

HOUSE BILL NO. 717

INTRODUCED BY J. FITZPATRICK, M. BERTOGLIO

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TRANSFER OF A MINING OPERATION TO A SUCCESSOR OPERATOR; PROVIDING FOR THE USE OF EMINENT DOMAIN POWERS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 82-4-340 AND 82-4-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 82-4-340, MCA, is amended to read:

**"82-4-340. Successor operator.** (1) ~~When~~ Subject to this part, when one operator succeeds to the interest of another in any uncompleted operation by transfer, including sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed ~~upon~~ on the operator by this part, ~~provided~~ Provided that both operators comply with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land and the ability to operate pursuant to the permit or subsequent modifications approved by the department to the permit consistent with this part, in which case the department shall transfer the permit to the successor operator upon ~~on~~ department approval of the successor operator's bond and the transfer of property interests, as required under this part.

(2) A transfer by the department to a successor operator pursuant to this section may not affect a lien, claim, encumbrance, or interest in the property subject to operations that the department determines are valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or interest. This subsection does not apply to a lien, claim, encumbrance, or interest in a property of the original operator or an affiliate or person controlling the operator or affiliate.

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

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

1 (b) assumes the duty of the former operator to complete reclamation pursuant to this part;

2 (c) operates pursuant to the permit or a subsequent modification approved by the department to  
3 the permit; and

4 (d) and submits to the department:

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

6 (ii) a \$2,000 fee.

7 (4) If the department believes there is a potential to transfer a suspended permit, then the  
8 department may initiate proceedings in district court for eminent domain of the surface, minerals, or other  
9 property interest not held by the United States within or appurtenant to the permit boundary, including ingress  
10 and egress to the permit boundary, if:

11 (a) the department makes written findings that it is in the public interest of Montana taxpayers,  
12 environmental protection, and reclamation. With the written findings, the right of eminent domain must be  
13 considered a public use as included with those listed in 70-30-102. Although not required, the department may  
14 consider the following when determining the public interest:

15 (i) the value of the property, fixtures, and potential for operations if the property is transferred,  
16 based on an inspection and evaluation by the department or at the department's request prior to initiating  
17 eminent domain proceedings pursuant to Title 70, chapter 30;

18 (ii) the existence of tax liens on the property;

19 (iii) the financial liability to the Montana taxpayers for the cost of reclamation or remediation by the  
20 department of the operation pursuant to 82-4-341;

21 (iv) whether the county or counties where the permitted operation is located agree that transferring  
22 the property interest is in the best interest of the county or counties; and

23 (v) whether there is an immediate environmental need;

24 (b) the property interest is within or appurtenant to the permit boundary of an operator that has  
25 been:

26 (i) prohibited from mining pursuant to 82-4-360 for at least 1 year from the date of notice to the  
27 operator of the prohibition and the operator does not have a timely, pending appeal pursuant to this part; and

28 (ii) issued a violation letter by the department pursuant to 82-4-361 on a transferred permit;

1           (c) the available bond is insufficient for the permitted operation and the amount of the bond  
 2 forfeited pursuant to 82-4-341 is less than the bond amount calculated pursuant to 82-4-338; and

3           (d) there is a successor operator who can operate under a permit transferred pursuant to  
 4 subsection (1). The department and the proposed successor operator may enter into an agreement for the  
 5 transfer of the property when it is condemned and the department takes possession pursuant to subsection (5).

6           (5) If the department initiates eminent domain proceedings pursuant to Title 70, chapter 30, and  
 7 requests immediate possession of the property pursuant to 70-30-311, then the court shall grant the  
 8 department immediate possession of the property prior to determining compensation.

9           (6) An eligible successor operator may post the bond required by 70-30-311(3) in accordance with  
 10 an agreement entered pursuant to 82-4-340(4)(d).

11           (7) After the department is in possession of the property, the court shall determine compensation  
 12 pursuant to 70-30-302, except that when determining the value of the property interest the commissioners shall  
 13 consider:

14           (a) the greater of the amount:

15           (i) equal to the difference between the bond amount forfeited pursuant to 82-4-341 and the bond  
 16 amount calculated pursuant to 82-4-338; or

17           (ii) necessary to complete site reclamation;

18           (b) the amount of a tax lien against the property;

19           (c) the value of mineral interests, development potential, or future mining based solely on the  
 20 value while in the possession of the original operator, who is prohibited from mining pursuant to 82-4-360; and

21           (d) other costs incurred by the state to suspend, terminate, or transfer the permit and recover the  
 22 forfeited bond.

23           (8) Nothing in this section limits the department's ability to modify the transferred permit or  
 24 reclamation plan pursuant to this part."

