

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0737.01 Thomas Morris x4218

HOUSE BILL 18-1301

HOUSE SPONSORSHIP

Roberts and McLachlan, Arndt

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF WATER QUALITY FROM ADVERSE
102 IMPACTS CAUSED BY MINERAL MINING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law does not address reliance on perpetual water treatment as the means to minimize impacts to water quality in a reclamation plan for a mining operation. **Section 1** of the bill requires most reclamation plans to demonstrate, by substantial evidence, an end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Current law allows a mining permittee to submit an audited financial statement as proof that the operator has sufficient funds to meet its reclamation liabilities in lieu of a bond or other financial assurance. **Section 2** eliminates this self-bonding option and also requires that all reclamation bonds include financial assurances in an amount sufficient to protect water quality, including costs for any necessary treatment and monitoring costs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 34-32-116, **amend**
3 (3), (7) introductory portion, and (7)(g) as follows:

4 **34-32-116. Duties of operators - reclamation plans.** (3) On the
5 anniversary date of the permit each year, the operator shall submit:

6 (a) ~~a report and~~ A map showing the extent of current disturbances
7 to affected land; AND

8 (b) A REPORT DESCRIBING THE AFFECTED LAND AND THE
9 SURROUNDING AREA, INCLUDING:

10 (I) CHANGES OVER THE PRECEDING YEAR REGARDING ANY
11 DISTURBANCES TO THE PREVAILING HYDROLOGICAL BALANCE;

12 (II) CHANGES OVER THE PRECEDING YEAR REGARDING ANY
13 DISTURBANCES TO THE QUALITY AND QUANTITY OF WATER IN SURFACE
14 AND GROUNDWATER SYSTEMS;

15 (III) Reclamation accomplished to date and during the preceding
16 year;

17 (IV) New disturbances that are anticipated to occur during the
18 upcoming year; and

19 (V) Reclamation that will be performed during the upcoming year.

20 (7) Reclamation plans and the implementation thereof shall OF
21 RECLAMATION PLANS MUST conform to the following general
22 requirements:

1 (g) (I) Disturbances to the prevailing hydrologic balance of the
2 affected land and of the surrounding area and to the quality and quantity
3 of water in surface and groundwater systems both during and after the
4 mining operation and during reclamation shall be minimized.

5 (II) EXCEPT AS SPECIFIED IN SUBSECTION (7)(g)(III) OF THIS
6 SECTION, A RECLAMATION PLAN FOR A NEW OR AMENDED PERMIT MUST
7 DEMONSTRATE, BY SUBSTANTIAL EVIDENCE, AN END DATE FOR ANY
8 WATER QUALITY TREATMENT NECESSARY TO ENSURE COMPLIANCE WITH
9 APPLICABLE WATER QUALITY STANDARDS.

10 (III) THE BOARD MAY APPROVE A RECLAMATION PLAN THAT LACKS
11 SUBSTANTIAL EVIDENCE OF AN END DATE FOR ANY NECESSARY WATER
12 QUALITY TREATMENT ONLY IF THE NEW OR AMENDED PERMIT INCLUDES AN
13 ENVIRONMENTAL PROTECTION PLAN AND RECLAMATION PLAN ADEQUATE
14 TO ENSURE COMPLIANCE WITH APPLICABLE WATER QUALITY STANDARDS
15 AND UPON MAKING A WRITTEN DETERMINATION:

16 (A) FOR A RECLAMATION PLAN AMENDMENT, THAT THE WATER
17 QUALITY IMPACTS THAT HAVE OCCURRED OR ARE OCCURRING FOR WHICH
18 NO REASONABLE END DATE FOR WATER QUALITY TREATMENT CAN BE
19 ESTABLISHED WERE EITHER UNFORESEEN AT THE TIME OF APPROVAL OF
20 THE RECLAMATION PLAN OR EXISTING AT A PERMITTED MINE SITE BEFORE
21 JANUARY 1, 2018; OR

22 (B) FOR A NEW OR AMENDED RECLAMATION PLAN FOR A PERMIT
23 INVOLVING A SITE THAT WAS PREVIOUSLY MINED BUT WAS NOT PERMITTED
24 AS OF JANUARY 1, 2018, THAT EXISTING WATER QUALITY CONDITIONS DO
25 NOT MEET APPLICABLE WATER QUALITY STANDARDS AND NO REASONABLE
26 END DATE FOR WATER QUALITY TREATMENT CAN BE ESTABLISHED.

