

1 HOUSE BILL NO. 581  
 2 INTRODUCED BY L. BISHOP, W. CURDY, J. ELLIS, P. FLOWERS, S. MORIGEAU, J. COHENOUR, T.  
 3 FRANCE, M. MARLER  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING OPENCUT MINING LAWS; EXEMPTING  
 6 CERTAIN PERMITS FROM ENVIRONMENTAL REVIEW; AND AMENDING SECTION 82-4-432, MCA;  
 7 REVISING DEFINITIONS; REQUIRING THAT RECLAMATION BE COMPATIBLE WITH EXISTING USES;  
 8 EXPANDING PUBLIC COMMENT REQUIREMENTS; SUBJECTING AMENDMENTS TO THE PUBLIC  
 9 HEARING PROCESS; REQUIRING PLANS OF OPERATION TO PREVENT RUNOFF AND MINIMIZE NOISE  
 10 AND VISUAL IMPACTS; ALLOWING FOR MONITORING; AND AMENDING SECTIONS 82-4-403, 82-4-431,  
 11 82-4-432, AND 82-4-434, MCA."  
 12

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

14  
 15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:

17  
 18 **Section 1.** Section 82-4-432, MCA, is amended to read:

19 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) (a) An operator who  
 20 requires a permit pursuant to 82-4-431 shall apply for a permit on forms furnished by the department prior to  
 21 commencing operations.

22 (b) Operations subject to subsections (2) through (13) are those:

23 (i) that affect ground water or surface water, including intermittent or perennial streams, or water  
 24 conveyance facilities; or

25 (ii) where 10 or more occupied dwelling units are within one-half mile of the permit boundary of the  
 26 operation.

27 (c) All other operations are subject to subsection (14).

28 (2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using

- 1 forms furnished by the department and must contain the following:
- 2 (i) the name of the applicant and, if other than the owner of the land, the name and address of the
- 3 owner;
- 4 (ii) the type of operation to be conducted;
- 5 (iii) the estimated volume of overburden and materials to be removed;
- 6 (iv) the location of the proposed opencut operation by legal description and county accompanied
- 7 by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed
- 8 site; and
- 9 (v) a statement that the applicant has the legal right to mine the designated materials in the lands
- 10 described.
- 11 (b) The application must be accompanied by:
- 12 (i) a bond or security meeting the requirements as set out in this part;
- 13 (ii) a statement from the local governing body having jurisdiction over the area to be mined
- 14 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning
- 15 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the
- 16 time a written request is received for a preapplication meeting pursuant to this section;
- 17 (iii) a plan of operation that contains information sufficient to initiate acceptability review by
- 18 addressing the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434;
- 19 (iv) written documentation that the landowner has been consulted about the proposed plan of
- 20 operation;
- 21 (v) a written agreement between the landowner and the operator authorizing the operator access
- 22 to the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;
- 23 (vi) a list that is certified by the operator and generated on a form furnished by the department
- 24 using cadastral and field information at the time of permit application of owners of real property on which
- 25 occupied dwelling units exist located within one-half mile of the proposed permit boundary using the owners of
- 26 record as shown no more than 60 days prior to the submission of an application in the paper or electronic
- 27 records of the county clerk and recorder for the county where the proposed opencut operation is located; and
- 28 (vii) documentation of consultation with the state historic preservation office regarding possible

1 archaeological or historical values on the affected land.

2 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an  
3 application and requests that the department examine the area to be mined, the department shall examine the  
4 area and make recommendations to the person regarding the proposed opencut operation. The person may  
5 request a preapplication meeting with the department. The department shall hold a meeting if requested.

6 (4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application, the department  
7 shall, within 5 working days, review the application and notify the person as to whether or not the application is  
8 complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department  
9 determines that the application is not complete, the department shall notify the applicant in writing and include a  
10 detailed identification of information necessary to make the application complete.

11 (ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until  
12 the department determines that the application is complete.

13 (b) (i) A determination that an application is complete does not ensure that the application is  
14 acceptable and does not limit the department's ability to request additional information or inspect the site during  
15 the review process.

16 (ii) Upon determining that an application is complete, the department shall begin reviewing the  
17 application for acceptability pursuant to this section.

18 (iii) The department shall accept public comment throughout the review process.

