

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0298.01 Thomas Morris

HOUSE BILL 08-1165

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 CONCERNING AN INCREASE IN THE REGULATORY AUTHORITY OF THE
102 MINED LAND RECLAMATION BOARD OVER MINING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the mined land reclamation board (board) to:

- Take human health and environmental risks into consideration in the permitting process;
- Regulate mining operations so as to prevent and mitigate significant adverse environmental impacts;
- Recognize the established principle of reasonable accommodation; and

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.

- Protect public health, safety, and welfare, including protection of the environment and wildlife resources.

Increases the board to 9 members, including the executive director of the department of public health and environment (department) and one member representing local governments. Gives the department an opportunity to comment during the board's decision-making process.

Specifies that construction materials mining operations that also extract other minerals are subject to the board's jurisdiction. Makes all information submitted to the board a public record other than information relating to the location, size, or nature of an ore deposit. Increases the time to object to or support an application for a permit to 45 days, and increases the time for filing of an appeal to 60 days.

Establishes that the funding to ensure that reclamation is achieved should be established as a requirement for permit approval and should be borne by the operator. Requires reclamation costs to be calculated based on when the reclamation is anticipated to occur rather than current costs. Limits the types of proof of financial responsibility that a foreign entity formed under a statute or common law of a jurisdiction outside of the United States may provide.

Defines and establishes fees for in situ leach mining. Authorizes the board to take emergency action when an operator fails or refuses to respond to a board order requiring corrective actions for any measure used for in situ leach mining designed to detect, prevent, minimize, or mitigate any adverse impacts on human health, wildlife, or the environment.

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

2 **SECTION 1.** 34-32-102 (1), (2), and (3) (c), Colorado Revised
3 Statutes, are amended to read:

4 **34-32-102. Legislative declaration.** (1) It is declared to be the
5 policy of this state that the extraction of minerals and the reclamation of
6 land affected by such extraction are both necessary and proper activities.
7 It is further declared to be the policy of this state that both such activities
8 should be and are compatible. It is the intent of the general assembly by
9 the enactment of this article to foster and encourage the development of
10 an economically sound and stable mining and minerals industry and to
11 encourage the orderly, SUSTAINABLE development of the state's natural

1 resources while PROTECTING SURFACE OWNERS' RIGHTS BY RECOGNIZING
2 THE ESTABLISHED PRINCIPLE OF REASONABLE ACCOMMODATION,
3 MAINTAINING LOCAL CONTROL OVER MINING ACTIVITIES, AND requiring
4 those persons involved in mining operations to reclaim land affected by
5 such operations so that the affected land may be put to a use beneficial to
6 the people of this state. It is the further intent of the general assembly by
7 the enactment of this article to PROTECT THE PUBLIC HEALTH, SAFETY, AND
8 WELFARE OF THE PEOPLE OF THE STATE, TO conserve natural resources, to
9 aid in the protection of wildlife and aquatic resources, AND to establish
10 agricultural, recreational, residential, and industrial sites. ~~and to protect
11 and promote the health, safety, and general welfare of the people of this
12 state.~~

13 (2) The general assembly further declares that it is the intent of
14 this article to require the development of a mined land reclamation
15 regulatory program in which the economic costs of reclamation measures
16 utilized ARE BORNE BY OPERATORS AND bear a reasonable relationship to
17 the environmental benefits derived from such measures. The mined land
18 reclamation board or the office, when considering the requirements of
19 reclamation measures, shall evaluate the benefits expected to result from
20 the use of such measures. It is also the intent of the general assembly that
21 consideration be given to the economic reasonableness of the action of
22 the mined land reclamation board or the office. In considering economic
23 reasonableness, the financial condition of an operator shall not be a
24 factor.

