

HOUSE BILL NO. 722

INTRODUCED BY S. GUNDERSON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSFERS OF HARD ROCK MINING PERMITS UNDER CERTAIN CONDITIONS; PROVIDING FOR SUSPENSION OF PERMITS AND SPENDING OF FORFEITED BONDS; CREATING A FEE; AMENDING SECTIONS 82-4-340, 82-4-341, AND 82-4-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

Section 1. Section 82-4-340, MCA, is amended to read:

"82-4-340. Successor operator. (1) When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon the operator by this part ~~as to such operation~~, provided that both operators ~~have complied~~ comply with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

(2) For an operation where the bond is forfeited and the permit suspended pursuant to 82-4-341(8) the department may transfer the permit to a successor operator provided that the successor operator:

- (a) complies with the requirements of this part; and
- (b) assumes the duty of the former operator to complete reclamation and submits:
 - (i) any additional bond required under 82-4-338; and
 - (ii) a \$2,000 fee."

Section 2. Section 82-4-341, MCA, is amended to read:

"82-4-341. Compliance -- reclamation by department. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection ~~(8)~~ (9). Following written notice by the department noting deficiencies, the



1 permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the
2 deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be
3 corrected in accordance with the applicable time provisions of those laws. The department may extend
4 performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control,
5 but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

6 (3) Within 30 days after notification by the permittee and when, in the judgment of the department,
7 reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice
8 and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the
9 permittee must be notified in writing and the bond on the area must be released or decreased proportionately to
10 the acreage included within the bond coverage.

11 (4) The department shall cause the bond to be forfeited if:

12 (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the
13 permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

14 (b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after
15 completion or abandonment of operation on any fraction of the permit area or within a longer period that may have
16 been authorized under this part; or

17 (c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction
18 of the department within the time required.

19 (5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within
20 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on
21 behalf of the state in district court.

22 (6) The department may, with the staff, equipment, and material under its control or by contract with
23 others, take any necessary actions for required reclamation of the disturbed lands according to the existing
24 reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications
25 are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure.
26 Except in an environmental emergency, work provided for in this section must be let on the basis of competitive
27 bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity
28 authorized under this section, including a reasonable charge for the services performed by the state's personnel
29 and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The
30 permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return

1 to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless
2 otherwise agreed to in writing by the surety.

3 (7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy
4 specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily
5 complete reclamation work on any segment of the permit area within 2 years or within a longer period that the
6 department may permit on the permittee's application or on the department's own motion, after completion or
7 abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of
8 a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not
9 be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

10 (8) (a) Except as provided in subsection (8)(e), the department may suspend a permit for up to 5 years
11 and place the proceeds from a bond forfeited under subsection (4)(b) in an interest-bearing account if accessible
12 ore minerals remain in sufficient size and grade.

13 (b) The department may spend bond proceeds from the account during the suspension period to:

14 (i) perform maintenance, monitoring, and other actions required by the permit;

15 (ii) abate imminent danger to public health, public safety, or the environment; or

16 (iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause
17 violations of those provisions.

18 (c) The department may transfer a permit suspended under this section as provided by 82-4-340. The
19 balance of funds in the account must be retained as a cash bond on behalf of the successor operator.

20 (d) The department may revoke a permit suspended under this section if a transfer is not completed
21 within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant to
22 subsection (6).

23 (e) The department may extend a suspension for a set period of time beyond 5 years if it finds there is
24 a reasonable expectation that the transfer will be completed before the end of the extended period.

25 ~~(8)(9)~~ (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has
26 occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension
27 of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair
28 reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5,
29 or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee
30 shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The

1 department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the
2 conditions or commence reclamation within the time specified in the notice and any extensions, the department
3 shall order either that the condition be abated or that reclamation be commenced.

4 (b) The permittee may request a hearing on the order by submitting a written request for hearing within
5 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the
6 department determines in writing that the stay will create an imminent threat of significant environmental harm
7 or will significantly impair reclamation."

8

9 **Section 3.** Section 82-4-353, MCA, is amended to read:

10 **"82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application
11 for an operating permit, the department shall provide notice of the application by publication in a newspaper of
12 general circulation in the area to be affected by the operation. The notice must be published once a week for 3
13 successive weeks.

14 (2) An applicant for a permit or license or for an amendment or revision to a permit or license may
15 request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of
16 receipt of written notice of the denial. The request must state the reason that the hearing is requested.

17 (3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and ~~(8)~~ (9), 82-4-361,
18 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana
19 Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action
20 taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the
21 person is capable of adequately representing the interests claimed.

22 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

23

24 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2019.

25

26 NEW SECTION. **Section 5. Termination.** [This act] terminates June 30, 2026.

27

- END -