19 (c) The department may declare an application abandoned and void if:

20 (i) the applicant fails to respond to the department's written request for more information within 1  
21 year; and

22 (ii) the department notifies the applicant of its intent to abandon the application and the applicant  
23 fails to provide information within 30 days.

24 (d) The department shall notify the applicant when an application is complete and post the  
25 complete application on the department's website.

26 (5) Within 15 days after the department sends notice of a complete application to the applicant, the  
27 applicant shall provide public notice, which must include:

28 (a) the name, address, and telephone number of the applicant;

1 (b) a description of the acreage, the estimated volume of overburden and materials to be removed,  
2 the type of materials to be removed, the facilities, the duration of activities, and the access points of the  
3 proposed opencut operation;

4 (c) a legal description of the proposed opencut operation and a map, or directions on how to  
5 access a map, showing the location of the proposed opencut operation and immediately surrounding property;  
6 and

7 (d) on a form provided by the department, notification that the application is complete and  
8 information on how to request a public meeting pursuant to this section.

9 (6) To provide public notice, the applicant shall:

10 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed  
11 opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed  
12 opencut operation, the notice provides an address for the map posted on the department's website and  
13 instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the  
14 applicant shall promptly provide a paper copy to a requestor.

15 (b) mail the notice by first-class mail to the board of county commissioners of the county in which  
16 the proposed opencut operation is located and to surface owners of land located within one-half mile of the  
17 boundary of the proposed opencut permit area using the most current known owners of record as shown in the  
18 paper or electronic records of the county clerk and recorder for the county where the proposed opencut  
19 operation is located;

20 (c) post the notice in at least two prominent locations at the site of the proposed opencut  
21 operation, including near a public road if possible; and

22 (d) provide the department with the names and addresses of those notified pursuant to subsection  
23 (6)(b).

24 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public  
25 meeting for 45 days after the department sends notice to the applicant of a complete application. Within this  
26 period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant  
27 as to whether or not the application is acceptable pursuant to subsection (10).

28 (b) If the applicant and the department mutually agree or the applicant submits documentation on

1 a form provided by the department showing that a public meeting will not be required pursuant to subsection  
2 (9), the department shall inform the applicant within 30 days of the notice of a complete application as to  
3 whether or not the application is acceptable pursuant to subsection (10).

4 (8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date  
5 of the public meeting request period in subsection (7), the department shall:

6 (a) hold a meeting; and

7 (b) notify the applicant as to whether or not the application is acceptable pursuant to subsection  
8 (10) or that the application requires an extended review pursuant to 82-4-439.

9 (9) (a) The department shall hold a public meeting in the area of the proposed opencut operation  
10 at the request of:

11 (i) the applicant; or

12 (ii) at least 51% of the real property owners on which occupied dwelling units exist or 10 real  
13 property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section.

14 For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be  
15 counted as a single real property owner.

16 (b) To provide notice for a public meeting, the department shall notify by first-class mail or  
17 electronically the property owners on the list provided by the applicant pursuant to this section and the board of  
18 county commissioners in the county where the proposed opencut operation is located.

19 (10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2)  
20 and includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this  
21 part related to 82-4-434. If the department determines that the application is not acceptable, the department  
22 shall notify the applicant in writing and include a detailed identification of all deficiencies.

23 (b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the  
24 department shall review the responses and notify the applicant as to whether or not the application is  
25 acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a  
26 detailed identification of the deficiencies.

27 (c) If the application is acceptable, the department shall issue a permit to the operator that entitles  
28 the operator to engage in the opencut operation on the land described in the application.

1 (11) (a) An operator may amend a permit by submitting an amendment application to the  
2 department. Upon receipt of the amendment application, the department shall review it in accordance with the  
3 requirements and procedures in this section. If the amendment application is acceptable, the department shall  
4 issue an amendment to the original permit.

5 (b) An application for an amendment is not subject to the public notice or public meeting  
6 requirements of this section or an extended review pursuant to 82-4-439 unless it proposes an increase in  
7 permitted acreage of 50% or more of the amount of permitted acreage in the current permit.

8 (c) For amendment applications not subject to the public notice and public meeting requirements  
9 of this section, the department shall, within 45 days of notifying the applicant that the application is complete,  
10 notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

11 (12) (a) Except as provided in subsection (12)(b), if weather or other field conditions prevent the  
12 department from conducting an adequate site inspection to evaluate a permit or amendment application, the  
13 time limits provided in subsections (7) and (11) are suspended until the weather or other field conditions allow  
14 for an adequate site inspection.

