

1993

HB 441	1993 HISTORY AND FINAL STATUS	384	
	3/20 TRANSMITTED TO GOVERNOR		
	3/24 SIGNED BY GOVERNOR		
	CHAPTER NUMBER 160		
	EFFECTIVE DATE: 10/01/93		
HB 441	INTRODUCED BY REHBEIN		
	REVISE WATER WELL CONTRACTOR DISCIPLINARY PROCEDURES		
	BY REQUEST OF BOARD OF WATER WELL CONTRACTORS		
	2/03 INTRODUCED		
	2/03 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
	2/03 FIRST READING		
	2/10 HEARING		
	2/11 COMMITTEE REPORT—BILL PASSED		
	2/13 2ND READING PASSED	97	0
	2/16 3RD READING PASSED	99	1
	TRANSMITTED TO SENATE		
	2/20 FIRST READING		
	2/20 REFERRED TO BUSINESS & INDUSTRY		
	3/18 HEARING		
	3/20 COMMITTEE REPORT—BILL CONCURRED		
	3/24 2ND READING CONCURRED	48	2
	3/25 3RD READING CONCURRED	48	1
	RETURNED TO HOUSE		
	3/31 SIGNED BY SPEAKER		
	4/01 SIGNED BY PRESIDENT		
	4/02 TRANSMITTED TO GOVERNOR		
	4/07 SIGNED BY GOVERNOR		
	CHAPTER NUMBER 284		
	EFFECTIVE DATE: 04/07/93		
HB 442	INTRODUCED BY KNOX		
	GENERALLY REVISE METAL MINE RECLAMATION LAWS		
	BY REQUEST OF DEPARTMENT OF STATE LANDS		
	2/03 INTRODUCED		
	2/03 REFERRED TO NATURAL RESOURCES		
	2/03 FIRST READING		
	2/08 HEARING		
	2/10 COMMITTEE REPORT—BILL PASSED		
	2/13 2ND READING PASSED	98	0
	2/16 3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
	2/20 FIRST READING		
	2/20 REFERRED TO NATURAL RESOURCES		
	3/17 HEARING		
	3/30 COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
	3/31 2ND READING CONCURRED AS AMENDED	37	12
	4/01 3RD READING CONCURRED	39	9
	RETURNED TO HOUSE WITH AMENDMENTS		
	4/06 2ND READING AMENDMENTS NOT CONCURRED	80	19
	4/06 CONFERENCE COMMITTEE APPOINTED		
	4/15 CONFERENCE COMMITTEE DISSOLVED		
	SENATE		
	4/07 CONFERENCE COMMITTEE APPOINTED		
	4/15 CONFERENCE COMMITTEE DISSOLVED		
	HOUSE		
	4/16 FREE CONFERENCE COMMITTEE APPOINTED		

385	HOUSE BILLS AND RESOLUTIONS	HB 444
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1	
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	66 33
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75 24
	SENATE	
4/15	FREE CONFERENCE COMMITTEE APPOINTED	
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1	
4/21	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49 0
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48 0
4/24	SIGNED BY SPEAKER	
4/24	SIGNED BY PRESIDENT	
4/26	TRANSMITTED TO GOVERNOR	
5/03	SIGNED BY GOVERNOR CHAPTER NUMBER 598 EFFECTIVE DATE: 10/01/93	
HB 443	INTRODUCED BY MCCULLOCH, ET AL. ALLOW SCHOOL DISTRICT TO WITHHOLD GRADES, DIPLOMA OR TRANSCRIPTS IF PUPIL OWES MONEY	
2/03	INTRODUCED	
2/03	REFERRED TO EDUCATION & CULTURAL RESOURCES	
2/03	FIRST READING	
2/10	HEARING	
2/16	COMMITTEE REPORT—BILL PASSED	
2/17	2ND READING PASSED	95 4
2/19	3RD READING PASSED	88 9
	TRANSMITTED TO SENATE	
2/22	FIRST READING	
2/22	REFERRED TO EDUCATION & CULTURAL RESOURCES	
3/08	HEARING	
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	
3/25	2ND READING CONCURRED	49 0
3/26	3RD READING CONCURRED	33 13
	RETURNED TO HOUSE WITH AMENDMENTS	
4/01	2ND READING AMENDMENTS CONCURRED	95 1
4/02	3RD READING AMENDMENTS CONCURRED	89 10
4/07	SIGNED BY SPEAKER	
4/13	SIGNED BY PRESIDENT	
4/14	TRANSMITTED TO GOVERNOR	
4/19	SIGNED BY GOVERNOR CHAPTER NUMBER 403 EFFECTIVE DATE: 04/19/93	
HB 444	INTRODUCED BY PAVLOVICH, ET AL. CONSTITUTIONAL AMENDMENT TO REDUCE COAL TAX TRUST DEPOSIT TO 25% AND TO REQUIRE THAT 25% BE DEDICATED TO SCHOOL FINANCE AND MAINTENANCE OF STATE BUILDINGS	
2/03	INTRODUCED	
2/03	REFERRED TO TAXATION	
2/03	FIRST READING	
2/10	HEARING	
2/18	TABLED IN COMMITTEE	

