCUT-MINING PROGRAM; ELIMINATING THE APPLICATION FEE; REVISING BOND RELEASE PROCEDURES; AND AMENDING SECTIONS ~~82-4-405~~, 82-4-422, 82-4-424, 82-4-432, AND 82-4-433, MCA."

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

~~SECTION 1. SECTION 82-4-405, MCA, IS AMENDED TO READ:~~

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

~~(2) A county that meets the requirements of subsection (3) as a growth county is subject to the provisions of this part relating to fees, but not those provisions relating to bonds:~~

~~(3) For the purposes of this section, a county is considered a growth county if:~~

~~(a) the county has a population greater than 30,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce; or~~

~~(b) the county has:~~

~~(i) a population greater than 15,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce; and~~

~~(ii) a population increase greater than 10% from the time of the prior decennial census or from the population estimate 10 years prior to the current estimate."~~

Section 1. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions

to:

(a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of this part and rules adopted to implement this part will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of this part;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited; ~~and~~

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; AND

(E) ASSESS AN ANNUAL FEE ON OPERATORS OF ALL OPENCUT-MINING OPERATIONS. THE ANNUAL FEE MUST BE PAID ON ALL PERMITTED ACREAGE FOR WHICH FINAL BOND RELEASE HAS NOT BEEN GRANTED. THE ANNUAL FEE IS:

(I) \$75 IF THE PERMITTED ACREAGE IS LESS THAN OR EQUAL TO 25 ACRES;

(II) \$150 IF THE PERMITTED ACREAGE IS GREATER THAN 25 ACRES AND LESS THAN OR EQUAL TO 50 ACRES;

(III) \$300 IF THE PERMITTED ACREAGE IS GREATER THAN 50 ACRES AND LESS THAN OR EQUAL TO 100 ACRES;

AND

(IV) \$600 IF THE PERMITTED ACREAGE IS GREATER THAN 100 ACRES.

(2) The board shall:

(a) adopt rules that pertain to opencut mining in order to accomplish the purposes of this part;

(b) adopt rules establishing uniform procedures for filing of necessary records, for the issuance of permits, and for any other matters of administration not specifically enumerated in this part; ~~and~~ AND

~~(c) adopt rules prescribing a fee to be assessed annually by the department on operators of permitted opencut mines. The total amount of fees assessed must be sufficient to fund the amount appropriated by the legislature for the department's costs in administering this part after subtracting appropriations from the general fund and from other sources for administering this part. The board shall base its determination of the fee on the number of permitted opencut mines, the acreage permitted, or categories of acreage permitted or on any combination of these factors. The annual fee must be paid on all permitted acreage for which final bond release has not been granted.~~

~~(d)~~(C) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 2. Section 82-4-424, MCA, is amended to read:

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

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

(3) Annual fees must be deposited in the state special revenue fund and must be used by the department to pay the costs of administering this part."

Section 3. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit -- contents -- issuance -- amendment. (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

- (a) the name of the operator and, if other than the owner of the land, the name and address of the owner;
- (b) the type of operation to be conducted;
- (c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;
- (d) the location of the operation by legal subdivision, section, township and range, and county;
- (e) the date when the operation was or will be commenced; and
- (f) a statement that the applicant has the right and power, by legal estate owned, to mine, by opencut mining, the lands described.

(2) The application must be accompanied by:

- (a) a bond or security meeting the requirements as set out in this part;
- ~~(b) a fee of \$50 for an application to mine bentonite, clay, scoria, sand, or gravel;~~
- ~~(c)~~(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable

local zoning regulations adopted under Title 76, chapter 2; and

~~(d)~~(c) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within 15 days, notify the person as to whether or not the department believes that the application is complete. If the department determines that the application is not complete, the department shall include in the notification a detailed identification of all deficiencies. Within 30 days of receipt of a complete application, the department shall notify the applicant if that it has either approved or denied the application. If the department denies the application, the notice must include a detailed explanation describing why the application was denied. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. The department shall include in the notification of extension the reason for the extension. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond that may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately."

Section 4. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) A bond required to be filed under this part by the operator must be in a form that the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules of the board, and the permit. The bond must be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do

business in the state of Montana, as surety. The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than \$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds \$1,000 an acre. Upon the cost determination, the bond amount must be set by the department at the cost of restoring the land.

(2) (a) For opencut-mining operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

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

(3) In lieu of the bond, the operator may deposit with the department cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs. The penalty of the bond or amount of cash and securities must be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the reclamation has been approved and the bond or security has been released by the department. The bond or security may cover only actual affected land and may be increased or reduced to cover only those acreages as remain unreclaimed.

(4) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the department may suspend the permit of the operator to conduct

operations upon the land described in the permit until the substitution has been made.

(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(6) Whenever an operator has completed some or all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements. If an operator includes this notification with a request for full or partial release of bond in a progress report that is filed by the deadline established by the board for filing progress reports pursuant to 82-4-434, the department shall grant or deny the request within 8 months of the filing of the progress report. A denial must cite the specific obligation under this part that has not been met by the operator. If the board department releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately. Upon completion of all reclamation obligations, the department shall release the remaining bond."

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