

SENATE BILL NO. 201

INTRODUCED BY D. ANKNEY

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 GENERALLY REVISING QUALIFICATIONS NECESSARY TO HOLD A MINING PERMIT; REVISING REQUIREMENTS FOR COAL MINE PERMITTEES TO PROVIDE CERTAIN FINANCIAL ASSURANCES TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING LEGISLATIVE INTENT; PROVIDING FOR CONTINGENT VOIDNESS; AMENDING SECTIONS 82-4-202 AND 82-4-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the State of Montana has an interest in ensuring that private pension plans remain in good standing and that employees who have earned benefits under those plans receive them;

WHEREAS, it is imperative that private employers not backtrack on pension plans, shifting the burden to the State of Montana; and

WHEREAS, if private pension plans fail to provide earned benefits, the State of Montana may be burdened with additional responsibilities and demands for Medicaid coverage, the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Low Income Home Energy Assistance Programs, and multiple other government programs.

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

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Intent -- policy -- findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. It is the legislature's intent that the requirements of this part promote the health and welfare of the people, provide adequate remedies for the protection of the environmental life support system from degradation, and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the declared policy of this state and its people to:

- (a) maintain and improve the state's clean and healthful environment for present and future generations;
- (b) protect its environmental life-support system from degradation;



- 1 (c) prevent unreasonable degradation of its natural resources;
- 2 (d) restore, enhance, and preserve its scenic, historic, archaeological, scientific, cultural, and recreational
3 sites;
- 4 (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain
5 state administration of the reclamation program;
- 6 (f) require the legislature to provide for proper administration and enforcement, create adequate
7 remedies, and set effective requirements and standards, especially as to reclamation of disturbed lands, in order
8 to achieve the objectives enumerated in this subsection (2); ~~and~~
- 9 (g) provide for the orderly development of coal resources through strip or underground mining to ensure
10 the wise use of these resources and prevent the failure to conserve coal; and
- 11 (h) promote the health and welfare of the people.
- 12 (3) The legislature finds and declares that:
- 13 (a) in order to achieve the policy objectives enumerated in subsection (2), promote the health and welfare
14 of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and
15 recreational productivity, save cultural, historic, and aesthetic values, and ensure a long-range dependable tax
16 base, it is reasonably necessary to require that:
- 17 (i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are
18 granted;
- 19 (ii) a permit not be issued until the operator presents a comprehensive plan for reclamation and
20 restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;
- 21 (iii) certain other things must be done, certain remedies must be available, and certain lands because
22 of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances;
23 and
- 24 (iv) the department be given authority to administer and enforce a reclamation program that complies with
25 Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;
- 26 (b) this part is an exercise of the authority granted in the Montana constitution and, in particular, a
27 response to the mandate expressed in Article IX of the constitution and that this part is also an exercise of the
28 general police power to provide for the health and welfare of the people;
- 29 (c) coal mining alters the character of soils and overburden materials and that duplication of premining
30 topography, soils, and vegetation composition is not practicable; and

1 (d) standards for successful reclamation must be well-defined and consistent so that mine operators can
 2 reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."

3

4 **Section 2.** Section 82-4-222, MCA, is amended to read:

5 **"82-4-222. Permit application -- application revisions.** (1) An operator desiring a permit shall file an
 6 application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and
 7 rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance
 8 investigation and study by the operator, include all known or readily discoverable past and present uses of the
 9 land and water to be affected and the approximate periods of use, and provide:

10 (a) the location and area of land to be affected by the operation, with a description of access to the area
 11 from the nearest public highways;

12 (b) the names and addresses of the owners of record and any purchasers under contracts for deed of
 13 the surface of the area of land to be affected by the permit and the owners of record and any purchasers under
 14 contracts for deed of all surface area within one-half mile of any part of the affected area;

15 (c) the names and addresses of the present owners of record and any purchasers under contracts for
 16 deed of all subsurface minerals in the land to be affected;

17 (d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

18 (e) the permanent and temporary post-office addresses of the applicant;

19 (f) whether the applicant or any person associated with the applicant holds or has held any other permits
 20 under this part and an identification of those permits;

21 (g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner,
 22 director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class
 23 of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.
 24 The information required in this subsection (1)(g) must be updated and approved by the department in the event
 25 of a change in the parties specified in this subsection (1)(g)(i) as a result of bankruptcy or reorganization.

