SURETY REQUIREMENTS FOR MINING

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Susan Duckworth

LONG TITLE

General Description:

This bill addresses surety requirements for mining operations.

Highlighted Provisions:

This bill:

- requires the Board of Oil, Gas, and Mining to annually adopt a figure representing the average cost of reclamation per acre; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-8-14, as last amended by Laws of Utah 2003, Chapter 35

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-8-14** is amended to read:

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

(1) (a) After receiving notification that a notice of intention for mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in

this section.

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

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

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

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

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

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

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

(d) (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.

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

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

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

[~~(i)~~] (A) collateral;

[~~(ii)~~] (B) a bond or other form of insured guarantee;

[~~(iii)~~] (C) deposited securities; or

[~~(iv)~~] (D) cash.

(3) (a) If the operator proposes reclamation surety in the form of a written contractual

agreement, the board shall approve the form of surety.

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

(i) the operator's:

(A) financial status;

(B) assets within the state;

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

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

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

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

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.

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

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

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

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

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

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