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HOUSE BILL NO. 130
INTRODUCED BY J. KASSMIER
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING HARD ROCK MINING FEES, ESTABLISHING A HARD ROCK MINING PERMITTING PROGRAM ACCOUNT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW FEES AND REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 82-4-311, 82-4-331, 82-4-332, 82-4-335, 82-4-339, 82-4-340, AND 82-4-342, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Hard rock mining permitting program account. (1) There is a hard rock mining permitting program account within the state special revenue fund established in 17-2-102. Money transferred to the fund by the legislature, fees collected in accordance with this part, and interest and income earned on money in the account must be deposited in the account.

(2) The department shall use the money in the account to administer and enforce this part.

NEW SECTION. Section 2. Review of fees and department duties. (1) Prior to July 1, 2032, the department shall consult with representatives of the mining industry and other appropriate stakeholders to review the fees required by this part and the department's use of the account established in [section 1].

(2) The department shall:

- (a) evaluate timelines for review and the issuance of permits to determine if the department permits actions in a timely manner;
- (b) compare fees with inflation and other appropriate economic measurements;
- (c) determine if fees adequately offset costs associated with activities conducted by the department under this part; and
- (d) survey representatives of the mining industry regarding fee changes.

1 (3) Prior to September 1, 2032, the department shall report to the environmental quality council
2 established in 5-16-101 the findings of the report prepared in accordance with subsection (2) and recommend if
3 fee changes are necessary.
4

5 **Section 3.** Section 82-4-311, MCA, is amended to read:

6 **"82-4-311. Disposition of fees, fines, penalties, and other uncleared money.** ~~All fees (1) (a), fines,~~
7 Fines, penalties, and other uncleared money that has been or will be paid to the department under the
8 provisions of this part must be placed in the environmental rehabilitation and response account in the state
9 special revenue fund provided for in 75-1-110.

10 (b) Funds held by the department as bond or as a result of bond forfeiture that are no longer
11 needed for reclamation and for which the department is not able to locate a surety or other person who owns
12 the funds after diligent search must be deposited in the environmental rehabilitation and response account in
13 the state special revenue fund provided for in 75-1-110.

14 (2) Fees paid to the department under the provisions of this part must be placed in the hard rock
15 mining permitting program account established in [section 1]."
16

17 **Section 4.** Section 82-4-331, MCA, is amended to read:

18 **"82-4-331. Exploration license required -- employees included -- limitation.** ~~(4)-(1) (a)~~ A person
19 may not engage in exploration in the state without first obtaining an exploration license from the department. A
20 license must be issued for a period of 1 year from the date of issue and is renewable from year to year on
21 application. An application for renewal must be filed within 30 days preceding the expiration of the current
22 license and be accompanied by payment of ~~a \$25 renewal fee:~~

23 (i) a \$500 renewal fee for exploration that includes drilling, underground activities, or both; or

24 (ii) a \$200 renewal fee for exploration that does not include drilling or underground activities.

25 (b) A license may not be renewed if the applicant for renewal is in violation of any provision of this
26 part. A license is subject to suspension and revocation as provided by this part.

27 (2) Employees of persons holding a valid license under this part are included in and covered by
28 the license.

1 (3) A person may not be issued an exploration license if:

2 (a) that person's failure, or the failure of any firm or business association of which that person was
3 a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or
4 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department
5 or the completion of reclamation by the person's surety or by the department, unless that person meets the
6 conditions described in 82-4-360;

7 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant
8 to 82-4-361;

9 (c) that person has failed to post a reclamation bond required by 82-4-305; or

10 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless
11 the department has completed the abatement and the person has reimbursed the department for the cost of the
12 abatement."
13

14 **Section 5.** Section 82-4-332, MCA, is amended to read:

15 **"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

16 (a) ~~pays a fee of \$100~~ (i) pays a fee of \$500 to the department for exploration that includes drilling,
17 underground activities, or both; or

18 (ii) pays a fee of \$200 to the department for exploration that does not include drilling or
19 underground activities;

20 (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as
21 may be reasonably required by the department; and

22 (c) is not in default of any other reclamation obligation under this law.

