

## 1 SENATE BILL NO. 328

2 INTRODUCED BY D. ANKNEY, J. SMALL, J. WELBORN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR RELEASING BONDS ON  
5 COAL MINES; DEFINING "AFFECTED DRAINAGE BASIN"; AMENDING SECTIONS 82-4-203 AND 82-4-232,  
6 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7

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

9

10 **Section 1.** Section 82-4-203, MCA, is amended to read:

11 **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
12 apply:

13 (1) "Abandoned" means an operation in which a mineral is not being produced and that the  
14 department determines will not continue or resume operation.

15 (2) "Adjacent area" means the area outside the permit area where a resource or resources,  
16 determined in the context in which the term is used, are or could reasonably be expected to be adversely  
17 affected by proposed mining operations, including probable impacts from underground workings.

18 (3) "Affected drainage basin" means an area of land where surface water and ground water quality  
19 and quantity are affected by mining activities and where they drain to a common point.

20 ~~(3)(4)~~ (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where  
21 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

22 (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial  
23 deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash,  
24 together with talus, other mass movement accumulation, and windblown deposits.

25 ~~(4)(5)~~ "Approximate original contour" means that surface configuration achieved by backfilling and  
26 grading of the mined area so that the reclaimed area, including any terracing or access roads, closely  
27 resembles the general surface configuration of the land prior to mining and blends into and complements the  
28 drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so

1 that:

2 (a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the  
3 premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain  
4 these features after mining, recognizing that rolls and dips need not be restored to their original locations and  
5 that level areas may be increased.

6 (b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so  
7 that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an  
8 unobstructed and controlled manner;

9 (c) postmining drainage basins may differ in size, location, configuration, orientation, and density of  
10 ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is  
11 controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

12 (d) the reclaimed surface configuration is appropriate for the postmining land use.

13 ~~(5)~~ (6) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that  
14 contains or stores water and transmits it from one point to another in quantities that permit or have the potential  
15 to permit economic development as a water source.

16 ~~(6)~~ (7) (a) "Area of land affected" means the area of land from which overburden is to be or has been  
17 removed and upon which the overburden is to be or has been deposited.

18 (b) The term includes:

19 (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

20 (ii) lands affected by the construction of new railroad loops and roads or the improvement or use of  
21 existing railroad loops and roads to gain access and to haul the mineral;

22 (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition  
23 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or  
24 underground mining; and

25 (iv) all activities necessary and incident to the reclamation of the mining operations.

26 ~~(7)~~ (8) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

27 ~~(8)~~ (9) "Board" means the board of environmental review provided for in 2-15-3502.

28 ~~(9)~~ (10)— \_ "Coal conservation plan" means the planned course of conduct of a strip- or underground-

1 mining operation and includes plans for the removal and use of minable and marketable coal located within the  
2 area planned to be mined.

3 ~~(40)~~ (11) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
4 concentrating, or other processing or preparation.

5 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
6 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for  
7 other than commercial purposes.

8 ~~(44)~~ (12) "Coal preparation plant" means a commercial facility where coal is subject to coal  
9 preparation. The term includes commercial facilities associated with coal preparation activities but is not limited  
10 to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and  
11 coal processing and other waste disposal areas.

12 ~~(42)~~ (13) "Contour strip mining" means that strip-mining method commonly carried out in areas of  
13 rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
14 are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
15 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
16 bench.

17 ~~(43)~~ (14) "Cropland" means land used for the production of adapted crops for harvest, alone or in  
18 rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard  
19 crops, and other similar crops.

20 ~~(44)~~ (15) "Degree" means a measurement from the horizontal. In each case, the measurement is  
21 subject to a tolerance of 5% error.

22 ~~(45)~~ (16) "Department" means the department of environmental quality provided for in 2-15-3501.

23 ~~(46)~~ (17) "Developed water resources" means land used for storing water for beneficial uses, such as  
24 stockponds, irrigation, fire protection, flood control, and water supply.

25 ~~(47)~~ (18) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation  
26 in the immediate watershed or in response to the melting of snow or ice and is always above the local water  
27 table.

28 ~~(48)~~ (19) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal

1 by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of  
2 compliance with reclamation standards established by the department is not considered failure to conserve  
3 coal.

