

**MINING SURETY REQUIREMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Phil Lyman**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies providers related to surety requirements for mining operations.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ exempts the state and political subdivisions from the requirement to provide surety related to reclamation of a mining operation; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 40-8-7**, as last amended by Laws of Utah 2008, Chapter 382
  - 40-8-14**, as last amended by Laws of Utah 2011, Chapter 125
  - 40-8-16**, as last amended by Laws of Utah 1989, Chapter 22
  - 40-8-18**, as last amended by Laws of Utah 2003, Chapter 35
  - 40-8-19**, as enacted by Laws of Utah 1975, Chapter 130
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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **40-8-7** is amended to read:

30 **40-8-7. Board and division -- Authority.**

31 (1) The board and the division may require:

32 (a) that a notice of intention for [aH] mining operations be filed with, and approved by,  
33 the division, before the mining operation commences or continues pursuant to Sections **40-8-13**  
34 and **40-8-23**;

35 (b) the reclamation of lands affected by mining operations after [~~the effective date of~~  
36 ~~this chapter~~] May 13, 1975, having due regard for innate differences in mineral deposits;

37 (c) for mining operations, including small mining operations, the furnishing and  
38 maintenance of reasonable surety to guarantee that the land affected is reclaimed according to  
39 approved plans consistent with on-site conditions except as provided in Subsection (4);

40 (d) that the operator rehabilitate, close, or mitigate the impacts of [~~each~~] a drill hole,  
41 shaft, or tunnel as required under Section **40-8-13**;

42 (e) that the operator pay legally determined public liability and property damage claims  
43 resulting from mining operations;

44 (f) that every operator who conducts mining operations in the state maintain suitable  
45 records and make periodic reports to the division as required under this chapter;

46 (g) that with respect to [aH] mining operations, a notice of intention is filed with and,  
47 if required by this chapter, approved by the division before [~~any such~~] the mining operations  
48 are commenced or continued pursuant to Section **40-8-23**;

49 (h) the suspension of mining operations in an emergency situation;

50 (i) the payment of fixed, uniform, and nonescalating permit fees; or

51 (j) that mining operations be conducted to minimize or prevent hazards to public health  
52 and safety.

53 (2) [~~No~~] A rule [~~established~~] made by the board with respect to mined land  
54 reclamation [~~shall~~] may not have retroactive effect on existing reclamation plans included as a  
55 part of an approved notice of intention to commence mining operations which was approved  
56 [~~prior to~~] before the effective date of the rule.

57 (3) The board may [~~promulgate~~] make rules relating to the surety for mining operations  
58 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

59 (4) (a) For purposes of this Subsection (4):

60 (i) "Political subdivision" means a:

61 (A) county;

62 (B) municipality;

63 (C) school district;

64 (D) local district under Title 17B, Limited Purpose Local Government Entities - Local  
65 Districts;

66 (E) special service district under Title 17D, Chapter 1, Special Service District Act; or

67 (F) any other political subdivision of the state.

68 (ii) "State" means:

69 (A) the state; or

70 (B) an office, department, agency, authority, commission, board, institution, hospital,  
71 college, university, or other instrumentality of the state.

72 (b) The state or a political subdivision is exempt from a requirement to provide surety  
73 to the board or division for mining operations if the mining operations are operated by the state  
74 or political subdivision.

75 Section 2. Section **40-8-14** is amended to read:

76 **40-8-14. Surety requirement -- Liability of small mining operations for failure to**  
77 **reclaim -- Forfeiture of surety.**

78 (1) (a) [~~After~~] Subject to Subsection 40-8-7(4), after receiving notification that a notice  
79 of intention for mining operations has been approved, but [~~prior to~~] before commencement of  
80 those operations, the operator shall provide surety to the division, in a form and amount  
81 determined by the division or board as provided in this section.

82 (b) In determining the amount of surety under this section, the division may use the  
83 average cost of reclamation per acre.

84 (c) The board shall annually establish a figure representing the average cost of  
85 reclamation per acre after receiving a presentation from the division concerning the average  
86 cost of reclamation per acre and providing opportunity for public comment.

87 (2) (a) Except as provided in Subsection (3), the division shall approve the amount and  
88 form of surety.

89 (b) In determining the amount of surety to be provided, the division shall consider:

90 (i) the magnitude, type, and costs of approved reclamation activities planned for the  
91 land affected; and

92 (ii) the nature, extent, and duration of operations under the approved notice.

93 (c) The division shall approve a fixed amount estimated to be required to complete  
94 reclamation at any point in time covered by the notice of intent.

95 (d) (i) The division shall determine the amount of surety required for [~~notices~~] a notice  
96 of intention, by using cost data from current large mining sureties.

97 (ii) The costs shall be adjusted to reflect the nature and scope of activities in the  
98 affirmative statement filed under Subsection 40-8-18(4).

99 (e) (i) In determining the form of surety to be provided by the operator, the division  
100 shall approve a method acceptable to the operator consistent with the requirements of this  
101 chapter.

102 (ii) The form of surety that the operator may provide includes [~~but is not limited to,~~]  
103 the following:

104 (A) collateral;

105 (B) a bond or other form of insured guarantee;

106 (C) deposited securities; or

107 (D) cash.

108 (3) (a) If the operator proposes reclamation surety in the form of a written contractual  
109 agreement, the board shall approve the form of surety.

110 (b) In making this decision, the board shall consider:

111 (i) the operator's:

112 (A) financial status;

113 (B) assets within the state;

114 (C) past performance in complying with contractual agreements; and

115 (D) facilities available to carry out the planned work;

116 (ii) the magnitude, type, and costs of approved reclamation activities planned for the  
117 land affected; and

118 (iii) the nature, extent, and duration of operations under the approved notice.

