

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT

LLS NO. 17-0762.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Becker K. and McLachlan,

SENATE SPONSORSHIP

(None),

House Committees

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 limits this option to situations in which the mined land reclamation board determines that perpetual water treatment is necessary to mitigate unforeseen water quality impacts for the protection of human health, property, or the environment.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters 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) 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 a
6 report and a map showing:

7 (a) The extent of current disturbances to:

8 (I) Affected land;

9 (II) THE PREVAILING HYDROLOGIC BALANCE OF THE AFFECTED
10 LAND AND OF THE SURROUNDING AREA; AND

11 (III) THE QUALITY AND QUANTITY OF WATER IN SURFACE AND
12 GROUNDWATER SYSTEMS;

13 (b) Reclamation accomplished to date and during the preceding
14 year;

15 (c) New disturbances that are anticipated to occur during the
16 upcoming year; and

17 (d) Reclamation that will be performed during the upcoming year.

18 (7) Reclamation plans and the implementation thereof shall
19 conform to the following general requirements:

20 (g) Disturbances to the prevailing hydrologic balance of the
21 affected land and of the surrounding area and to the quality and quantity
22 of water in surface and groundwater systems both during and after the

1 mining operation and during reclamation shall be minimized. A
2 RECLAMATION PLAN MUST NOT RELY ON PERPETUAL WATER TREATMENT
3 TO MINIMIZE WATER QUALITY DISTURBANCES UNLESS THE BOARD
4 DETERMINES THAT DOING SO IS NECESSARY TO MITIGATE UNFORESEEN
5 WATER QUALITY IMPACTS FOR THE PROTECTION OF HUMAN HEALTH,
6 PROPERTY, OR THE ENVIRONMENT. Nothing in this ~~paragraph (g)~~
7 SUBSECTION (7)(g) shall be construed to allow the operator to avoid
8 compliance with other statutory provisions governing well permits and
9 augmentation requirements and replacement plans when applicable.

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

13 **34-32-117. Warranties of performance - warranties of**
14 **financial responsibility - release of warranties - applicability.**

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

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

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

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

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

26 ~~(VII) A certified financial statement for the financial warrantor's~~
27 ~~most recent fiscal year and a certification by an independent auditor that~~

1 as of the close of said year:

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

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

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

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

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

1 conducting the reclamation.

2 (6) (b) Each financial warrantor providing proof of financial
3 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~
4 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or in
5 ~~subsection (8)~~ of this section shall annually cause to be filed with the
6 board a certification by an independent auditor that, as of the close of the
7 financial warrantor's most recent fiscal year, the financial warrantor
8 continued to meet all applicable requirements of said ~~subparagraphs~~
9 SUBSECTIONS. Financial warrantors who no longer meet said requirements
10 shall instead cause to be filed an alternate form of financial warranty.

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

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

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

26 **SECTION 4. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly (August 9, 2017, if adjournment sine die is on May 10,
3 2017); except that, if a referendum petition is filed pursuant to section 1
4 (3) of article V of the state constitution against this act or an item, section,
5 or part of this act within such period, then the act, item, section, or part
6 will not take effect unless approved by the people at the general election
7 to be held in November 2018 and, in such case, will take effect on the
8 date of the official declaration of the vote thereon by the governor.

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