

SECTION 82-4-360, MCA

METAL MINE RECLAMATION

Is it clear enough to carry out legislative intent?

A Report Prepared for the
Legislative Finance Committee
by

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September 22, 2000



PURPOSE AND SCOPE

The purpose of this report is to provide a written review of 82-4-360 MCA to the Legislative Finance Committee (LFC). More specifically, the report provides a description of what this statute accomplishes and identifies some situations the statute does not address.

REVIEW

During the June 9, 2000 Legislative Finance Committee Meeting, branch staff was asked to perform a review of 82-4-360 MCA. The LFC asked staff to provide input on whether or not the statute was clear enough to carry out legislative intent.

82-4-360. Activity prohibited if bond forfeited -- exception. (1) *Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part.*

(2) *A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:*

(a) *the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;*

(b) *the full amount of any penalties assessed under this part; and*

(c) *interest on these amounts and penalties incurred at the rate of 6% per year.*

History: En. Sec. 7, Ch. 93, L. 1989; amd. Sec. 400, Ch. 418, L. 1995; amd. Sec. 296, Ch. 42, L. 1997.

Because only the legislature can determine intent of its legislation, this discussion will focus on what the 82-4-360 MCA does and what it does not do.

Based upon the language contained in this section, it appears that 82-4-360:

- 1) Prohibits a person from mining if that person or firm in which that person was associated had a bond forfeited.
- 2) Provides an exception if that person pays any reclamation expenses incurred by the department and any penalties and interest owed. If the person or firm pays the required expenses they may once again apply for licenses and permits for exploration or operations. Or in the case of a small miner, he or she may complete a written agreement as required under 82-4-341 MCA.

This section does not:

- 1) Prohibit a person from mining if that person or firm defaulted on a bond or otherwise fails to perform reclamation. Thus, it appears that the statute does not distinguish between forfeiting a bond and defaulting on the reclamation responsibility after the mining operation has ceased.

- 2) Prohibit a person from mining if that person or firm fails to comply with an order to increase a bond amount before or after a mine has closed. If the department determines that conditions exist that warrant an increase in the amount of the bond, the miner can continue to operate without providing additional bonding.
- 3) Prohibit a person from mining if that person or firm has a history of environmental or metal mine violations.
- 4) Prohibit a person from mining if that person or firm has a history of bond forfeitures or defaults in other states.

CONCLUSION

It appears that miners can continue to operate even if they violate mining and environmental laws as long as they continue to show a good faith effort toward their reclamation requirements – or pay the department for reclamation costs plus penalty and interest. If this is the intent of the legislature no statutory change is needed and the law is functioning properly.

However, if the legislature would like to address some of the areas the statute does not, statutory changes are needed. For example, if it is the intent of the legislature to prevent miners that violate environmental laws from operating even when they perform reclamation, then statutory changes are necessary.