25 (3) The general assembly further finds, determines, and declares
26 that:

27 (c) The funding to ensure that reclamation is achieved should be

1 ESTABLISHED AS A REQUIREMENT FOR PERMIT APPROVAL AND SHOULD BE
2 borne equitably by both the public and private sectors THE OPERATOR;

3 **SECTION 2.** 34-32-103 (8), Colorado Revised Statutes, is
4 amended, and the said 34-32-103 is further amended BY THE
5 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

6 **34-32-103. Definitions.** As used in this article, unless the context
7 otherwise requires:

8 (5.7) "IN SITU LEACH MINING" MEANS IN SITU MINING THROUGH
9 THE IN-PLACE DISSOLUTION OF MINERAL COMPONENTS OF AN ORE DEPOSIT
10 BY CAUSING A CHEMICAL LEACHING SOLUTION, USUALLY AQUEOUS, TO
11 TRICKLE DOWNWARD OR TO BE PUMPED DOWN WELLS THROUGH THE ORE
12 BODY AND THEN REMOVING THE MINERAL-CONTAINING SOLUTION FOR
13 RECOVERY OF THE MINERAL VALUES; EXCEPT THAT IN SITU LEACH MINING
14 DOES NOT INCLUDE IN SITU MINING FOR SODIUM MINERALS OR OIL SHALE.

15 (5.8) "IN SITU MINING" MEANS THE IN-PLACE RECOVERY OF A
16 MINERAL BY MEANS OTHER THAN OPEN MINING OR UNDERGROUND MINING.

17 (8) "Mining operation" means the development or extraction of a
18 mineral from its natural occurrences on affected land. The term "MINING
19 OPERATION" includes, but is not limited to, open mining, and IN SITU
20 MINING, IN SITU LEACH MINING, surface ~~operation~~ OPERATIONS, and the
21 disposal of refuse from underground and in situ mining. ~~The term~~
22 "MINING OPERATION" includes the following operations on affected lands:
23 Transportation; concentrating; milling; evaporation; and other processing.
24 ~~The term~~ "MINING OPERATION" does not include: The exploration and
25 extraction of natural petroleum in a liquid or gaseous state by means of
26 wells or pipe; the development or extraction of coal; the extraction of
27 geothermal resources; OR smelting, refining, cleaning, preparation,

1 transportation, and other off-site operations not conducted on affected
2 land.

3 **SECTION 3.** 34-32-105 (2), Colorado Revised Statutes, is
4 amended to read:

5 **34-32-105. Office of mined land reclamation - mined land**
6 **reclamation board - created.** (2) The board shall consist of ~~seven~~ NINE
7 members: The executive director, who shall serve as secretary to the
8 board; THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH
9 AND ENVIRONMENT OR HIS OR HER DESIGNEE; a member of the state
10 conservation board appointed by such board; and ~~five~~ SIX persons
11 appointed by the governor with the consent of the senate. Such appointed
12 members shall be: Three individuals with substantial experience in
13 agriculture or conservation, no more than two of whom shall have had
14 experience in agriculture or conservation; ~~and~~ two individuals with
15 substantial experience in the mining industry; ~~Effective July 1, 1976, the~~
16 ~~terms of office of the existing members of the mined land reclamation~~
17 ~~board shall terminate, and, prior thereto, the governor shall appoint two~~
18 ~~members of the board, effective July 1, 1976, whose terms of office shall~~
19 ~~expire March 1, 1977, and three members of the board, effective July 1,~~
20 ~~1976, whose terms of office shall expire March 1, 1979. Subsequent~~
21 AND ONE MEMBER REPRESENTING LOCAL GOVERNMENT INTERESTS.
22 Appointments shall be made for a term of four years. Vacancies shall be
23 filled in the same manner as original appointments for the balance of the
24 unexpired term. All members of the board shall be residents of the state
25 of Colorado. All members of the board except for the executive ~~director~~
26 DIRECTORS shall receive compensation for their service on the board at
27 the rate of fifty dollars per diem and shall be reimbursed for necessary

1 expenses incurred in the performance of their duties on the board. The
2 board shall, by majority vote of all members, ~~elect its chairperson from~~
3 ~~among the appointed members at its first meeting in July, 1976, and the~~
4 ~~board shall~~ elect its chairperson from among the appointed members
5 biannually. ~~thereafter.~~

6 **SECTION 4.** 34-32-106 (1) (c), Colorado Revised Statutes, is
7 amended to read:

8 **34-32-106. Duties of the board.** (1) The board shall:

9 (c) TAKE HUMAN HEALTH AND ENVIRONMENTAL RISKS INTO
10 CONSIDERATION IN THE PERMITTING PROCESS AND develop and
11 promulgate standards for land reclamation plans and substitution of
12 affected lands as provided in section 34-32-116;