4 ~~(19)~~ (20) "Fill bench" means that portion of a bench or table that is formed by depositing overburden  
5 beyond or downslope from the cut section as formed in the contour method of strip mining.

6 ~~(20)~~ (21) "Fish and wildlife habitat" means land dedicated wholly or partially to the production,  
7 protection, or management of species of fish or wildlife.

8 ~~(24)~~ (22) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or  
9 wood-derived products.

10 ~~(22)~~ (23) "Grazing land" means land used for grasslands and forest lands where the indigenous  
11 vegetation is actively managed for livestock grazing or browsing or occasional hay production.

12 ~~(23)~~ (24) "Higher or better uses" means postmining land uses that have a higher economic value or  
13 noneconomic benefit to the landowner or the community than the premining land uses.

14 ~~(24)~~ (25) "Hydrologic balance" means the relationship between the quality and quantity of water inflow  
15 to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake,  
16 or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and  
17 changes in ground water and surface water storage.

18 ~~(25)~~ (26) "Imminent danger to the health and safety of the public" means the existence of any condition  
19 or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining  
20 and reclamation operation that could reasonably be expected to cause substantial physical harm to persons  
21 outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of  
22 death or serious injury before abatement exists if a rational person, subjected to the same conditions or  
23 practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for  
24 abatement.

25 ~~(26)~~ (27) "Industrial or commercial" means land used for:

26 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or  
27 long-term storage of products. This includes all heavy and light manufacturing facilities.

28 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other

1 commercial establishments.

2 ~~(27)~~ (28) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities  
3 of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid,  
4 solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

5 (b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage  
6 reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated  
7 by the board of oil and gas conservation pursuant to Title 82, chapter 11.

8 ~~(28)~~ (29) "Intermittent stream" means a stream or reach of a stream that is below the water table for at  
9 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

10 ~~(29)~~ (30) "Land use" means specific uses or management-related activities, rather than the vegetative  
11 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may  
12 include land used for support facilities that are an integral part of the land use. Land use categories include  
13 cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,  
14 pastureland, land occasionally cut for hay, recreation, or residential.

15 ~~(30)~~ (31) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for  
16 sale in the usual course of trade.

17 ~~(31)~~ (32) "Material damage" means, with respect to protection of the hydrologic balance, degradation  
18 or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit  
19 area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality  
20 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an  
21 existing water use is affected, is material damage.

22 ~~(32)~~ (33) "Method of operation" means the method or manner by which the cut, open pit, shaft, or  
23 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by  
24 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of  
25 land affected.

26 ~~(33)~~ (34) "Minaable coal" means that coal that can be removed through strip- or underground-mining  
27 methods adaptable to the location that coal is being mined or is planned to be mined.

28 ~~(34)~~ (35) "Mineral" means coal and uranium.

1           ~~(35)~~ (36) "Operation" means:

2           (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of  
3 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,  
4 including coal preparation plants; and

5           (b) all activities, including excavation incident to operations, or prospecting for the purpose of  
6 determining the location, quality, or quantity of a natural mineral deposit.

7           ~~(36)~~ (37) "Operator" means a person engaged in:

8           (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic  
9 yards of mineral or overburden;

10          (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by  
11 mining within 12 consecutive calendar months in any one location;

12          (c) operating a coal preparation plant; or

13          (d) uranium mining using in situ methods.

14          ~~(37)~~ (38) "Overburden" means:

15          (a) all of the earth and other materials that lie above a natural mineral deposit; and

16          (b) the earth and other material after removal from their natural state in the process of mining.

17          ~~(38)~~ (39) "Pastureland" means land used primarily for the long-term production of adapted,  
18 domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

19          ~~(39)~~ (40) "Perennial stream" means a stream or part of a stream that flows continuously during all of  
20 the calendar year as a result of ground water discharge or surface runoff.

21          ~~(40)~~ (41) "Person" means a person, partnership, corporation, association, or other legal entity or any  
22 political subdivision or agency of the state or federal government.

23          ~~(41)~~ (42) "Prime farmland" means land that:

24          (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the  
25 Federal Register; and

26          (b) historically has been used for intensive agricultural purposes.

27          ~~(42)~~ (43) "Prospecting" means:

28          (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,

1 or geophysical or other techniques necessary to determine:

2 (i) the quality and quantity of overburden in an area; or

3 (ii) the location, quantity, or quality of a mineral deposit; or

4 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
5 or underground-coal-mining and reclamation operations under this part.

