

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 19-0083.01 Thomas Morris x4218

HOUSE BILL 19-1113

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House Committees
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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.

SENATE
3rd Reading Unamended
March 14, 2019

SENATE
Amended 2nd Reading
March 13, 2019

HOUSE
3rd Reading Unamended
February 7, 2019

HOUSE
Amended 2nd Reading
February 6, 2019

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 HYDROLOGIC 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 SUBSECTIONS (7)(g)(III) AND
6 (7)(g)(IV) OF THIS SECTION, A RECLAMATION PLAN FOR A NEW OR
7 AMENDED PERMIT MUST DEMONSTRATE, BY SUBSTANTIAL EVIDENCE, A
8 REASONABLY FORESEEABLE END DATE FOR ANY WATER QUALITY
9 TREATMENT NECESSARY TO ENSURE COMPLIANCE WITH APPLICABLE
10 WATER QUALITY STANDARDS.

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

18 (A) FOR AN AMENDED RECLAMATION PLAN, EXCEPT AS PROVIDED
19 IN SUBSECTION (7)(g)(III)(B) OF THIS SECTION, THAT THE WATER QUALITY
20 IMPACTS THAT HAVE OCCURRED OR ARE OCCURRING FOR WHICH NO
21 REASONABLY FORESEEABLE END DATE FOR WATER QUALITY TREATMENT
22 CAN BE ESTABLISHED WERE EITHER UNFORESEEN AT THE TIME OF
23 APPROVAL OF THE RECLAMATION PLAN OR EXISTING AT A MINE SITE
24 PERMITTED BEFORE JANUARY 1, 2019; OR

25 (B) FOR A NEW OR AMENDED RECLAMATION PLAN FOR A PERMIT
26 INVOLVING A SITE THAT WAS PREVIOUSLY MINED BUT WAS NOT PERMITTED
27 AS OF JANUARY 1, 2019, THAT EXISTING WATER QUALITY CONDITIONS DO

1 NOT MEET APPLICABLE WATER QUALITY STANDARDS AND NO REASONABLY
2 FORESEEABLE END DATE FOR WATER QUALITY TREATMENT CAN BE
3 ESTABLISHED.

4 (IV) THE BOARD MAY APPROVE A NEW RECLAMATION PLAN THAT
5 LACKS SUBSTANTIAL EVIDENCE OF A REASONABLY FORESEEABLE END
6 DATE FOR ANY NECESSARY WATER QUALITY TREATMENT IF A PERMIT
7 APPLICATION IS SUBMITTED AND THE RECLAMATION PLAN IS LIMITED TO
8 RECLAMATION OF ALREADY-MINED ORE OR OTHER WASTE MATERIALS,
9 INCLUDING MINE DRAINAGE OR RUNOFF, AS PART OF A ___ CLEANUP.

10 (V) Nothing in this ~~paragraph (g)~~ shall be construed to allow
11 SUBSECTION (7)(g) ALLOWS the operator to avoid compliance with other
12 APPLICABLE statutory provisions governing well permits, and
13 augmentation requirements, and replacement plans. ~~when applicable.~~

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

17 **34-32-117. Warranties of performance - warranties of**
18 **financial responsibility - release of warranties - applicability - repeal.**

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

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

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

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

27 ~~(C) At the close of the financial warrantor's most recent fiscal~~

1 year, his or her net worth was equal to or greater than two times the
2 amount of all financial warranties;

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

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

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

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

13 (D) The financial warrantor's net income, excluding nonrecurring
14 items, was positive. Nonrecurring items which affect net income should
15 be stated in order to determine if they materially affect self-bonding
16 capacity.

17 (4) (b) (I) In any single year during the life of a permit, the amount
18 of required financial warranties shall MUST not exceed the estimated cost
19 of fully reclaiming all lands to be affected in said year, plus all lands
20 affected in previous permit years and not yet fully reclaimed. For the
21 purpose of this paragraph (b) SUBSECTION (4)(b)(I), reclamation costs
22 shall be computed with reference to current reclamation costs. The
23 amount of the financial warranty shall MUST be sufficient to assure the
24 completion of reclamation of affected lands if the office has to complete
25 such THE reclamation due to forfeiture, Such INCLUDING ALL MEASURES
26 COMMENCED OR REASONABLY FORESEEN TO ASSURE THE PROTECTION OF
27 WATER RESOURCES, INCLUDING COSTS NECESSARY TO COVER WATER

1 QUALITY PROTECTION, TREATMENT, AND MONITORING AS MAY BE
2 REQUIRED BY PERMIT. THE financial warranty ~~shall~~ MUST include an
3 additional amount equal to five percent of the amount of the financial
4 warranty to defray the administrative costs incurred by the office in
5 conducting the reclamation.

6 (6) (b) (I) 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 annually cause to be filed with the
10 board a certification by an independent auditor that, as of the close of the
11 financial warrantor's most recent fiscal year, the financial warrantor
12 continued to meet all applicable requirements of ~~said subparagraphs~~ THE
13 APPLICABLE SUBSECTION. Financial warrantors ~~who~~ THAT no longer meet
14 ~~said~~ THE requirements shall instead cause to be filed an alternate form of
15 financial warranty.

16 (II) (A) THE BOARD SHALL PROVIDE A REASONABLE PERIOD OF
17 TIME, NOT TO EXCEED ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
18 SUBSECTION (6)(b)(II), TO FINANCIAL WARRANTORS THAT, AS OF THE
19 EFFECTIVE DATE OF THIS SUBSECTION (6)(b)(II), HAD PROOF OF FINANCIAL
20 RESPONSIBILITY UNDER SUBSECTION (3)(f)(VI) OR (3)(f)(VII) OF THIS
21 SECTION, AS THEY EXISTED IMMEDIATELY BEFORE THE EFFECTIVE DATE OF
22 THIS SUBSECTION (6)(b)(II), TO FILE AN ALTERNATE FORM OF FINANCIAL
23 WARRANTY.

24 (B) THIS SUBSECTION (6)(b)(II) IS REPEALED, EFFECTIVE
25 SEPTEMBER 1, 2021.

26 (c) Each financial warrantor providing proof of financial
27 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~

1 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or ~~in~~
2 ~~subsection (8) of this section shall notify the board within sixty days of~~
3 any net loss incurred in any quarterly period.

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

6 **34-32-122. Fees, civil penalties, and forfeitures - deposit -**
7 **emergency response cash fund - created - definition.** (2) Any applicant
8 that desires to utilize the self-insurance provisions listed in section
9 34-32-117 (3)(f)(IV), ~~to (3)(f)(VII)~~ (3)(f)(V), or (8) shall pay an annual
10 fee to the office sufficient to defray the actual cost to the office of
11 establishing and reviewing the financial warranty of the applicant. These
12 funds are hereby annually made available to the office, which shall utilize
13 outside financial and legal services for this purpose.

14 **SECTION 4. Act subject to petition - effective date -**
15 **applicability.** (1) Section 34-32-117 (6)(c), as amended in section 2 of
16 this act, takes effect August 2, 2020, and the remainder of this act takes
17 effect at 12:01 a.m. on the day following the expiration of the ninety-day
18 period after final adjournment of the general assembly (August 2, 2019,
19 if adjournment sine die is on May 3, 2019); except that, if a referendum
20 petition is filed pursuant to section 1 (3) of article V of the state
21 constitution against this act or an item, section, or part of this act within
22 such period, then the act, item, section, or part will not take effect unless
23 approved by the people at the general election to be held in November
24 2020 and, in such case, will take effect on the date of the official
25 declaration of the vote thereon by the governor.

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