ordinance ~~which~~ *that* do not exceed a fine of \$500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed \$1,000 per day for each violation or 6 months' imprisonment, or both."

Section 2. Section 7-5-4207, MCA, is amended to read:

"7-5-4207. Penalties for violation of municipal ordinances. ~~The~~ *(1) Except as provided in subsection (2), the city or town council has power to* may impose fines and penalties for the violation of any city ordinance, but ~~no~~ a fine or penalty may not exceed \$500 and ~~no~~ imprisonment may not exceed 6 months for any one offense.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed \$1,000 per day for each violation or 6 months' imprisonment, or both."

Approved May 4, 1993.

CHAPTER NO. 598

[HB 442]

AN ACT GENERALLY REVISING THE MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND 82-4-362, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to any small miner if the small miner annually agrees in writing:

- (a) that ~~he~~ *the small miner* will not pollute or contaminate any stream;
- (b) that ~~he~~ *the small miner* will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that ~~he~~ *the small miner* will provide a map locating ~~his~~ *the miner's* mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that ~~he~~ *the small miner* shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless ~~he~~ *the small miner* annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which ~~he~~ *the small miner* is a member or partner has a small-miner exemption; and

(ii) no corporation of which ~~he~~ *the small miner* is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed \$5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, ~~he~~ *the small miner* is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, ~~he~~ *the small miner* is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and

diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems ~~considers~~ reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his *the small miner's* operation where the cyanide ore-processing reagent will be used or disposed of.

(8) The exemption provided in this section does not apply to:

(a) a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

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

(c) a person who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

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

(9) The exemption provided in this section does not apply to an area under permit pursuant to 82-4-335 or to an area that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency."

Section 2. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required — employees included — limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the board. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

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

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

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

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

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

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

Section 3. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of ~~his~~ *the small miner's* operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant

that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

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

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

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

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

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

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

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

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

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

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

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

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

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

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

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

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

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

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

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

(c) *that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;*

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

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

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

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

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

Section 4. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within *60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies.* The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within *30 days of receipt the appropriate review period.*

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within ~~such~~ *the* time period, the operating permit ~~shall be~~ *is* issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) ~~No~~ A permit may *not* be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department ~~must~~ *shall* serve written notice of extension upon the applicant in person or by certified mail, and any ~~such~~

extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall *must* be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall *must* be granted for the period required to complete the operation and shall be *is* valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall *must* provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

- (a) to modify the requirements so they will not conflict with existing laws;
- (b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;
- (c) when significant environmental problem situations are revealed by field inspection."

Section 5. Amendment or revision of operating permits. (1) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(2) Applications for major amendments must be processed in the same manner as applications for new permits.

(3) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(4) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.