6 ~~(43)~~ (44) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall  
7 reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or  
8 underground mining under a plan approved by the department to make those lands capable of supporting the  
9 uses that those lands were capable of supporting prior to any mining or to higher or better uses.

10 (44) ~~(45)~~ "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge,  
11 gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

12 ~~(45)~~ (46) "Recreation" means land used for public or private leisure-time activities, including developed  
13 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,  
14 such as hiking, canoeing, and other undeveloped recreational uses.

15 ~~(46)~~ (47) "Reference area" means a land unit maintained under appropriate management for the  
16 purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced  
17 naturally or by crop production methods approved by the department. Reference areas must be representative  
18 of geology, soil, slope, and vegetation in the permit area.

19 ~~(47)~~ (48) "Remining" means conducting surface coal mining and reclamation operations that affect  
20 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

21 ~~(48)~~ (49) "Residential" means land used for single- and multiple-family housing, mobile home parks, or  
22 other residential lodgings.

23 ~~(49)~~ (50) "Restore" or "restoration" means reestablishment after mining and reclamation of the land  
24 use that existed prior to mining or to higher or better uses.

25 ~~(50)~~ (51) (a) "Strip mining" means any part of the process followed in the production of mineral by the  
26 open-cut method, including mining by the auger method or any similar method that penetrates a mineral deposit  
27 and removes mineral directly through a series of openings made by a machine that enters the deposit from a  
28 surface excavation or any other mining method or process in which the strata or overburden is removed or

1 displaced in order to recover the mineral.

2 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

3 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for  
4 purposes of Title 15, chapter 35, part 1.

5 ~~(51)~~ (52) "Subsidence" means a vertically downward movement of overburden materials resulting from  
6 the actual mining of an underlying mineral deposit or associated underground excavations.

7 ~~(52)~~ (53) "Surface owner" means:

8 (a) a person who holds legal or equitable title to the land surface;

9 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be  
10 directly affected by strip-mining operations or who receives directly a significant portion of income from farming  
11 or ranching operations;

12 (c) the state of Montana when the state owns the surface; or

13 (d) the appropriate federal land management agency when the United States government owns the  
14 surface.

15 ~~(53)~~ (54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
16 the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,  
17 climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is  
18 necessary for the growth and regeneration of vegetation on the surface of the earth.

19 ~~(54)~~ (55) "Underground mining" means any part of the process that is followed in the production of a  
20 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations  
21 penetrating the mineral stratum or strata. The term includes mining by in situ methods.

22 ~~(55)~~ (56) "Unwarranted failure to comply" means:

23 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement  
24 of this part because of indifference, lack of diligence, or lack of reasonable care; or

25 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of  
26 diligence, or lack of reasonable care.

27 ~~(56)~~ (57) "Waiver" means a document that demonstrates the clear intention to release rights in the  
28 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.



1           ~~(57)~~ (58) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,  
2 established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,  
3 including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,  
4 microtopography, or raptor perches.

5           ~~(58)~~ (59) "Written consent" means a statement that is executed by the owner of the surface estate and  
6 that is written on a form approved by the department to demonstrate that the owner consents to entry of an  
7 operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining  
8 and reclamation operations that fully comply with the terms and requirements of this part."  
9

10           **Section 2.** Section 82-4-232, MCA, is amended to read:

11           **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of  
12 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of  
13 land affected must be backfilled and graded to the approximate original contour of the land. However:

14           (i) consistent with the adjacent unmined landscape elements, the operator may propose and the  
15 department may approve regraded topography gentler than premining topography in order to enhance the  
16 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater  
17 stability, and reduced soil losses from runoff and erosion;

18           (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a  
19 long-term static safety factor of 1.3 or greater and to prevent slides;

20           (iii) permanent impoundments may be approved if they are suitable for the postmining land use and  
21 otherwise meet the requirements of this part, as provided by board rules; and

22           (iv) reclaimed topography must be suitable for the approved postmining land use.

23           (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated,  
24 box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the  
25 land is achieved.

26           (c) When directed by the department, the operator shall construct in the final grading diversion  
27 ditches, depressions, or terraces that will accumulate or control the water runoff.

