

HOUSE BILL NO. 722

INTRODUCED BY S. GUNDERSON

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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 82-4-338, 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 82-4-338, MCA, IS AMENDED TO READ:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or until full bond liquidation can be effected.

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

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

(d) (i) For an exploration license or operating permit authorizing activities 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.

(ii) 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



1 department and may also be payable to the federal land management agency. If the bond is payable to the
2 department and the federal land management agency, the department, before accepting the bond, shall enter
3 into an agreement or memorandum of understanding with the federal land management agency providing for
4 administration of the bond funds in a manner that will allow the department to provide for compliance with the
5 requirements of this part, the rules adopted under this part, and the permit.

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

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

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

21 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct
22 a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive
23 bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the
24 permit area, the department determines that an increase of the bond level may be necessary. The department
25 shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When
26 determined by the department that the set bonding level of a permit or license does not represent the present
27 costs of compliance with this part, the rules, and the permit, the department shall modify the bonding
28 requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary
29 bond determination with the department, at the end of which time period the department shall issue the proposed
30 bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form

1 the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond
2 determination in a newspaper of general circulation in the county in which the operation is located. The
3 department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing
4 under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented
5 by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee
6 or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not
7 be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

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

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

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

28 (5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until
29 the public has been provided an opportunity for a hearing and a hearing has been held if requested. The
30 department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not

1 limited to publishing the notice in newspapers of general daily circulation.

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

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

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

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

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

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

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

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

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

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

7 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the
8 department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan
9 that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an
10 assessment of the effectiveness of the changes and any potential negative environmental impacts of the
11 changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only
12 if the department determines that the changes would not mitigate the condition to an acceptable level or may have
13 potentially significant negative environmental impacts.

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

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

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

30 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited

1 under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in
2 subsection (10)(a).

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

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

8 (11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled
9 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for
10 the entire amount of the terminated bond within 30 days following the notice of termination provided to the
11 department, then the license or permit must be immediately suspended without further action by the department."
12

13 **Section 2.** Section 82-4-340, MCA, is amended to read:

14 **"82-4-340. Successor operator.** (1) When one operator succeeds to the interest of another in any
15 uncompleted operation by sale, assignment, lease, or otherwise, the department may release the first operator
16 from the duties imposed upon the operator by this part as to such operation, provided that both operators have
17 complied ~~comply~~ with the requirements of this part and the successor operator assumes the duty of the former
18 operator to complete the reclamation of the land, in which case the department shall transfer the permit to the
19 successor operator upon approval of the successor operator's bond as required under this part.

20 (2) For an operation where the bond is forfeited and the permit suspended THE DEPARTMENT HOLDS A
21 SUSPENDED PERMIT pursuant to 82-4-341(8) the department may transfer the permit to a successor operator
22 provided that the successor operator:

23 (a) complies with the requirements of this part; and

24 (b) assumes the duty of the former operator to complete reclamation and submits:

25 (i) any additional bond required under 82-4-338; and

26 (ii) a \$2,000 fee."
27

28 **Section 3.** Section 82-4-341, MCA, is amended to read:

29 **"82-4-341. Compliance -- reclamation by department.** (1) The department shall cause the permit area
30 to be inspected at least annually to determine whether the permittee has complied with this part, the rules

1 adopted under this part, or the permit.

2 (2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as
3 required pursuant to subsection ~~(8)~~ (9). Following written notice by the department noting deficiencies, the
4 permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the
5 deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be
6 corrected in accordance with the applicable time provisions of those laws. The department may extend
7 performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control,
8 but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

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

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

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

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

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

22 (5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within
23 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on
24 behalf of the state in district court.

25 (6) The department may, with the staff, equipment, and material under its control or by contract with
26 others, take any necessary actions for required reclamation of the disturbed lands according to the existing
27 reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications
28 are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure.
29 Except in an environmental emergency, work provided for in this section must be let on the basis of competitive
30 bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity

1 authorized under this section, including a reasonable charge for the services performed by the state's personnel
 2 and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The
 3 permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return
 4 to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless
 5 otherwise agreed to in writing by the surety.

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

13 (8) (a) Except as provided in subsection (8)(e), the department may ~~suspend~~ HOLD a permit SUSPENDED
 14 PURSUANT TO 82-4-338 for up to 5 years and place the proceeds from a CASH bond forfeited under subsection
 15 (4)(b) in an interest-bearing account if ~~accessible ore minerals remain in sufficient size and grade~~ MINING OF THE
 16 ORE BODY IDENTIFIED IN THE PERMIT OR A PERMIT AMENDMENT APPLICATION IS NOT COMPLETE.

17 (b) The department may spend bond proceeds from the account during the suspension period to:
 18 (i) perform maintenance, monitoring, and other actions required by the permit;
 19 (ii) abate imminent danger to public health, public safety, or the environment; or
 20 (iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause
 21 violations of those provisions.

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

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

27 (e) The department may extend a suspension ~~for a set period of time beyond 5 years if it finds there is~~
 28 a reasonable expectation that the transfer will be completed before the end of the extended period UP TO 6
 29 MONTHS IF A POTENTIAL SUCCESSOR OPERATOR IS EXERCISING REASONABLE DILIGENCE TO COMPLETE THE TRANSFER.
 30 THE DEPARTMENT MAY ALSO GRANT REASONABLE EXTENSIONS OF THE SUSPENSION IF EXTENSIONS ARE NECESSARY BY

1 REASON OF LITIGATION PRECLUDING THE TRANSFER.

2 ~~(8)~~(9) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has
 3 occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension
 4 of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair
 5 reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5,
 6 or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee
 7 shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The
 8 department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the
 9 conditions or commence reclamation within the time specified in the notice and any extensions, the department
 10 shall order either that the condition be abated or that reclamation be commenced.

11 (b) The permittee may request a hearing on the order by submitting a written request for hearing within
 12 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the
 13 department determines in writing that the stay will create an imminent threat of significant environmental harm
 14 or will significantly impair reclamation."
 15

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

17 **"82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application
 18 for an operating permit, the department shall provide notice of the application by publication in a newspaper of
 19 general circulation in the area to be affected by the operation. The notice must be published once a week for 3
 20 successive weeks.

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

24 (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,
 25 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana
 26 Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action
 27 taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the
 28 person is capable of adequately representing the interests claimed.

29 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."
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1 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2019.

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3 NEW SECTION. **Section 6. Termination.** [This act] terminates June 30, 2026.

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