26 (ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining
 27 or underground-mining license or permit issued by any other state or federal agency revoked or have ever
 28 forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed
 29 explanation of the facts involved in each case must be attached.

30 (iii) evidence, determined by department rule and in accordance with 82-4-231, that the parties or

1 persons specified in subsection (1)(g)(i) will provide bonding or other financial assurance necessary to meet their
 2 financial obligations in the state of Montana, including obligations for employee pensions and [OBLIGATIONS FOR
 3 EMPLOYEE PENSIONS AND] obligations to reclaim property in accordance with the requirements of 82-4-231 through
 4 82-4-234. A PERMITHOLDER MAY NOT PASS THE COSTS ASSOCIATED WITH THE FINANCIAL OBLIGATIONS ESTABLISHED
 5 IN THIS SUBSECTION (1)(G)(III) ON TO PURCHASERS SERVED BY THE STRIP OR UNDERGROUND MINE IF THE PURCHASERS
 6 ARE DEPENDENT ON THE MINE TO GENERATE ELECTRICITY THAT IS CONSUMED BY ELECTRIC CUSTOMERS.

7 (h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory
 8 authority;

9 (i) the names and addresses of any persons who are engaged in strip-mining or underground-mining
 10 activities on behalf of the applicant;

11 (j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the
 12 applicant has requested a permit;

13 (k) the results of any test borings or core samplings that the applicant or the applicant's agent has
 14 conducted on the land to be affected, including the nature and the depth of the various strata or overburden and
 15 topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an
 16 analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral
 17 elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the
 18 overburden, including topsoil. If test borings or core samplings are submitted, each permit application must
 19 contain two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface
 20 of the affected land. Each set must depict subsurface conditions at intervals the department requires across the
 21 surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than
 22 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with
 23 the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross
 24 sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other
 25 excavations to be excavated during the permit period. These cross sections must also include all existing shafts,
 26 entries, and haulageways.

27 (l) the name of a newspaper of general circulation in the locality of the proposed activity in which the
 28 applicant will prominently publish at least once a week for 4 successive weeks after submission of the application
 29 an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed
 30 description of the area of land to be affected if a permit is granted. If that newspaper is not published in Montana,

1 the applicant shall also provide the name of a newspaper of general circulation in the county in which the
2 proposed operation is located that is published in Montana in which the applicant will publish an announcement
3 and description in accordance with this subsection.

4 (m) a determination of the probable hydrologic consequences of coal mining and reclamation operations,
5 both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface
6 water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions
7 and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all
8 anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made.
9 However, this determination is not required until hydrologic information on the general area prior to mining is
10 made available from an appropriate federal or state agency. The permit may not be approved until the information
11 is available and is incorporated into the application. The determination of probable hydrologic consequences must
12 include findings on:

13 (i) whether adverse impacts may occur to the hydrologic balance;

14 (ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of
15 ground water or surface water supplies;

16 (iii) whether the proposed operation may proximately result in contamination, diminution, or interruption
17 of an underground or surface source of water within the proposed permit or adjacent areas that is used for
18 domestic, agricultural, industrial, or other beneficial use; and

19 (iv) what impact the operation will have on:

20 (A) sediment yields from the disturbed area;

21 (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local
22 impact;

23 (C) flooding or streamflow alteration;

24 (D) ground water and surface water availability; and

25 (E) other characteristics required by the department that potentially affect beneficial uses of water in and
26 adjacent to the permit area.

27 (n) a plan for monitoring ground water and surface water, based upon the determination of probable
28 hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of
29 parameters that relate to the availability and suitability of ground water and surface water for current and
30 approved postmining land uses and the objectives for protection of the hydrologic balance.