28           (2) In addition to the backfilling and grading requirements, the operator's method of operation on

1 steep slopes may be regulated and controlled according to rules adopted by the board. These rules may  
2 require any measure to accomplish the purpose of this part.

3 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil  
4 removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

5 (a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available  
6 soil materials will create a final soil having a greater productive capacity; and

7 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed  
8 protection from wind and water erosion or contamination by other acid or toxic material;

9 (b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a  
10 combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant  
11 growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient  
12 quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in  
13 the natural soil; and

14 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed  
15 protection from wind and water erosion or contamination by acid or toxic material;

16 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction  
17 and uniform depth over the regraded spoil material; and

18 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

19 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and  
20 kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to  
21 removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of  
22 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as  
23 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available  
24 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

25 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,  
26 subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept  
27 current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before  
28 necessary equipment is moved from the operation.

1           (6) (a) The permittee may file an application with the department for the release of all or part of a  
2 performance bond. The application must contain a proposed public notice of the precise location of the land  
3 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount  
4 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work  
5 performed, and a description of the results achieved as they relate to the permittee's approved reclamation  
6 plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the  
7 permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage  
8 and water treatment authorities or water companies in the locality of the operation, notifying them of the  
9 permittee's intention to seek release from the bond.

10           (b) The department shall determine whether the application is administratively complete. An  
11 application is administratively complete if it includes:

12           (i) the location and acreage of the land for which bond release is sought;

13           (ii) the amount of bond release sought;

14           (iii) a description of the completed reclamation, including the date of performance;

15           (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the  
16 approved reclamation plan; and

17           (v) information required by rules implementing this part.

18           (c) The department shall notify the applicant in writing of its determination no later than 60 days after  
19 submittal of the application. If the department determines that the application is not administratively complete, it  
20 shall specify in the notice those items that the application must address. After an application for bond release  
21 has been determined to be administratively complete by the department, the permittee shall publish a public  
22 notice that has been approved as to form and content by the department at least once a week for 4 successive  
23 weeks in a newspaper of general circulation in the locality of the mining operation.

24           (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or  
25 the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or  
26 special expertise with respect to any environmental, social, or economic impact involved in the operation or is  
27 authorized to develop and enforce environmental standards with respect to the operation may file written  
28 objections to the proposed release of bond to the department within 30 days after the last publication of the

1 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in  
2 the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days  
3 of the request for hearing. The department shall inform the interested parties of the time and place of the  
4 hearing. The date, time, and location of the public hearing must be advertised by the department in a  
5 newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the  
6 department shall notify the permittee and the objector of its final decision.

7 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the  
8 department pursuant to this section, the department may establish an informal conference to resolve written  
9 objections.

10 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,  
11 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of  
12 materials, and take evidence, including but not limited to conducting inspections of the land affected and other  
13 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required  
14 by this section must be made, and a transcript must be made available on the motion of any party or by order of  
15 the department.

16 (g) If the applicant significantly modifies the application after the application has been determined to  
17 be administratively complete, the department shall conduct a new review, including an administrative  
18 completeness determination. A significant modification includes but is not limited to:

19 (i) the notification of an additional property owner, local governmental body, planning agency, or  
20 sewage and water treatment authority of the permittee's intention to seek a bond release;

21 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond  
22 release sought; or

23 (iii) a material change in the reclamation for which a bond release is sought or the information used to  
24 evaluate the results of that reclamation.

25 (h) The department shall, within 30 days of determining that the application is administratively  
26 complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work  
27 involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in  
28 completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the

1 probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

2 (i) The department shall review each administratively complete application to determine the  
3 acceptability of the application. A complete application is acceptable if the application is in compliance with all  
4 of the applicable requirements of this part, the rules adopted under this part, and the permit.

5 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application  
6 no later than 60 days from the date of the inspection.

7 (ii) If the department determines that the application is not acceptable, it shall specify in the notice  
8 those items that the application must address.

9 (iii) If the applicant revises the application in response to a notice of unacceptability, the department  
10 shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to  
11 whether the revised application is acceptable.

12 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,  
13 beginning with an administrative completeness determination.

14 (v) A significant modification includes but is not limited to:

15 (A) the notification of an additional property owner, local governmental body, planning agency, or  
16 sewage and water treatment authority of the permittee's intention to seek a bond release;

17 (B) a material increase in the acreage for which a bond release is sought or the amount of bond  
18 release sought; or

19 (C) a material change in the reclamation for which a bond release is sought or the information used to  
20 evaluate the results of that reclamation.