13 **SECTION 5.** 34-32-106 (2), Colorado Revised Statutes, is
14 amended to read:

15 **34-32-106. Duties of the board.** (2) It is the duty of the
16 department of agriculture, the department of higher education, the state
17 conservation board, the Colorado geological survey, the division of parks
18 and outdoor recreation, the division of wildlife, the division of water
19 resources, the university of Colorado, Colorado state university, Colorado
20 school of mines, and the state forester to furnish the board and its
21 designees, as far as practicable, whatever data and technical assistance the
22 board may request and deem necessary for the performance of total
23 reclamation and enforcement duties. THE DEPARTMENT OF PUBLIC
24 HEALTH AND ENVIRONMENT SHALL BE GIVEN AN OPPORTUNITY TO
25 PROVIDE COMMENTS, PURSUANT TO A TIMELY AND EFFICIENT PROCEDURE,
26 DURING THE BOARD'S DECISION-MAKING PROCESS REGARDING THE
27 PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE, INCLUDING

1 PROTECTION OF THE ENVIRONMENT.

2 **SECTION 6.** 34-32-107, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **34-32-107. Powers of board.** (3) THE BOARD SHALL REGULATE
5 MINING OPERATIONS SO AS TO:

6 (a) PREVENT AND MITIGATE SIGNIFICANT ADVERSE
7 ENVIRONMENTAL IMPACTS ON ANY AIR, WATER, SOIL, OR BIOLOGICAL
8 RESOURCE RESULTING FROM MINING OPERATIONS;

9 (b) RECOGNIZE THE ESTABLISHED PRINCIPLE OF REASONABLE
10 ACCOMMODATION; AND

11 (c) PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, INCLUDING
12 PROTECTION OF THE ENVIRONMENT AND WILDLIFE RESOURCES.

13 **SECTION 7.** 34-32-109 (6) and (9), Colorado Revised Statutes,
14 are amended to read:

15 **34-32-109. Necessity of reclamation permit - application to**
16 **existing permits.** (6) No governmental office of the state, other than the
17 board, nor any political subdivision of the state shall have the authority
18 to issue a reclamation permit pursuant to this article, to require
19 reclamation standards different than those established in this article, or to
20 require any performance or financial warranty of any kind for mining
21 operations. The operator shall be responsible for assuring that the mining
22 operation and the postmining land use comply with city, town, county, or
23 city and county land use regulations and any master plan for extraction
24 adopted pursuant to section 34-1-304 unless a prior declaration of intent
25 to change or waive the prohibition is obtained by the applicant from the
26 affected political subdivisions. Any mining operator subject to this article
27 shall also be subject to zoning, ~~and~~ land use, AND ENVIRONMENTAL

1 PROTECTION authority and regulation by political subdivisions as provided
2 by law. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT OR
3 PREEMPT THE AUTHORITY OF ANY CITY, TOWN, COUNTY, CITY AND
4 COUNTY, OR OTHER POLITICAL SUBDIVISION TO CONDITION OR PROHIBIT
5 ANY MINING ACTIVITY, OPERATION, OR PROCESS.

6 (9) All mining operations for construction materials, as defined in
7 section 34-32.5-103 (3), shall be subject to ~~the provisions of~~ article 32.5
8 of this title and not this article; EXCEPT THAT, IF SUCH MINING OPERATIONS
9 ARE FOR THE PURPOSE OF OR RESULT IN THE DEVELOPMENT OR
10 EXTRACTION OF A MINERAL THAT INCLUDES MINERALS OTHER THAN
11 CONSTRUCTION MATERIALS, THE MINING OPERATION SHALL BE SUBJECT TO
12 THIS ARTICLE. Construction materials mining operations operating under
13 permits issued prior to July 1, 1995, under ~~the provisions of~~ this article
14 shall continue to operate under such permits, and such permits shall be
15 deemed to be permits issued under ~~the provisions of~~ article 32.5 of this
16 title.