Section 6. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) The applicant 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 or more than \$2,500 for each acre or fraction thereof of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, and the rules of the board, and the permit. In lieu of such a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits in this subsection, the bond shall may not be less than the estimated cost to the state to complete the reclamation of the disturbed land ensure compliance with this part, the rules, and the permit. A public or governmental agency shall may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such A blanket bond shall must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

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

(4) No A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

Section 7. Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits — hearing. (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan has not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. The commissioner may order immediate suspension of a permit whenever he the commissioner makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 8. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 5].

Approved May 3, 1993.

CHAPTER NO. 599

[HB 495]

AN ACT AUTHORIZING CATERING ENDORSEMENTS TO BEER RETAIL LICENSES FOR ON-PREMISES CONSUMPTION AND TO BEER AND WINE RETAIL LICENSES FOR ON-PREMISES CONSUMPTION; REQUIRING THAT ALL LICENSEES CATERING AN EVENT PAY A FEE TO THE LOCAL LAW ENFORCEMENT AGENCY; AMENDING SECTIONS 16-3-103, 16-4-204, AND 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Catering endorsement for beer and wine licensees. (1) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer and wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

legislation to secure the public rights to instream flows.

HEARING ON HB 442

Opening Statement by Sponsor:

REP. MIKE FOSTER, HD 32, Townsend on behalf of REP. DICK KNOX, HD 29, Winifred, stated HB 442 is a bill revising the Metal Mine Reclamation Act.

Proponents' Testimony:

Sandra Olsen, Chief, Hard Rock Bureau, Department of State Lands, testified in support HB 442. EXHIBIT 22

Gary Langley, Executive Director, Montana Mining Association, submitted written testimony. EXHIBIT 23

John Fitzpatrick, Pegasus Gold, favored HB 442.

Opponents' Testimony:

Dennis Olson, Northern Plains Resource Council, said there are concerns about the amendments which limit a competent review process.

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. KNOX, said HB 442 will benefit both the mining industry and the Department of State Lands. He said section 7 of the bill is of particular benefit to small miners and DSL, and will benefit the environment by enforcing reclamation.

EXECUTIVE ACTION ON HB 352

Motion: REP. FAGG moved to adopt REP. MOLNAR'S amendments to HB 352. EXHIBIT 24

Discussion: REP. MOLNAR told the committee he was available to answer questions.

REP. SWANSON asked if people could now request additional access.

John North, DSL, replied that, to date, no petitions to expand access have been granted.

REP. TUNBY said the state lands access situation should be left alone for now.

Motion: REP. HARPER MOVED THAT HB 352 DO PASS AS AMENDED.

REP. TOOLE asked Mr. Doney how the amendment will be beneficial.

Mr. Doney replied the amendments bring FWP back into the picture.

REP. TOOLE asked what areas of the amendments are objectionable. Mr. Doney answered that place and purpose of use must be approved by DNRC under the Water Use Act.

REP. STOVALL asked Mr. Doney if the amendments will allow reservations to dictate to senior water rights holders. Mr. Doney answered that individuals with reservations will have the right to object. He suggested use of the word dictate was inappropriate.

REP. HARPER said that in 1985 water reservations did not interfere with anyone's rights to obtain water. He also said that reservations pose no more of a threat than any other appropriation.

Mr. Doney said he agreed that the owner will have some legal standing.

REP. HARPER said FWP will be just as aggressive regarding stream bed rights.

REP. RANEY asked if there were more than junior water rights holders? Mr. Doney replied no junior water rights have been issued since 1985.

Motion: REP. HARPER made a substitute motion to strike Section 3 as a means of supporting HB 365. EXHIBIT 25

REP. FAGG said he would support the substitute motion and shares the concerns over basin closures.

REP. FELAND asked if removing Section 3 will take away FWP water reservations. REP. FAGG answered, yes.

REP. SWANSON said striking Section 3 will remove muddiness in the bill.

REP. RANEY noted the two issues are to close the basin and to shut FWP out of the basin. He added that he cannot support the substitute motion if FWP is removed.

Vote: TO STRIKE SECTION 3 OF HB 365. Motion failed 7 to 8.