23 (2) An application for an exploration license must be made in writing, notarized, and submitted to
24 the department in duplicate upon forms prepared and furnished by it. The application must include an
25 exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether
26 significant environmental problems would be encountered. The department shall by rule determine the precise
27 nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation
28 techniques will be employed in disturbing the land. An applicant for an amendment to an exploration license

1 shall pay a fee to the department of:

2 (a) \$500 for amendments that include drilling, underground activities, or both; or

3 (b) \$200 for amendments that do not include drilling or underground activities.

4 (3) Prior to the issuance of an exploration license, the applicant shall file with the department a
5 reclamation and revegetation bond in a form and amount as determined by the department in accordance with
6 82-4-338.

7 (4) In the event that the holder of an exploration license desires to mine the area covered by the
8 exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow
9 the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete
10 reclamation plan submitted with the application for an operating permit. Any land actually affected by
11 exploration or excavation under an exploration license and not covered by the operating reclamation plan must
12 be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner
13 acceptable to the department."
14

15 **Section 6.** Section 82-4-335, MCA, is amended to read:

16 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
17 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
18 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
19 activities in the state without first obtaining a final operating permit from the department. Except as provided in
20 82-4-343, a separate final operating permit is required for each complex.

21 (2) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
22 solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the
23 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

24 (3) (a) Prior to receiving an operating permit from the department, a person shall pay the ~~basic~~
25 ~~permit fee of \$500~~ department an application fee of:

26 (i) \$10,000 for an operating permit for a metal mine that primarily produces minerals for
27 beneficiation into metal and that includes an active tailings storage facility and more than 100 acres of disturbed
28 land;

1 (ii) \$5,000 for an operating permit for an industrial mineral mine; or

2 (iii) \$500 for any other operating permit issued pursuant to this part.

3 (b)_____ The department may require a person who is applying for a permit pursuant to subsection (1) to
4 pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
5 operating expenses of the department whenever those expenses are reasonably necessary to provide for
6 timely and adequate review of the application, including any environmental review conducted under Title 75,
7 chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department
8 determines that an additional fee is necessary and the additional fee will exceed ~~\$5,000~~ \$10,000, the
9 department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of
10 the proposed expenses. The department shall provide the applicant an opportunity to review the department's
11 estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative
12 or excessive, if any.

13 ~~(b) (i) (c)~~ (i) Subject to subsection ~~(3)(b)(ii), (3)(c)(ii)~~, a contractor shall, at the request of the
14 applicant, directly submit invoices of contractor expenses to the applicant.

15 (ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to
16 this section.

17 (4) The person shall submit an application on a form provided by the department, which must
18 contain the following information and any other pertinent data required by rule:

19 (a) the name and address of the operator, the engineer of record if applicable, and, if a corporation
20 or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of
21 voting stock, partners, and the like and its resident agent for service of process, if required by law;

22 (b) the minerals expected to be mined;

23 (c) a proposed reclamation plan;

24 (d) the expected starting date of operations;

25 (e) a map showing the specific area to be mined and the boundaries of the land that will be
26 disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or
27 immediately adjacent to the area, and the location of proposed access roads to be built;

28 (f) the names and addresses of the owners of record and any purchasers under contracts for

1 deed of the surface of the land within the permit area and the owners of record and any purchasers under
2 contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the
3 department is not required to verify this information;

4 (g) the names and addresses of the present owners of record and any purchasers under contracts
5 for deed of all minerals in the land within the permit area, provided that the department is not required to verify
6 this information;

7 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
8 provided that the department is not required to verify this information;

9 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

10 (j) a plan that will provide, within limits of normal operating procedures of the industry, for
11 completion of the operation;

12 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources
13 and length of time to characterize the hydrologic regime;

14 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but
15 not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and
16 stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to
17 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual
18 pursuant to 82-4-379 prior to issuance of a draft permit.

19 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
20 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

21 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential
22 for expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by
23 submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings
24 operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

25 (o) an assessment of the potential for the postmining use of mine-related facilities for other
26 industrial purposes, including evidence of consultation with the county commission of the county or counties
27 where the mine or mine-related facilities will be located.