17 **SECTION 8.** 34-32-113 (3) and (5.5) (f), Colorado Revised
18 Statutes, are amended to read:

19 **34-32-113. Prospecting notice - reclamation requirements.**

20 (3) All information provided TO the board in a notice of intent to conduct
21 prospecting IS A MATTER OF PUBLIC RECORD SUBJECT TO THE OPEN
22 RECORDS ACT, PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.; EXCEPT THAT
23 INFORMATION RELATING TO THE LOCATION, SIZE, OR NATURE OF THE ORE
24 DEPOSIT shall be protected as confidential information by the board and
25 SHALL not be a matter of public record in the absence of a written release
26 from the operator or until a finding by the board that reclamation is
27 satisfactory.

1 (5.5) (f) The head of the office may NOT waive any of the
2 administrative provisions of this subsection (5.5). ~~which pertain to~~
3 ~~aquifers upon written application filed with the director.~~

4 **SECTION 9.** 34-32-114, Colorado Revised Statutes, is amended
5 to read:

6 **34-32-114. Protests and petitions for a hearing.** Any person has
7 the right to file written objections to or statements in support of an
8 application for a permit with the board. Such protests or petitions for a
9 hearing shall be timely filed with the board not more than ~~twenty~~
10 FORTY-FIVE days after the date of last publication of notice pursuant to
11 section 34-32-112 (10). For good cause shown in the protest or petition
12 documents, the board, in its discretion, may hold a hearing pursuant to
13 section 34-32-115 on the question of whether the permit should be
14 granted. The applicant shall be notified within ten days of any objections
15 to ~~his~~ THE application and SHALL be supplied with a copy of the written
16 objections.

17 **SECTION 10.** 34-32-115 (3) and the introductory portion to
18 34-32-115 (4), Colorado Revised Statutes, are amended to read:

19 **34-32-115. Action by board - appeals - rules.** (3) If action upon
20 the application is not completed within the period specified in subsection
21 (2) of this section, the permit shall be ~~considered to be~~ DEEMED approved
22 and shall be promptly issued upon presentation by the applicant of a
23 financial warranty in the amount of two thousand dollars per acre affected
24 or such other amount as determined by the board. NOTWITHSTANDING
25 SECTION 24-4-106 (4), C.R.S., A PERSON AGGRIEVED BY THE BOARD'S
26 FINAL AGENCY ACTION MAY FILE AN APPEAL WITH THE DISTRICT COURT
27 WITHIN SIXTY DAYS AFTER SUCH ACTION.

1 (4) The board or the office shall grant a permit to an operator if
2 the application complies with the requirements of this article. EXCEPT AS
3 SPECIFIED IN SUBSECTION (5) OF THIS SECTION, the board or the office
4 shall not deny a permit if the operator demonstrates compliance with the
5 following:

6 **SECTION 11.** 34-32-116.5 (6), Colorado Revised Statutes, is
7 amended to read:

8 **34-32-116.5. Environmental protection plan - designated**
9 **mining operation - rules.** (6) THE BOARD SHALL REFER all applicants
10 APPLICATIONS for new permits ~~shall contact~~ TO the division of wildlife for
11 appropriate wildlife protection recommendations AND TO THE
12 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR APPROPRIATE
13 RECOMMENDATIONS CONCERNING HUMAN HEALTH AND ENVIRONMENTAL
14 RISKS, which RECOMMENDATIONS THE BOARD shall ~~be reviewed~~ REVIEW
15 as part of the application process. ~~If protecting wildlife is determined to~~
16 ~~be necessary by the board,~~ The office may SHALL incorporate such
17 ~~wildlife protection~~ recommendations into the new permit as a condition
18 for such permit IF IT DETERMINES THAT DOING SO IS NECESSARY TO
19 PROTECT HUMAN HEALTH, WILDLIFE, OR THE ENVIRONMENT.

20 **SECTION 12.** The introductory portion to 34-32-117 (3) (f) and
21 34-32-117 (4) (b) (I), Colorado Revised Statutes, are amended to read:

22 **34-32-117. Warranties of performance - warranties of**
23 **financial responsibility - release of warranties - applicability.**

24 (3) (f) Proof of financial responsibility may consist of any one or more
25 of the following, subject to approval by the board; EXCEPT THAT A
26 FOREIGN ENTITY, AS DEFINED IN SECTION 7-90-102, C.R.S., THAT IS
27 FORMED UNDER A STATUTE OR COMMON LAW OF A JURISDICTION OUTSIDE