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26           **Section 2.** Section 82-4-341, MCA, is amended to read:

27           **"82-4-341. Compliance -- reclamation by department.** (1) The department shall cause the permit  
 28 area to be inspected at least annually to determine whether the permittee has complied with this part, the rules

1 adopted under this part, or the permit.

2 (2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or  
3 as required pursuant to subsection (9). Following written notice by the department noting deficiencies, the  
4 permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until  
5 the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be  
6 corrected in accordance with the applicable time provisions of those laws. The department may extend  
7 performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control,  
8 but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

9 (3) Within 30 days after notification by the permittee and when, in the judgment of the department,  
10 reclamation of a unit of disturbed land area is properly completed, the department shall provide the public  
11 notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and  
12 hearing, the permittee must be notified in writing and the bond on the area must be released or decreased  
13 proportionately to the acreage included within the bond coverage.

14 (4) The department shall cause the bond to be forfeited if:

15 (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the  
16 permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

17 (b) reclamation is not properly completed in conformance with the reclamation plan within 2 years  
18 after completion or abandonment of operation on any fraction of the permit area or within a longer period that  
19 may have been authorized under this part; or

20 (c) after default by the permittee, the surety either refuses or fails to perform the work to the  
21 satisfaction of the department within the time required.

22 (5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid  
23 within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an  
24 action on behalf of the state in district court.

25 (6) The department may, with the staff, equipment, and material under its control or by contract  
26 with others, take any necessary actions for required reclamation of the disturbed lands according to the existing  
27 reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications  
28 are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure.

1 Except in an environmental emergency, work provided for in this section must be let on the basis of competitive  
2 bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or  
3 activity authorized under this section, including a reasonable charge for the services performed by the state's  
4 personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the  
5 bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department  
6 shall return to the surety any amount not expended, including any unexpended interest accrued on bond  
7 proceeds, unless otherwise agreed to in writing by the surety.

8 (7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy  
9 specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily  
10 complete reclamation work on any segment of the permit area within 2 years or within a longer period that the  
11 department may permit on the permittee's application or on the department's own motion, after completion or  
12 abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of  
13 a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not  
14 be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

15 (8) (a) Except as provided in subsection (8)(e), the department may hold a permit suspended  
16 pursuant to 82-4-338 for up to 5 years and place the proceeds from a cash bond forfeited under this section in  
17 an interest-bearing account if mining of the ore body identified in the permit or a permit amendment application  
18 is not complete. The 5-year period begins on the date the department takes possession of the bond proceeds.

19 (b) The department may spend bond proceeds from the account during the suspension period to:

20 (i) perform maintenance, monitoring, and other actions required by the permit;

21 (ii) abate imminent danger to public health, public safety, or the environment; or

22 (iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may  
23 cause violations of those provisions.

24 (c) The department may transfer a permit suspended under this section as provided by 82-4-340  
25 and the associated property interest pursuant to 70-30-311 to grant the condemnor immediate possession and  
26 provide compensation to the property owner pursuant to 70-30-302. The balance of funds in the account must  
27 be retained as a cash bond on behalf of the successor operator.

28 (d) A transfer by the department to a successor operator pursuant to subsection (2) may not affect

1 a lien, claim, encumbrance, or interest in the property subject to operations, which the department determines  
2 is valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or  
3 interest. This subsection (8)(d) does not apply to a lien, claim, encumbrance, or interest in a property of the  
4 original operator or an affiliate or person controlling the operator or affiliate.

5 ~~(d)~~ (e) The department may revoke a permit suspended under this section if a transfer is not  
6 completed within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant  
7 to subsection (6).

8 ~~(e)~~ (f) The department may extend a suspension up to 6 months if a potential successor operator is  
9 exercising reasonable diligence to complete the transfer. If litigation precludes the transfer, the suspension is  
10 stayed until the litigation is resolved.

11 (g) If the department forfeits a bond pursuant to subsection (8)(a), the operator is liable to the  
12 department for the insufficient bond amount, which is the difference between the bond amount forfeited  
13 pursuant to 82-4-341 and the bond amount calculated pursuant to 82-4-338. This amount is not subject to a  
14 bona fide dispute. The department may initiate cases and proceedings to recover the insufficient bond amount.

15 (9) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing  
16 has occurred on a mine permit area for the past 5 years, the department shall determine whether further  
17 suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or  
18 significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title  
19 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee  
20 that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence  
21 reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee  
22 does not abate the conditions or commence reclamation within the time specified in the notice and any  
23 extensions, the department shall order either that the condition be abated or that reclamation be commenced.

24 (b) The permittee may request a hearing on the order by submitting a written request for hearing  
25 within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the  
26 department determines in writing that the stay will create an imminent threat of significant environmental harm  
27 or will significantly impair reclamation."  
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1            NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are  
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
3 the part remains in effect in all valid applications that are severable from the invalid applications.

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5            NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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