

1 HOUSE BILL NO. 37

2 INTRODUCED BY B. MCCHESENEY

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING VEGETATIVE COVER OF WATER FACILITY
6 STANDARDS FOR FINAL BOND RELEASE AT COAL AND URANIUM MINES; ELIMINATING THE
7 CONTINGENT VOIDNESS SECTION RELATED TO FEDERAL APPROVAL OF MODIFICATIONS TO THE
8 VEGETATIVE COVER STANDARDS; AMENDING SECTION 82-4-235, MCA; REPEALING SECTION 2,
9 CHAPTER 72, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 82-4-235, MCA, is amended to read:

14 **"82-4-235. (Temporary) Determination of successful revegetation -- final bond release.** (1) Success
15 of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the
16 extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233.
17 Standards for success are:

18 (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior
19 to mining based on comparison with historical data, comparable reference areas, or United States department
20 of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

21 (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living
22 plants on the revegetated area must be at least equal to that of a reference area or other standard approved by
23 the department as appropriate for the postmining land use;

24 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation
25 must be determined on the basis of approved tree density standards or shrub density standards, or both, and
26 vegetative ground cover required to achieve the postmining land use;

27 (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
28 is controlled;

29 (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the
30 10-year responsibility period specified under subsection (2); and

1 (f) plant species composing the reestablished vegetation are considered to have the same seasonal
2 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
3 be compatible with the plant and animal species of the area if those plant species are native to the area or are
4 introduced species approved by the department as desirable and necessary to achieve the postmining land use.

5 (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following
6 an application for final bond release to determine if a satisfactory stand has been established. If the department
7 determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held
8 on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as
9 provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last
10 year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or
11 portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for
12 all exploration activities and all other operations.

13 (3) (a) Vegetative cover of water management facilities and other support facilities composing no more
14 than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water
15 management facilities and other support facilities include ~~but are not limited to~~ sedimentation ponds, diversions,
16 other water management structures, soils stockpiles, and access roads, ~~segments of haul roads, and electrical~~
17 ~~substations.~~

18 (b) Vegetative cover of water management facilities and other support facilities composing no more than
19 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise
20 meets the reclamation standards in subsection (1).

21 (4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed
22 prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or
23 redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under
24 this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the
25 following criteria:

26 (i) it was seeded using a seed mixture that was approved by the department under the criteria
27 established pursuant to 82-4-233 and that included introduced species; and

28 (ii) at least one of the following conditions exists:

29 (A) the standards of 82-4-233(1) are otherwise achieved;

30 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of

1 livestock;

2 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat
3 component for wildlife present in the area; or

4 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the
5 standards of 82-4-232 and the department approves and the operator completes that conversion.

6 (b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting
7 may be performed without reinitiating the liability period provided in subsection (2). ~~(Void on occurrence of
8 contingency--sec. 2, Ch. 72, L. 2009.)~~

9 ~~**82-4-235. (Effective on occurrence of contingency) Determination of successful revegetation --**~~
10 ~~**final bond release.**~~ (1) Success of revegetation must be judged on the effectiveness of the vegetation for the
11 approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and
12 the requirements of 82-4-233. Standards for success are:

13 ~~———(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior~~
14 ~~to mining based on comparison with historical data, comparable reference areas, or United States department~~
15 ~~of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;~~

16 ~~———(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living~~
17 ~~plants on the revegetated area must be at least equal to that of a reference area or other standard approved by~~
18 ~~the department as appropriate for the postmining land use;~~

19 ~~———(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation~~
20 ~~must be determined on the basis of approved tree density standards or shrub density standards, or both, and~~
21 ~~vegetative ground cover required to achieve the postmining land use;~~

22 ~~———(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion~~
23 ~~is controlled;~~

24 ~~———(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the~~
25 ~~10-year responsibility period specified under subsection (2); and~~

26 ~~———(f) plant species composing the reestablished vegetation are considered to have the same seasonal~~
27 ~~characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to~~
28 ~~be compatible with the plant and animal species of the area if those plant species are native to the area or are~~
29 ~~introduced species approved by the department as desirable and necessary to achieve the postmining land use.~~

30 ~~———(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following~~

1 an application for final bond release to determine if a satisfactory stand has been established. If the department
 2 determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held
 3 on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining
 4 bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing,
 5 irrigation, or other work required under this part for those operations or portions of operations that were seeded
 6 after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other
 7 operations:

8 ~~—— (3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to~~
 9 ~~May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in~~
 10 ~~connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the~~
 11 ~~department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:~~

12 ~~—— (i) it was seeded using a seed mixture that was approved by the department under the criteria~~
 13 ~~established pursuant to 82-4-233 and that included introduced species; and~~

14 ~~—— (ii) at least one of the following conditions exists:~~

15 ~~—— (A) the standards of 82-4-233(1) are otherwise achieved;~~

16 ~~—— (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of~~
 17 ~~livestock;~~

18 ~~—— (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat~~
 19 ~~component for wildlife present in the area; or~~

20 ~~—— (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the~~
 21 ~~standards of 82-4-232 and the department approves and the operator completes that conversion:~~

22 ~~—— (b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting~~
 23 ~~may be performed without reinitiating the liability period provided in subsection (2)."~~

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25 NEW SECTION. Section 2. Repealer. Section 2, Chapter 72, Laws of 2009, is repealed.

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27 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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