28 (5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale

1 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit
2 may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a
3 written guarantee to the department and to the hard-rock mining impact board of compliance within the time
4 schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee
5 does not comply with that commitment within the time scheduled, the department, upon receipt of written notice
6 from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-
7 rock mining impact board that the permittee is in compliance.

8 (6) When the department determines that a permittee has become or will become a large-scale
9 mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6
10 months of receiving the notice, the permittee shall provide the department with proof that the permittee has
11 obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee
12 has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the
13 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
14 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
15 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required
16 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
17 mining impact review and implementation requirements.

18 (7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical
19 testing when the aggregate samples are less than 10,000 tons.

20 (8) A person may not be issued an operating permit if:

21 (a) that person's failure, or the failure of any firm or business association of which that person was
22 a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or
23 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department
24 or the completion of reclamation by the person's surety or by the department, unless that person meets the
25 conditions described in 82-4-360;

26 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant
27 to 82-4-361;

28 (c) that person has failed to post a reclamation bond required by 82-4-305; or

1 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless
2 the department has completed the abatement and the person has reimbursed the department for the cost of
3 abatement.

4 (9) A person may not be issued a permit under this part unless, at the time of submission of a
5 bond, the person provides the current information required in subsection (4)(a) and:

6 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation
7 of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

8 (ii) presents a certification by the administering agency that the violation is in the process of being
9 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

10 (b) if the person is a partnership, corporation, or other business association, provides the
11 certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors,
12 owners of 10% or more of any class of voting stock, and business association members."
13

14 **Section 7.** Section 82-4-339, MCA, is amended to read:

15 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral**
16 **developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit
17 or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be
18 provided by rule and each year after that date until reclamation is completed and approved, the permittee shall
19 pay the annual fee of ~~\$100~~ provided for in subsection (3) and shall file a report of activities completed during
20 the preceding year on a form prescribed by the department. The report must:

21 (a) identify the permittee and the permit number;

22 (b) locate the operation by subdivision, section, township, and range and with relation to the
23 nearest town or other well-known geographic feature;

24 (c) estimate acreage to be newly disturbed by operation in the next 12-month period;

25 (d) include the number of persons on the payroll for the previous permit year and for the next
26 permit year at intervals that the department considers sufficient to enable a determination of the permittee's
27 status under 90-6-302(4);

28 (e) update the information required in 82-4-335(4)(a); and

- 1 (f) update any maps previously submitted or specifically requested by the department. The maps
 2 must show:
- 3 (i) the permit area;
- 4 (ii) the unit of disturbed land;
- 5 (iii) the area to be disturbed during the next 12-month period;
- 6 (iv) if completed, the date of completion of operations;
- 7 (v) if not completed, the additional area estimated to be further disturbed by the operation within
 8 the following permit year; and
- 9 (vi) the date of beginning, amount, and current status of reclamation performed during the previous
 10 12 months.

11 (2) Whenever the department determines that the permittee has become or will, during the next
 12 permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the
 13 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

14 (3) This part requires annual fees of:

15 (a) \$12,000 for an active metal mine that primarily produces minerals for beneficiation into metal
 16 and that includes an active tailings storage facility and more than 100 acres of disturbed land;

17 (b) \$6,000 for an active industrial mineral mine;

18 (c) \$500 for an active rock products operation;

19 (d) \$1,000 for a metal mine not subject to the provisions of subsection (3)(a) or nonindustrial
 20 mineral mine;

21 (e) \$300 for an inactive mine; and

22 (f) \$200 for a mine in which the only activity is reclamation."

23

24 **Section 8.** Section 82-4-340, MCA, is amended to read:

25 **"82-4-340. (Temporary) Successor operator.** (1) (a) When one operator succeeds to the interest of
 26 another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may release
 27 the first operator from the duties imposed upon the operator by this part, provided that both operators comply
 28 with the requirements of this part and the successor operator assumes the duty of the former operator to

1 complete the reclamation of the land, in which case the department shall transfer the permit to the successor
2 operator upon approval of the successor operator's bond as required under this part.

3 (b) A successor operator applying for a permit transfer in accordance with subsection (1)(a) shall
4 pay a \$500 fee.