1 OF THE UNITED STATES MAY NOT PROVIDE PROOF OF FINANCIAL
2 RESPONSIBILITY PURSUANT TO SUBPARAGRAPHS (VI) OR (VII) OF THIS
3 PARAGRAPH (f):

4 (4) (b) (I) In any single year during the life of a permit, the amount
5 of required financial warranties shall not exceed the estimated cost of
6 fully reclaiming all lands to be affected in said year, plus all lands
7 affected in previous permit years and not yet fully reclaimed. For the
8 purpose of this paragraph (b), reclamation costs shall be computed with
9 reference to ~~current~~ THE REASONABLY PREDICTED reclamation costs AS OF
10 THE TIME THE RECLAMATION IS ANTICIPATED TO OCCUR. The amount of
11 the financial warranty shall be sufficient to assure the completion of
12 reclamation of affected lands if the office has to complete such
13 reclamation due to forfeiture. Such financial warranty shall include an
14 additional amount, equal to five percent of the amount of the financial
15 warranty, to defray the administrative costs incurred by the office in
16 conducting the reclamation.

17 **SECTION 13.** The introductory portion to 34-32-124.5 (1) and
18 34-32-124.5 (1) (b) (III), Colorado Revised Statutes, are amended, and
19 the said 34-32-124.5 (1) (b) is further amended BY THE ADDITION OF
20 A NEW SUBPARAGRAPH, to read:

21 **34-32-124.5. Emergencies endangering public health or the**
22 **environment.** (1) Following an investigation, an emergency response
23 ~~shall be~~ IS justified pursuant to section 34-32-122 (3) if the board or
24 office determines that any person is:

25 (b) An operator with a permit who is failing or refusing to respond
26 to a board order requiring corrective actions for:

27 (III) Any other measure identified in such permit or as provided

1 for in this article or any rule promulgated pursuant to this article ~~which~~
2 THAT is intended to protect human health, ~~or~~ property, or the
3 environment; OR

4 (IV) ANY MEASURES TAKEN IN CONNECTION WITH IN SITU LEACH
5 MINING AND DESIGNED TO DETECT, PREVENT, MINIMIZE, OR MITIGATE
6 ADVERSE IMPACTS ON HUMAN HEALTH, WILDLIFE, OR THE ENVIRONMENT.

7 **SECTION 14.** 34-32-127 (2) (a) (I) (N) and (2) (a) (IV) (E),
8 Colorado Revised Statutes, are amended, and the said 34-32-127 (2) (a)
9 (IV) is further amended BY THE ADDITION OF A NEW
10 SUB-SUBPARAGRAPH, to read:

11 **34-32-127. Mined land reclamation fund - created - fees - fee**
12 **adjustments - rules.** (2) (a) Fees for fiscal year 2007-08 and for each
13 subsequent year of operation shall be collected by the office for
14 operations according to the following schedule:

15 (I) Applications pursuant to:

16 (N) ANY PROVISION GOVERNING AN oil shale OR IN SITU LEACH
17 MINING application and amendment fee: If the costs to review and
18 process an oil shale OR IN SITU LEACH MINING application or amendment
19 exceeds twice the value of the fee for a new application or amendment
20 pursuant to sub-subparagraph (H) or (M) of this subparagraph (I), the
21 applicant shall pay the additional costs. The costs shall include those of
22 the division, another division of the department involved in the review,
23 and any consultants or other nongovernmental agents that have specific
24 expertise on the issue in question acting at the request of the division in
25 the review of the oil shale OR IN SITU LEACH MINING permit application.
26 The division shall inform the applicant that the actual fee may exceed
27 twice the value of the listed fee and shall provide the applicant with an

1 estimate of the actual charges for the review of the application or
2 amendment within ten days after receipt of the application. An appeal of
3 this estimate shall be made to the board within ten days after the
4 applicant's receipt of the estimate.

5 (IV) Annual fees for fiscal year 2007-08 and for each subsequent
6 year for operations pursuant to:

7 (E) Section 34-32-112 (for designated mining operations OTHER
8 THAN IN SITU LEACH MINING) \$ 1,150

9 (E.5) SECTION 34-32-112 (FOR IN SITU LEACH MINING) \$ 2,500

10 **SECTION 15. Applicability.** This act shall apply to mining
11 applications filed and mining operations occurring on or after the
12 effective date of this act.

13 **SECTION 16. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.