21 (k) ~~The~~ At the request of the permittee, and for a designated area within the permit boundary within or  
22 across affected drainage basins, the department shall release the bond in whole or in part if ~~it is satisfied~~ the  
23 reclamation covered by the bond or portion of the bond has been accomplished as required by this part  
24 according to the following schedule:

25 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a  
26 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond  
27 or collateral for the ~~applicable~~ designated area within the permit area boundary.

28 (ii) ~~After~~ The department shall release a portion of the bond for the designated area that would be

1 sufficient for a third party to cover the cost of replacing soil after revegetation has been and soil stability have  
 2 been established on in the regraded lands designated area in accordance with the approved reclamation plan,  
 3 ~~the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain~~  
 4 ~~that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of~~  
 5 ~~reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of~~  
 6 ~~bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator~~  
 7 ~~or the landowner have been made with the department. Any part of the bond may not be released under this~~  
 8 ~~subsection (6)(k)(ii):~~

9 ~~(A) as long as the lands to which the release would be applicable are contributing suspended solids to~~  
 10 ~~streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or~~

11 ~~(B) before soil productivity for prime farm lands to which the release would be applicable has returned~~  
 12 ~~to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent~~  
 13 ~~management practices, as determined from the soil survey.~~

14 ~~(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,~~  
 15 ~~the department shall release the remaining portion of the bond, but not before the expiration of the period~~  
 16 ~~specified for responsibility and not until all reclamation requirements of this part are fully met. Whenever a silt~~  
 17 ~~dam is to be retained as a permanent impoundment, that portion of the bond may also be released under this~~  
 18 ~~subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner are made with~~  
 19 ~~the department.~~

20 ~~(iii) Except as provided in subsection (6)(k)(iv), in accordance with the requirements of 82-4-235, upon~~  
 21 ~~expiration of the period specified for responsibility, and after the designated area has been successfully~~  
 22 ~~revegetated, the remaining total of the bond required for a third party to establish vegetation must be released~~  
 23 ~~for the designated area.~~

24 ~~(iv) The department may retain a portion of the bond sufficient for a third party to fully satisfy remaining~~  
 25 ~~permit conditions if:~~

26 ~~(A) the disturbed areas eligible for release are contributing suspended solids to streamflow or runoff~~  
 27 ~~outside of the affected drainage basin or permit boundary in excess of the requirements of 82-4-231(10)(k); or~~

28 ~~(B) soil productivity for prime farmlands eligible for release is not returned to equivalent levels of yield~~

1 as nonmined land of the same soil type in the surrounding area under equivalent management practices, as  
2 determined from the soil survey.

3 (v) On request by the permittee, the department shall release all final bonds when, in accordance with  
4 the requirements of this chapter, the permittee successfully completes all prospecting, mining, and reclamation  
5 activities within the designated area.

6 (l) If the department disapproves the application for release of the bond or a portion of the bond, it  
7 shall:

8 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the  
9 bond or a portion of the bond has not been accomplished as required by this part; and

10 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public  
11 hearing.

12 (m) When an application for total or partial bond release is filed with the department, it shall notify the  
13 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days  
14 prior to the release of all or a portion of the bond.

15 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of  
16 supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as  
17 approved pursuant to subsection (8).

18 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the  
19 landowner is not the operator, the operator shall submit written documentation of the concurrence of the  
20 landowner or the land management agency with jurisdiction over the land. The department may approve the  
21 proposed alternative postmining land use only if it meets all of the following criteria:

22 (i) There is a reasonable likelihood for achievement of the alternative land use.

23 (ii) The alternative land use does not present any actual or probable hazard to the public health or  
24 safety or any threat of water diminution or pollution.

25 (iii) The alternative land use will not:

26 (A) be impractical or unreasonable;

27 (B) be inconsistent with applicable land use policies or plans;

28 (C) involve unreasonable delay in implementation; or

1 (D) cause or contribute to violation of federal, state, or local law.

2 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to  
3 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

4 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are  
5 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to  
6 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered  
7 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian  
8 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement  
9 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the  
10 designated land use.

11 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or  
12 pipelines, may be replaced as part of the reclamation plan."

13

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

15

- END -