Vote: HB 365 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 442

Motion: REP. FAGG MOVED THAT HB 442 DO PASS AS AMENDED. EXHIBIT 26

Discussion: REP. RANEY asked Sandra Olsen to present a synopsis of the bill to the committee.

Ms. Olsen, Chief, Hardrock Bureau, DSL, stated HB 442 provides additional authority for denial of small mines in the event that they are not in compliance with state reclamation plans. She also said Section 7 of the bill issues abatement orders.

Vote: HB 442 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 263

Motion: REP. TOOLE MOVED HB 263 DO PASS AS AMENDED. EXHIBIT 27

Discussion: REP. ORR said he opposes the amendments since they are counter to REP. COBB'S requests.

REP. RANEY said REP. COBB is changing water policy in an effort to protect, maintain and improve the quality of Montana's water. Rather than improving water standards, the amendment will lower these standards, he said. He added this is a major policy change.

REP. GILBERT stated that a permit will authorize degradation.

REP. RANEY said the amendment is making it more difficult for those wanting a new permit.

REP. HARPER said the committee has no idea what exactly is being changed. He stated the purpose of the bill is to define permit.

REP. RANEY said litigation beyond our comprehension is now possible.

REP. TUNBY asked what will be gained by passing the bill.
REP. ORR said the DHES determines whether there is degradation, and the amendment will clarify the authority of the Board of Health.

REP. TOOLE noted the Board of Health is charged with protecting water quality.

REP. FAGG stated the Montana Environmental Information Center does not support the bill.

Motion: REP. TUNBY moved to strike Section 5 of HB 263.

REP. RANEY said the effect of striking this section will help define REP. COBB'S desire to define the term permit.

Vote: HB 263 DO PASS AS AMENDED. Motion carried 12 to 4 with REPS. FELAND, WAGNER, ORR AND FAGG opposed.

EXHIBIT 22
DATE 2-8-93
HB 442

DEPARTMENT OF STATE LANDS

TESTIMONY of Sandra Olsen, Chief
HARD ROCK BUREAU

to the
House Natural Resources Committee

in support of HB 442

The Hard Rock Bureau of the Department of State Lands has the administrative authority for implementing the Metal Mine Reclamation Act. Under the Metal Mine Reclamation Act the Department regulates the mining of all hard rock minerals. The Act administratively establishes three type of programs to be implemented. These include:

the regulation of small miners - who are defined as persons disturbing less than 5-acres at a site who commit to compliance with air and water quality laws,

the regulation of exploration activities - which consist of drilling, trenching, or other activities, following evaluation and approval of a plan, submittal of bond and issuance of a license - and which involve the removal of less than 36,500 tons of ore, and

the regulation of large mines - consisting of all other hard rock mining. Large operators are required to get operating permits following submittal and review of a plan and submittal of a bond.

In addition the Bureau assures that each project is evaluated pursuant to the Montana Environmental Policy Act and undertakes inspection and enforcement activities.

HB 442 has been introduced at the request of the Department to provide for additional procedural and enforcement mechanisms in the Metal Mine Reclamation Act. HB 442 would increase the number of alternatives available to the Department for assuring compliance with the law, and would facilitate enforcement and permit review, and would clarify bonding requirements.

Additional authority ^{is} included under Sections 1, 2, and 3, to allow for denial of small miners exemptions, exploration licenses, or operating permits in the event that outstanding penalties have not been paid, if bonding or reclamation costs are due to the State, or if any costs of implementing abatement orders are due to the State.

Modifications to the application review process are included in Sections 4 and 5, in response to concerns about how long permit application review takes. Section 4 lengthens the initial

review period for an application to 60 days. The Department and the mining industry have agreed that a more thorough initial review would minimize the need for multiple application resubmittals. Any subsequent review of a resubmitted application, however, would remain limited to the 30-day period currently established under the Act.

Section 5 defines administrative mechanisms for modifying permits, after they are initially issued. The process proposed would distinguish between major and minor changes, clarifying the need for public notice and more detailed public involvement for major changes, while minimizing the complexity of the process for minor changes.