- 1 (o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other
2 methods approved by the department, showing the manner of spoil placement, showing removal of coal volume
3 and overburden swell, and including:
- 4 (i) locations and elevations of tie-in points with adjacent unmined drainageways;
5 (ii) approximate locations of primary or highest order drainageways and associated drainage divides in
6 the reclaimed topography; and
7 (iii) projected elevations of primary drainageways and associated drainage divides and generalized
8 slopes with the level of detail appropriate to project the approximate original contour;
- 9 (p) the condition of the land to be covered by the permit prior to any mining, including:
- 10 (i) the land uses existing at the time of the application and, if the land has a history of previous mining,
11 the uses that preceded any mining;
12 (ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil
13 characteristics, topography, and vegetative cover; and
14 (iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as
15 well as the average yield of food, fiber, forage, or wood products from land under high levels of management;
- 16 (q) a coal conservation plan; ~~and~~
17 (r) other or further information as the department may require.
- 18 (2) The application for a permit must be accompanied by maps meeting the requirements of subsections
19 (2)(a) through (2)(n). The maps must:
- 20 (a) identify the area to correspond with the application;
21 (b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names
22 of owners of record of the affected area and within 1,000 feet of any part of the affected area;
23 (c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings,
24 cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;
25 (d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam
26 or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;
27 (e) show the date on which the map was prepared and the north point;
28 (f) show the final surface and underground water drainage plan on and away from the area of land
29 affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural
30 waterways used for drainage, and the streams or tributaries receiving the discharge.

- 1 (g) show the proposed location of waste or refuse area;
- 2 (h) show the proposed location of temporary subsoil and topsoil storage area;
- 3 (i) show the proposed location of all facilities;
- 4 (j) show the location of test boring holes;
- 5 (k) show the surface location lines of any geologic cross sections that have been submitted;
- 6 (l) show a listing of plant species encountered in the area to be affected and their relative dominance
- 7 in the area, together with an enumeration of tree species and the approximate number of each species occurring
- 8 per acre on the area to be affected, and the locations generally of the various species of plants;
- 9 (m) be certified by a professional engineer or professional land surveyor licensed as provided by Title
- 10 37, chapter 67; and
- 11 (n) contain other or further information as the department may require.
- 12 (3) If the department finds that the probable total annual production at all locations of any strip-mining
- 13 or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable
- 14 hydrologic consequences that the department requires and the statement of result of test borings or core
- 15 samplings must, upon written request of the operator, be performed by a qualified public or private laboratory
- 16 designated by the department. The department shall assume the cost of the determination and statement to the
- 17 extent that it has received funds for this purpose.
- 18 (4) In addition to the information and maps required by this section, each application for a permit must
- 19 be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance,
- 20 and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction,
- 21 topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which
- 22 proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must
- 23 address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is
- 24 anticipated that individual permits will be sought.
- 25 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by
- 26 an insurance company authorized to do business in the state, certifying that the applicant has in force for the
- 27 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability
- 28 insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements.
- 29 This policy must provide for personal injury and property damage protection in an amount adequate to
- 30 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation

1 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.
2 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until
3 all reclamation operations have been completed.

4 (6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that
5 is pending on January 1, 2004, in order to incorporate the provisions of this part.

6 (7) A permittee may apply to revise and the department may approve an application to incorporate the
7 provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be
8 revised whether or not reclamation has been completed pursuant to the reclamation plan.

9 (8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the
10 applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which
11 the major portion of mining is proposed to occur or at another accessible public office or facility approved by the
12 department."

13

14 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a
15 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
16 Chippewa tribe.

17

18 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable
19 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are severable from the invalid applications.

21

22 NEW SECTION. SECTION 5. CONTINGENT VOIDNESS. IF THE BRACKETED LANGUAGE IN SUBSECTION (1)(G)(III)
23 AS INCLUDED IN [SECTION 2] IS INVALIDATED OR FOUND TO BE UNCONSTITUTIONAL BY A COURT OF COMPETENT
24 JURISDICTION ON ITS FINAL DISPOSITION, THEN THE BRACKETED LANGUAGE IN SUBSECTION (1)(G)(III) AS INCLUDED IN
25 [SECTION 2] TERMINATES ON THE DATE OF THE INVALIDATION OR THE FINDING OF UNCONSTITUTIONALITY.

26

27 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

28

- END -