



AN ACT REVISING THE TRANSFER OF A MINING OPERATION TO A SUCCESSOR OPERATOR;
 PROVIDING FOR THE USE OF EMINENT DOMAIN POWERS; PROVIDING RULEMAKING AUTHORITY;
 AMENDING SECTIONS 82-4-340 AND 82-4-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 DATE.

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

Section 1. Section 82-4-340, MCA, is amended to read:

"82-4-340. Successor operator. (1) ~~When~~ Subject to this part, when one operator succeeds to the interest of another in any uncompleted operation by transfer, including sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed ~~upon~~ on the operator by this part, ~~provided~~ Provided that both operators comply with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land and the ability to operate pursuant to the permit or subsequent modifications approved by the department to the permit consistent with this part, ~~in which case the department shall transfer the permit to the successor operator upon on department approval of the successor operator's bond and the transfer of property interests,~~ as required under this part.

(2) A transfer by the department to a successor operator pursuant to this section may not affect a lien, claim, encumbrance, or interest in the property subject to operations that the department determines are valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or interest. This subsection does not apply to a lien, claim, encumbrance, or interest in a property of the original operator or an affiliate or person controlling the operator or affiliate.

(2) (3) For an operation with a forfeited bond where the department holds a suspended permit pursuant to 82-4-341(8), the department may transfer the permit to a successor operator provided that the successor operator:

(a) complies with the requirements of this part; and

(b) assumes the duty of the former operator to complete reclamation pursuant to this part;

(c) operates pursuant to the permit or a subsequent modification approved by the department to the permit; and

(d) and submits to the department:

- (i) any additional bond required under 82-4-338; and
- (ii) a \$2,000 fee.

(4) If the department believes there is a potential to transfer a suspended permit, then the department may initiate proceedings in district court for eminent domain of the surface, minerals, or other property interest not held by the United States within or appurtenant to the permit boundary, including ingress and egress to the permit boundary, if:

(a) the department makes written findings that it is in the public interest of Montana taxpayers, environmental protection, and reclamation. With the written findings, the right of eminent domain must be considered a public use as included with those listed in 70-30-102. Although not required, the department may consider the following when determining the public interest:

(i) the value of the property, fixtures, and potential for operations if the property is transferred, based on an inspection and evaluation by the department or at the department's request prior to initiating eminent domain proceedings pursuant to Title 70, chapter 30;

(ii) the existence of tax liens on the property;

(iii) the financial liability to the Montana taxpayers for the cost of reclamation or remediation by the department of the operation pursuant to 82-4-341;

(iv) whether the county or counties where the permitted operation is located agree that transferring the property interest is in the best interest of the county or counties; and

(v) whether there is an immediate environmental need;

(b) the property interest is within or appurtenant to the permit boundary of an operator that has been:

(i) prohibited from mining pursuant to 82-4-360 for at least 1 year from the date of notice to the operator of the prohibition and the operator does not have a timely, pending appeal pursuant to this part; and

- (ii) issued a violation letter by the department pursuant to 82-4-361 on a transferred permit;
- (c) the available bond is insufficient for the permitted operation and the amount of the bond forfeited pursuant to 82-4-341 is less than the bond amount calculated pursuant to 82-4-338; and
- (d) there is a successor operator who can operate under a permit transferred pursuant to subsection (1). The department and the proposed successor operator may enter into an agreement for the transfer of the property when it is condemned and the department takes possession pursuant to subsection (5).
- (5) If the department initiates eminent domain proceedings pursuant to Title 70, chapter 30, and requests immediate possession of the property pursuant to 70-30-311, then the court shall grant the department immediate possession of the property prior to determining compensation.
- (6) An eligible successor operator may post the bond required by 70-30-311(3) in accordance with an agreement entered pursuant to 82-4-340(4)(d).
- (7) After the department is in possession of the property, the court shall determine compensation pursuant to 70-30-302, except that when determining the value of the property interest the commissioners shall consider:
- (a) the greater of the amount:
- (i) equal to the difference between the bond amount forfeited pursuant to 82-4-341 and the bond amount calculated pursuant to 82-4-338; or
- (ii) necessary to complete site reclamation;
- (b) the amount of a tax lien against the property;
- (c) the value of mineral interests, development potential, or future mining based solely on the value while in the possession of the original operator, who is prohibited from mining pursuant to 82-4-360; and
- (d) other costs incurred by the state to suspend, terminate, or transfer the permit and recover the forfeited bond.
- (8) Nothing in this section limits the department's ability to modify the transferred permit or reclamation plan pursuant to this part."

Section 2. Section 82-4-341, MCA, is amended to read:

"82-4-341. Compliance -- reclamation by department. (1) The department shall cause the permit

area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (9). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications

are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) Except as provided in subsection (8)(e), the department may hold a permit suspended pursuant to 82-4-338 for up to 5 years and place the proceeds from a cash bond forfeited under this section in an interest-bearing account if mining of the ore body identified in the permit or a permit amendment application is not complete. The 5-year period begins on the date the department takes possession of the bond proceeds.

(b) The department may spend bond proceeds from the account during the suspension period to:

- (i) perform maintenance, monitoring, and other actions required by the permit;
- (ii) abate imminent danger to public health, public safety, or the environment; or
- (iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause violations of those provisions.

(c) The department may transfer a permit suspended under this section as provided by 82-4-340 and the associated property interest pursuant to 70-30-311 to grant the condemnor immediate possession and provide compensation to the property owner pursuant to 70-30-302. The balance of funds in the account must be retained as a cash bond on behalf of the successor operator.

(d) A transfer by the department to a successor operator pursuant to subsection (2) may not affect a lien, claim, encumbrance, or interest in the property subject to operations, which the department determines is valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or interest. This subsection (8)(d) does not apply to a lien, claim, encumbrance, or interest in a property of the original operator or an affiliate or person controlling the operator or affiliate.

~~(d)~~ (e) The department may revoke a permit suspended under this section if a transfer is not completed within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant to subsection (6).

~~(e)~~ (f) The department may extend a suspension up to 6 months if a potential successor operator is exercising reasonable diligence to complete the transfer. If litigation precludes the transfer, the suspension is stayed until the litigation is resolved.

(g) If the department forfeits a bond pursuant to subsection (8)(a), the operator is liable to the department for the insufficient bond amount, which is the difference between the bond amount forfeited pursuant to 82-4-341 and the bond amount calculated pursuant to 82-4-338. This amount is not subject to a bona fide dispute. The department may initiate cases and proceedings to recover the insufficient bond amount.

(9) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 717, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2025.

President of the Senate

Signed this _____ day
of _____, 2025.

HOUSE BILL NO. 717

INTRODUCED BY J. FITZPATRICK, M. BERTOGLIO

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