5 (2) For an operation with a forfeited bond where the department holds a suspended permit
6 pursuant to 82-4-341(8), the department may transfer the permit to a successor operator provided that the
7 successor operator:

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

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

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

11 (ii) a \$2,000 fee. (Terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)

12 **82-4-340. (Effective July 1, 2026) Successor operator.** (1) When one operator succeeds to the
13 interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may
14 release the first operator from the duties imposed upon the operator by this part as to such operation, provided
15 that both operators have complied with the requirements of this part and the successor operator assumes the
16 duty of the former operator to complete the reclamation of the land, in which case the department shall transfer
17 the permit to the successor operator upon approval of the successor operator's bond as required under this
18 part.

19 (2) A successor operator applying for a permit transfer in accordance with subsection (1) shall pay
20 a \$500 fee."

21

22 **Section 9.** Section 82-4-342, MCA, is amended to read:

23 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued
24 under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or
25 an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except
26 following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-
27 4-338.

28 (2) (a) The department may by rule establish criteria for the classification of amendments as major

1 or minor. The department shall adopt rules establishing requirements for the content of applications for
2 revisions and major and minor amendments and the procedures for processing revisions and minor
3 amendments.

4 (b) An amendment must be considered minor if:

5 (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

6 (ii) evidence is submitted showing that a local government has requested retention of the mine-
7 related facilities for a postmining use; and

8 (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-
9 336.

10 (c) An operator applying for a minor amendment shall pay the department a fee of:

11 (i) \$250 for a rock product permit and appropriate fees as provided in 82-4-343;

12 (ii) \$2,000 for a metal mine that primarily produces minerals for beneficiation into metal and that
13 includes an active tailings storage facility and more than 100 acres of disturbed land;

14 (iii) \$1,000 for an industrial mineral mine; or

15 (iv) \$250 for a metal mine not subject to the provisions of subsection (2)(c)(ii) or a nonindustrial
16 mineral mine.

17 (d) Permit revisions are not subject to the fee established in subsection (2)(c).

18 (3) (a) Applications for major amendments must be processed pursuant to 82-4-337.

19 (b) An operator applying for a major amendment shall pay the department a fee of:

20 (i) \$500 for a rock product permit and appropriate fees as provided in 82-4-343;

21 (ii) \$10,000 for a metal mine that primarily produces minerals for beneficiation into metal and that
22 includes an active tailings storage facility and more than 100 acres of disturbed land;

23 (iii) \$5,000 for an industrial mineral mine; or

24 (iv) \$500 for a metal mine not subject to the provisions of subsection (3)(b)(ii) or a nonindustrial
25 mineral mine.

26 (4) The department shall review an application for a revision or a minor amendment and provide a
27 notice of decision on the adequacy of the application within 30 days. If the department does not respond within
28 30 days, then the permit is revised or amended in accordance with the application.

1 (5) The department is not required to prepare an environmental assessment or an environmental
2 impact statement for the following categories of action and permit revisions:

3 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic
4 review pursuant to Title 75, chapter 1;

5 (b) administrative actions, such as routine, clerical, or similar functions of a department, including
6 but not limited to administrative procurement, contracts for consulting services, and personnel actions;

7 (c) repair or maintenance of the permittee's equipment or facilities;

8 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or
9 enforcement of environmental standards;

10 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts
11 upon a given state of facts in a prescribed manner;

12 (f) approval of actions that are primarily social or economic in nature and that do not otherwise
13 affect the human environment;

14 (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact
15 relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area,
16 whichever is less;

17 (h) changes to an approved reclamation plan if the changes are consistent with this part and rules
18 adopted pursuant to this part;

19 (i) changes in an approved operating plan for an activity that was previously permitted if the
20 changes will be insignificant relative to the entire operation and the changes are consistent with subsection
21 (5)(g);

22 (j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for
23 postmining use;

24 (k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

25 (i) the proposed modification is certified by the seal of the engineer of record;

26 (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the
27 existing tailings storage facility; and

28 (iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection

1 (5)(g), (5)(h), or (5)(i) of this section; and

2 (l) applications for rock product permits and amendments pursuant to 82-4-343."

3

4 NEW SECTION. Section 10. Codification instruction. [Sections 1 and 2] are intended to be codified
5 as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to
6 [sections 1 and 2].

7

8 NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2023.

9

- END -