15 (b) Before suspending time limits, the department shall allow the operator to provide the  
16 information needed from a site inspection by other means, including but not limited to surveys, photos, videos,  
17 or other reports.

18 (13) The department shall post a copy of an acceptable permit or amendment on its website.

19 (14) (a) Operations not described by subsection (1)(b) that apply for a permit or an amendment shall  
20 submit:

21 (i) a landowner consultation form;

22 (ii) documentation of consultation with the state historic preservation office regarding possible  
23 archaeological or historical values on the affected land;

24 (iii) a reclamation bond calculated pursuant to the requirements of 82-4-433 unless exempt  
25 pursuant to 82-4-405;

26 (iv) if applicable, documentation of compliance with Title 87, chapter 5, part 9;

27 (v) a statement from the local governing body having jurisdiction over the area to be mined  
28 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning

1 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the  
2 time a written request is received for a preapplication meeting pursuant to this section;

3 (vi) results from three soil test pits meeting the soil guideline requirements;

4 (vii) the appropriate fee as set forth in 82-4-437 and a \$500 fee to be deposited in the opencut fund  
5 pursuant to 82-4-438;

6 (viii) the proposed permit boundary in a format acceptable to the department and a location map;

7 (ix) a certification from the operator that there are fewer than 10 occupied dwelling units within one-  
8 half mile of the permit boundary of the operation no more than 60 days from the date the application materials  
9 are submitted;

10 (x) certification from the operator that notice of the proposed opencut operation was:

11 (A) published at least twice in a newspaper of general circulation in the locality of the proposed  
12 opencut operation;

13 (B) mailed to surface owners of land located within one-half mile of the boundary of the proposed  
14 opencut permit area using the most current known owners of record as shown in the paper or electronic records  
15 of the county clerk and recorder for the county where the proposed opencut operation is located. If the notice  
16 does not include a map, the applicant shall promptly provide a copy to a requestor.

17 (C) posted in at least two prominent locations at the site of the proposed opencut operation,  
18 including near a public road if possible;

19 (xi) the date the site is to be fully reclaimed.

20 (b) Except as provided in 75-1-208(4)(b), upon Applications under this subsection (14) are exempt  
21 from the provisions of Title 75, chapter 1, parts 1 and 2. Upon receipt of an application under this subsection  
22 (14), the department shall, within 5 working days, review the application and notify the person as to whether or  
23 not the application is complete. An application is complete if it contains the items listed in subsection (14)(a). If  
24 the department determines that the application is not complete, the department shall notify the applicant in  
25 writing and include a detailed identification of information necessary to make the application complete.

26 (c) Upon determining that an application is complete, the department shall begin reviewing the  
27 application for acceptability pursuant to this section. Public comment may be submitted throughout the review  
28 period.

1 (d) Within 15 days of receiving the information required by subsection (14)(a), the department shall  
2 determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If  
3 the requirements are met, the operator may commence the operation on receipt of the notification.

4 (e) If the information submitted does not meet the requirements of subsection (14)(a), the  
5 department shall notify the applicant in writing and include a detailed identification of all deficiencies.

6 (f) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the  
7 department shall review the responses and notify the applicant as to whether the information submitted meets  
8 the requirements of subsection (14)(a). If the information submitted does not meet the requirements, the  
9 department shall notify the applicant in writing and include a detailed identification of the deficiencies.

10 (g) If the information submitted to the department meets the requirements of subsection (14)(a),  
11 the department shall notify the operator in writing. On receipt of the notification, the operator may commence  
12 opencut operations on the land described in the application.

13 (h) The department may prohibit an operation under this section if, at the time of submission of  
14 information required by subsection (14)(a), the operator has a pattern of violations of this part or is in current  
15 violation of this part, rules adopted under this part, or provisions of a permit.

16 (i) Prior to removing materials, the operator shall salvage all of the soil from the area to be  
17 disturbed.

18 (j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter  
19 slopes for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the  
20 surrounding topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions  
21 either present prior to operations or as specified by the landowner, including all access roads used for the  
22 operation unless the landowner requests in writing that specific roads or portions of roads remain in place.  
23 Roads left at the landowner's request must be sized to support the use of the road after operations."  
24

25 - END -