27 (IV) Nothing in this ~~paragraph (g) shall be construed to allow~~

1 SUBSECTION (7)(g) ALLOWS the operator to avoid compliance with other
2 APPLICABLE statutory provisions governing well permits, and
3 augmentation requirements, and replacement plans. ~~when applicable.~~

4 **SECTION 2.** In Colorado Revised Statutes, 34-32-117, **amend**
5 (4)(b)(I), (6)(b), and (6)(c); and **repeal** (3)(f)(VI) and (3)(f)(VII) as
6 follows:

7 **34-32-117. Warranties of performance - warranties of**
8 **financial responsibility - release of warranties - applicability.**

9 (3) (f) Proof of financial responsibility may consist of any one or more
10 of the following, subject to approval by the board:

11 (VI) ~~A certified financial statement for the financial warrantor's~~
12 ~~most recent fiscal year and a certification by an independent auditor that:~~

13 (A) ~~The financial warrantor is the issuer of one or more currently~~
14 ~~outstanding senior credit obligations that have been rated by a nationally~~
15 ~~recognized rating organization;~~

16 (B) ~~Said obligations enjoy a rating of 'A' or better; and~~

17 (C) ~~At the close of the financial warrantor's most recent fiscal~~
18 ~~year, his or her net worth was equal to or greater than two times the~~
19 ~~amount of all financial warranties;~~

20 (VII) ~~A certified financial statement for the financial warrantor's~~
21 ~~most recent fiscal year and a certification by an independent auditor that~~
22 ~~as of the close of said year:~~

23 (A) ~~The financial warrantor's net worth was at least ten million~~
24 ~~dollars and was equal to or greater than two times the amount of all~~
25 ~~financial warranties;~~

26 (B) ~~The financial warrantor's tangible fixed assets in the United~~
27 ~~States were worth at least twenty million dollars;~~

1 ~~(C) The financial warrantor's total liabilities-to-net-worth ratio~~
2 ~~was not more than two to one; and~~

3 ~~(D) The financial warrantor's net income, excluding nonrecurring~~
4 ~~items, was positive. Nonrecurring items which affect net income should~~
5 ~~be stated in order to determine if they materially affect self-bonding~~
6 ~~capacity.~~

7 (4) (b) (I) In any single year during the life of a permit, the amount
8 of required financial warranties ~~shall~~ MUST not exceed the estimated cost
9 of fully reclaiming all lands to be affected in said year, plus all lands
10 affected in previous permit years and not yet fully reclaimed. For the
11 purpose of this ~~paragraph (b)~~ SUBSECTION (4)(b)(I), reclamation costs
12 shall be computed with reference to current reclamation costs. The
13 amount of the financial warranty ~~shall~~ MUST be sufficient to assure the
14 completion of reclamation of affected lands if the office has to complete
15 ~~such~~ THE reclamation due to forfeiture, ~~Such~~ INCLUDING ALL MEASURES
16 COMMENCED OR REASONABLY FORESEEN TO ASSURE THE PROTECTION OF
17 WATER RESOURCES, INCLUDING COSTS NECESSARY TO COVER WATER
18 QUALITY PROTECTION, TREATMENT, AND MONITORING AS MAY BE
19 REQUIRED BY PERMIT. THE financial warranty ~~shall~~ MUST include an
20 additional amount equal to five percent of the amount of the financial
21 warranty to defray the administrative costs incurred by the office in
22 conducting the reclamation.

23 (6) (b) Each financial warrantor providing proof of financial
24 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~
25 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or in
26 ~~subsection (8) of this section~~ shall annually cause to be filed with the
27 board a certification by an independent auditor that, as of the close of the

1 financial warrantor's most recent fiscal year, the financial warrantor
2 continued to meet all applicable requirements of ~~said subparagraphs~~ THE
3 APPLICABLE SUBSECTION. Financial warrantors ~~who~~ THAT no longer meet
4 ~~said~~ THE requirements shall instead cause to be filed an alternate form of
5 financial warranty.

6 (c) Each financial warrantor providing proof of financial
7 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~
8 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or in
9 ~~subsection (8) of this section~~ shall notify the board within sixty days of
10 any net loss incurred in any quarterly period.

11 **SECTION 3.** In Colorado Revised Statutes, 34-32-122, **amend**
12 (2) as follows:

13 **34-32-122. Fees, civil penalties, and forfeitures - deposit -**
14 **emergency response cash fund - created.** (2) Any applicant that desires
15 to utilize the self-insurance provisions listed in section 34-32-117
16 (3)(f)(IV), ~~to (3)(f)(VII)~~ (3)(f)(V), or (8) shall pay an annual fee to the
17 office sufficient to defray the actual cost to the office of establishing and
18 reviewing the financial warranty of the applicant. These funds are hereby
19 annually made available to the office, which shall utilize outside financial
20 and legal services for this purpose.

21 **SECTION 4. Act subject to petition - effective date -**
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
23 the expiration of the ninety-day period after final adjournment of the
24 general assembly (August 8, 2018, if adjournment sine die is on May 9,
25 2018); except that, if a referendum petition is filed pursuant to section 1
26 (3) of article V of the state constitution against this act or an item, section,
27 or part of this act within such period, then the act, item, section, or part

1 will not take effect unless approved by the people at the general election
2 to be held in November 2018 and, in such case, will take effect on the
3 date of the official declaration of the vote thereon by the governor.

4 (2) This act applies to conduct occurring on or after the applicable
5 effective date of this act.