

HOUSE BILL NO. 633

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN STRIP AND UNDERGROUND MINE
APPLICATION AND PERMIT PROVISIONS; REVISING CUMULATIVE HYDROLOGIC IMPACT
ASSESSMENT REQUIREMENTS; REVISING CONTESTED CASE HEARING PROCEDURES; PROVIDING
RULEMAKING AUTHORITY; AMENDING SECTIONS 82-4-206 AND 82-4-231, MCA; PROVIDING FOR
CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 82-4-206, MCA, is amended to read:

"82-4-206. Procedure for contested case hearings. (1) An applicant, permittee, or person with an
interest that is or may be adversely affected and who submitted comments or written objections during the
relevant comment period for an application pursuant to subsections (1)(a) through (1)(e), may request a hearing
before the board on any of the following decisions of the department by submitting a written request stating the
reason for the request within 30 days after the department's decision:

- (a) approval or denial of an application for a permit pursuant to 82-4-231;
- (b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;
- (c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;
- (d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or
- (e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
part 6, apply to a hearing before the board under subsection (1)."

Section 2. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and

effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the department, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local

governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons

1 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All
2 items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as
3 provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the
4 department shall review the revised application and notify the applicant in writing within 120 days of the date of
5 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under
6 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness
7 determination.

8 (e) When the application is determined to be acceptable, the department shall publish notice of its
9 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the
10 proposed operation. If the department required a cumulative hydrologic impact assessment to meet the
11 requirements of this part, the department shall publish a draft of that assessment and the department's
12 determination. Any person having an interest that is or may be adversely affected by the determination or the
13 cumulative hydrologic impact assessment may file a written objection to the determination within 10 days of the
14 department's last published notice. If a written objection is filed and an objector requests an informal
15 conference, the department shall hold an informal conference in the locality of the proposed operation within 20
16 days of receipt of the request. The department shall notify the applicant and all parties to the informal
17 conference of its decision and the reasons for the decision within 10 days of the informal conference.

18 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written
19 findings granting or denying the permit or major revision application in whole or in part not later than 45-60 days
20 from the date the application is determined acceptable. However, if lands subject to the federal lands program
21 are included in the application for permit or major revision, the department shall prepare and submit written
22 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department
23 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date
24 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth
25 in the written notification to the applicant.

26 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
27 notify the board in writing of its failure to comply and the reasons for the failure to comply.

28 (9) The applicant, the permittee, a landowner, or any person with an interest that is or may be

adversely affected by the department's permit decision and who submitted a written objection pursuant to subsection (8) may within 30 days of ~~that the department's~~ decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error and must be limited to the issues raised in written objections and issues in the department's decision not addressed by the department in its notice of determination published pursuant to subsection (8)(e). The hearing must be started within 30 days of the request. For purposes of a hearing, the board or its hearings officer may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to

domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the department.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

- 1 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from
2 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in
3 a manner approved by the department;
- 4 (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- 5 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water
6 from mines;
- 7 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of
8 alluvial valley floors in the arid and semiarid areas of the country;
- 9 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams
10 to ensure long-term stability; and
- 11 (viii) any other actions that the department may prescribe;
- 12 (l) conduct strip- or underground-mine operations in accordance with the approved coal
13 conservation plan;
- 14 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- 15 (n) seal all auger holes with an impervious and noncombustible material in order to prevent
16 drainage except when the department determines that the resulting impoundment of water in the auger holes
17 may create a hazard to the environment or the public health and safety;
- 18 (o) develop contingency plans to prevent sustained combustion;
- 19 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or
20 in proximity to the channel so as to seriously alter the normal flow of water;
- 21 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes
22 of this part, taking into consideration the physical, climatological, and other characteristics of the site;
- 23 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions
24 that constitute a hazard to health and safety of the public;
- 25 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in
26 a manner that prevents a gravity discharge of water from the mine.
- 27 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise
28 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other

1 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for
2 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that
3 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or
4 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner
5 that protects areas outside the permit area."

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7 **NEW SECTION. Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
8 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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10 **NEW SECTION. Section 4. Severability.** If a portion of [this act] is invalid, all valid portions that are
11 severable from the invalid part remain in effect. If a portion of [this act] is invalid in one or more of its
12 applications, the portion remains in effect in all valid applications that are severable from the invalid
13 applications.

14
15 **NEW SECTION. Section 5. Contingent voidness.** (1) If any provision of [this act] is disapproved by
16 the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

17 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of
18 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1)
19 has occurred.

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

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