

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 372

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO MINERAL RIGHTS ON STATE LANDS; AMENDING SECTION 47-718, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO REVISE THE INTEREST RATE FOR CERTAIN VIOLATIONS RELATING TO MINERAL EXTRACTATIONS ON STATE LANDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-718, Idaho Code, be, and the same is hereby amended to read as follows:

47-718. VIOLATIONS -- REMEDIES -- PENALTIES. (1) In addition to any other penalties and remedies of this chapter and at law, any person, firm, or corporation who violates any provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed thereby, or who violates any determination or order thereunder or any violation of a lease granted under this chapter, the director of the department of lands may:

(a) Proceed by legal action in the name of the state of Idaho to enjoin the violation, by temporary restraining order, preliminary injunction and/or permanent injunction.

~~1-~~(i) The court, or a judge thereof at chambers, if satisfied from a verified complaint or by affidavit that the alleged violation has been or is being committed, may issue a temporary restraining order, without notice or bond, enjoining the defendant, his agents, employees, contractors and assigns from further violation, or from conducting exploration or mining on the state lands affected by the violation.

~~2-~~(ii) The verified complaint or affidavit that the alleged violation has been or is being committed shall constitute prima facie evidence of great or irreparable injury and/or great waste sufficient to support the temporary restraining order.

~~3-~~(iii) The action shall thereafter proceed as in other cases for injunctions. If at the trial the violation is established, the court shall enter a decree perpetually enjoining said defendant, his agents, employees, contractors and assigns from thereafter committing said or similar violations.

(b) Proceed by legal action in the name of the state of Idaho to obtain an order requiring the operator to promptly repair the damage and reclaim the state lands in accordance with the requirements of section 47-703A, Idaho Code, and rules adopted pursuant thereto. If thereafter the court finds that the operator is not promptly complying with such order, the court shall order the operator to immediately pay an amount determined by the department to be the anticipated cost of reasonable repair and reclamation in accordance with section 47-703A(2), Idaho Code, and rules adopted pursuant thereto.

1 (c) Proceed to forfeit the operator's bond required by section  
 2 47-703A(1), 47-704(6) or 47-708, Idaho Code. The board may cause to  
 3 have issued and served upon the operator alleged to be committing such  
 4 violation, a formal complaint which includes a statement of the man-  
 5 ner in and the extent to which said operator is alleged to be violating  
 6 the provisions of this act. Such complaint may be served by certified  
 7 mail, and return receipt signed by the lessee, an officer of a corporate  
 8 lessee, or the designated agent of the lessee shall constitute service.  
 9 The lessee shall answer the complaint and request a hearing before a  
 10 designated hearing officer within thirty (30) days from receipt of the  
 11 complaint if matters asserted in the complaint are disputed. If the  
 12 lessee fails to answer the complaint and request a hearing, the matters  
 13 asserted in the complaint shall be deemed admitted by the lessee, and  
 14 the board may proceed to forfeit the bond in the amount necessary to re-  
 15 claim affected lands and pay for any outstanding royalties and related  
 16 administrative costs. The director of the department of lands is empow-  
 17 ered to issue subpoenas. The hearing shall be conducted in accordance  
 18 with chapter 52, title 67, Idaho Code. The hearing officer shall enter  
 19 an order in accordance with chapter 52, title 67, Idaho Code. Appeal to  
 20 a district court shall be in accordance with chapter 52, title 67, Idaho  
 21 Code.

22 (d) Cancel the lease in accordance with section 47-707, Idaho Code.

23 (2) In addition to the injunctive remedies of subsection (1) (a) of this  
 24 section:

25 (a) Proceed in the first instance by legal action in the name of the  
 26 state of Idaho to recover from an operator who without bond has con-  
 27 ducted or is conducting exploration with heavy equipment on state  
 28 lands, including lands between the ordinary high watermarks of naviga-  
 29 ble rivers, the cost of repairing damage to and reclaiming the affected  
 30 state lands in accordance with section 47-703A(2), Idaho Code, and  
 31 rules adopted pursuant thereto; or if the bond on file with the depart-  
 32 ment of lands is not sufficient to adequately reclaim the affected state  
 33 lands, to recover the cost in excess of the bond to reclaim the affected  
 34 state lands in accordance with section 47-703A(2), Idaho Code, and  
 35 rules adopted pursuant thereto.

36 (b) Proceed by legal action in the name of the state of Idaho to recover  
 37 from an operator who has removed minerals in commercial quantities from  
 38 state lands, including lands between the ordinary high watermarks of  
 39 navigable rivers, in violation of the provisions of section 47-717,  
 40 Idaho Code, damages in the amount of the prevailing royalty rate set by  
 41 the board of land commissioners for the particular mineral removed plus  
 42 interest from the date of removal at the average annual interest legal  
 43 rate of the investment board interest due on money judgments set by the  
 44 Idaho state treasurer pursuant to section 28-22-104, Idaho Code, from  
 45 the date of removal to judgment.

46 (3) In addition to any other penalties or injunctive remedies of this  
 47 chapter, any person, firm, or corporation who violates any of the provisions  
 48 of this chapter or rules adopted pursuant thereto, or who fails to perform  
 49 the duties imposed by these provisions, or who violates any determination or  
 50 order promulgated pursuant to the provisions of this chapter, shall be li-

1     able to a civil penalty of not less than one hundred dollars (\$100) nor more  
2     than one thousand dollars (\$1,000) for each day during which any provision of  
3     this chapter, rule or order has been or is being violated. All sums recovered  
4     shall be credited to the general fund.

5             (4) An appeal from a final judgment of the district court shall be taken  
6     in the manner provided by law for appeals in civil cases.