Sections 6 and 7 are changes which would clarify the existing bonding and enforcement procedures in the Act. It is important to clarify that the bond, in Section 6, is required to guarantee the conditions of the permit, as well as the conditions of the act and rules, because many activities authorized, but not required, by the Act are included in a permit.

The authority to issue abatement orders, provided by Section 7, would allow the Department to require an operator to clean up a violation, rather than requiring the Department to shut down an operation regardless of the severity of the infraction. Suspension and revocation of permits would remain as enforcement mechanisms, should an operator fail to comply with an abatement order.

For all of these reasons, the Department respectfully requests the Committee to give a do pass recommendation to HB 442.

EXHIBIT 23
DATE 2-8-93
442



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FACTS ON HB 442

1. The legislature previously passed a similar bill concerning corporations. This extends the same restriction to individuals. That is, an individual cannot attain an operating permit unless he has satisfied the conditions of a previous permit.
2. The mining industry supported the previous legislation pertaining to corporations. And, therefore, supports HB 442.
3. The legislation also allows the Department of State Lands 60 days to review an application for an operating permit for completeness. This will allow the Department additional time for the initial review to examine the application for deficiencies. This should reduce the number and scope of deficiency notices. At present, because DSL does not have sufficient time to review the initial application, new issues are raised in each deficiency notice, causing untimely delays. Passage of this bill would speed up the process without detracting from environmental quality.

EXHIBIT 27
DATE 2-8-93
HB 442

Amendments to House Bill No. 352
First Reading Copy

Requested by Rep. Molnar
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 6, 1993

1. Title, lines 11 through 13.
Following: "CLOSURE;" on line 11
Strike: "ELIMINATING" on line 11 through "COST;" on line 13
2. Title, lines 14 and 15.
Following: "77-6-116,"
Strike: "77-6-202" on line 14 through "77-6-212," on line 15
3. Page 13, line 8 through page 19, line 10.
Strike: Sections 11 through 14 in their entirety.
Renumber: subsequent sections

IN MOTION CARRIED UNANIMOUSLY.

HEARING ON HB 442

Opening Statement by Sponsor:

Representative Dick Knox, House District 29, stated HB 442 would revise the Metal Mine Reclamation Act. He said Section 1 of HB 442 would preclude operators from abandoning one site, moving to another and leaving behind the reclamation for the state to assume. He said this new rule would apply to existing mines as well as to exploration and permitting of new mines.

Representative Knox noted HB 442 would also extend from thirty days to sixty days the issuing of permits. He said the Department of State Lands (DSL) favors a sixty day time period in order to more thoroughly process permits. Representative Knox noted he had prepared an amendment to HB 442 which would make Section 5 of the bill null and void if SB 320 were passed. He added that Section 7 of the bill would authorize the DSL to suspend operations or revoke a permit on a mine if repeated violations occur. According to Representative Knox, HB 442 would give mining companies the opportunity to identify and correct their problems instead of being shut down immediately by the DSL.

Proponents' Testimony:

Ms. Sandra Olsen, Department of State Lands, spoke from prepared testimony in support of HB 442 (Exhibit #2).

Mr. Gary Langley, Montana Mining Association, stated his support for HB 442. He said the extension to sixty days for the permitting process should act to speed up the review period once the permit has been acquired. Mr. Langley stated he hoped the Committee would avoid playing games with HB 442 and SB 320 as they are straightforward measures which clarify the procedure for obtaining permits. He concluded HB 442 would not detract from the environmental quality of Montana.

Mr. Eric Williams, Pegasus Gold Corporation, stated his support for HB 442 and the amendment proposed by Representative Knox.

Mr. Jim Jensen, Montana Environmental Information Center (MEIC), stated his support for the need to change the way the DSL administers the Mining Act. He suggested the Committee add "determines to be reasonable" to line 12 of page 5 to make the language consistent. Mr. Jensen stated a distinction should be made between major and minor revisions of operating permits. He said "benign activities should be reviewed in the least onerous way possible". He added that the current thirty day process did not allow enough time for a sufficient review of the permit. Mr.