119 (4) In determining the amount and form of surety to be provided under this section,  
120 consideration shall be given to similar requirements made on the operator by landowners,

121 governmental agencies, or others, with the intent that surety requirements shall be coordinated  
122 and not duplicated.

123 (5) The liability under surety provisions shall continue until liability, in part, or in its  
124 entirety, is released by the division.

125 (6) (a) If the operator of a mining operation, including a small mining operation, fails  
126 or refuses to carry out the necessary land reclamation as outlined in the approved notice of  
127 intention, the board may, after notice and hearing, declare any surety filed for this purpose  
128 forfeited.

129 (b) With respect to the surety filed with the division, the board shall request the  
130 attorney general to take the necessary legal action to enforce and collect the amount of liability.

131 (c) If surety or a bond has been filed with the Division of Forestry, Fire, and State  
132 Lands, the School and Institutional Trust Lands Administration, or any agency of the federal  
133 government, the board shall certify a copy of the transcript of the hearing and transmit ~~[it]~~ the  
134 certified copy to the agency together with a request that the necessary forfeiture action be  
135 taken.

136 (d) The forfeited surety shall be used only for the reclamation of the land to which ~~[it]~~  
137 the forfeited surety relates, and any residual amount returned to the rightful claimant.

138 Section 3. Section **40-8-16** is amended to read:

139 **40-8-16. Approved notice of intention valid for life of operation -- Withdrawal,**  
140 **withholding, or refusal of approval -- Procedure and basis.**

141 (1) An approved notice of intention or approved revision of ~~[it]~~ a notice of intention  
142 remains valid for the life of the mining operation, as stated in ~~[it]~~ the notice of intention, unless  
143 the board withdraws the approval as provided in Subsection (2).

144 (2) The board or the division ~~shall~~ may not withdraw approval of a notice of intention  
145 or revision of ~~[it]~~ a notice of intention, except as follows:

146 (a) Approval may be withdrawn ~~[in the event that]~~ if the operator substantially fails to  
147 perform reclamation or conduct mining operations so that the approved reclamation plan can be  
148 accomplished.

149 (b) Approval may be withdrawn ~~[in the event that]~~ if the operator fails to provide and  
150 maintain surety as may be required under this chapter unless the operator is exempt under  
151 Subsection 40-8-7(4).

152 (c) Approval may be withdrawn [~~in the event that~~] if mining operations are  
153 continuously shut down for a period in excess of five years, unless the extended period is  
154 accepted upon application of the operator.

155 (3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by  
156 the division until the operator, who holds or has applied for such approval, has had an  
157 opportunity to request a hearing before the board, present evidence, cross-examine, and  
158 participate fully in the proceedings. Based on the record of the hearing, the board [~~with~~] shall  
159 issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If  
160 no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of  
161 intention.

162 (4) [~~In the event that~~] If the division or the board withdraws approval of a notice of  
163 intention or [~~its~~] the notice of intention's revision, [~~an~~] mining operations included under the  
164 notice of intention shall be suspended in accordance with procedures and schedule approved by  
165 the division.

166 Section 4. Section **40-8-18** is amended to read:

167 **40-8-18. Notice of intention to revise operations -- Procedure.**

168 (1) (a) Since mining operations and related reclamation plans may need to be revised to  
169 accommodate changing conditions or new technology, an operator conducting mining  
170 operations under an approved notice of intention shall submit to the division a notice of  
171 intention when revising mining operations.

172 (b) The notice of intention to revise mining operations shall be submitted in the form  
173 required by the rules [~~promulgated~~] made by the board.

174 (2) (a) The division shall designate a notice of intention to revise mining operations  
175 [~~will be designated~~] as an amendment to the existing notice of intention [~~by the division~~],  
176 based on rules [~~promulgated~~] made by the board.

177 (b) An amendment of a notice of intention [~~with~~] shall be reviewed and considered for  
178 approval or disapproval by the division within 30 days of receipt of a notice of intention to  
179 revise mining operations.

180 (3) (a) A notice of intention to revise mining operations, if not designated as an  
181 amendment of a notice of intention as set forth in Subsection (2), shall be processed and  
182 considered for approval by the division in the same manner and within the same time period as

183 an original notice of intention.

184 (b) The operator shall be authorized and bound by the requirements of the existing  
185 notice until the revision is acted upon and any revised surety requirements are established and  
186 satisfied.

187 (4) (a) If a change in the mining operation occurs, a mining operation representative  
188 shall submit an amendment to the notice of intention.

189 (b) Although approval of an amendment to the notice of intention by small mining  
190 operations is not required, a revised surety shall be filed by the permittee [~~prior to~~] before  
191 implementing the amended notice of intention unless exempt under Subsection 40-8-7(4).

192 Section 5. Section **40-8-19** is amended to read:

193 **40-8-19. Transfer of mining operation under approved notice of intention.**

194 (1) Whenever an operator succeeds to the interest of another operator who holds an  
195 approved notice of intention or revision covering a mining operation, by sale, assignment,  
196 lease, or other means, the division may release the first operator from [~~his~~] the first operator's  
197 responsibilities under [~~his~~] the first operator's approved notice of intention, including surety,  
198 provided the successor assumes all of the duties of the former operator, to the satisfaction of  
199 the division, under [~~this~~] the approved notice of intention, including [~~its~~] the successor's then  
200 approved reclamation plan and the posting of surety unless exempt under Subsection 40-8-7(4).

201 (2) Upon the satisfactory assumption of [~~such responsibilities~~] the duties described in  
202 Subsection (1) by the successor operator, under conditions approved by the division, the  
203 approved notice of intention shall be transferred to the successor operator.