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HOUSE BILL NO. 1169

Offered January 14, 2016

A *BILL to amend and reenact §§ 45.1-183, 45.1-185, 45.1-197.8, 45.1-197.10, 45.1-197.14, and 45.1-197.18 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 45.1-186.3 through 45.1-186.8, relating to permits for certain mining operations; reclamation of land.*

Patron—Pillion

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-183, 45.1-185, 45.1-197.8, 45.1-197.10, 45.1-197.14, and 45.1-197.18 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 45.1-186.3 through 45.1-186.8 as follows:

§ 45.1-183. Bond of operator.

Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the Director payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the operations plan as approved and directed by the Department. The amount of bond shall be ~~no less than \$200 nor more than \$1,000~~ \$3,000 per acre, based upon the number of acres of land ~~which that~~ the operator estimates will be affected by mining operations during the next ensuing year. ~~The minimum amount of bond furnished shall be \$1,000, except in areas of five acres or less the bond shall be no less than \$200 nor more than \$1,000 per acre.~~ Such bond shall be executed by the operator and by a corporate surety licensed to do business in ~~this the~~ Commonwealth; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director.

§ 45.1-185. Additional bond to be posted annually; release of previous bond; report of reclamation work.

Within ~~ten~~ 10 days following the anniversary date of any permit, the operator shall post additional bond in the amount of ~~no less than \$200 nor more than \$1,000~~ \$3,000 per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for the areas disturbed in the last ~~twelve~~ 12 months if reclamation work has been completed or transferred to additional acres to be disturbed. The approval of the Director to release the bond shall be obtained in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(~~a~~) (i) Identification of the operation; (~~b~~) (ii) the county or city in which it is located and its location with reference to the nearest public highway; (~~c~~) (iii) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (~~d~~) and (iv) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or in such manner as to be acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area, and the methods of access to the area from the nearest public highway.

§ 45.1-186.3. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as provided in this article, on land reclaimed by the Director pursuant to this chapter for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person if the Director waives the lien as provided in § 45.1-186.4.

§ 45.1-186.4. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of § 45.1-186.3 by filing, within six months after completion of the reclamation, with the clerk of the circuit court of the county or city in which the land or any part thereof is situate (i) a statement consisting of the name of each owner of record of the property sought to be charged, an itemized account of moneys expended for the reclamation work, and notarized copies of appraisals made by an independent appraiser of the fair market value of the land both before and upon completion of the reclamation work and (ii) a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that (i) the direct and indirect costs of filing such

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59 *lien exceed the increase in fair market value resulting from reclamation; (ii) the reclamation primarily*
60 *benefits health, safety, or environmental values of the community or area in which the land is located;*
61 *or (iii) if reclamation is necessitated by an unforeseen occurrence, the reclamation will not result in a*
62 *significant increase in the market value of the land.*

63 **§ 45.1-186.5. Recordation and indexing of lien; notice.**

64 *It shall be the duty of the clerk in whose office the statement described in § 45.1-186.4 is filed to*
65 *record the same in the deed books of such office and to index the same in the general index of deeds, in*
66 *the name of the Commonwealth as well as the owner of the property, showing the type of such lien.*
67 *From the time of such recording and indexing, all persons shall be deemed to have notice thereof.*

68 **§ 45.1-186.6. Priority of lien.**

69 *A lien acquired under this article shall have priority as a lien second only to the lien of real estate*
70 *taxes imposed upon the land.*

71 **§ 45.1-186.7. Hearing to determine amount of lien.**

72 *Any party having an interest in the real property against which a lien has been filed pursuant to this*
73 *article may, within 60 days of such filing, petition the circuit court having jurisdiction wherein the*
74 *property or some portion thereof is located to hold a hearing to determine the increase in the market*
75 *value of the land as a result of reclamation. After reasonable notice to the Director, the court shall hold*
76 *a hearing to determine such increase. If the court determines such increase to be erroneously excessive,*
77 *it shall determine the proper amount and order that the lien and the record be amended to show this*
78 *amount.*

79 **§ 45.1-186.8. Satisfaction of lien.**

80 *A lien acquired under this article shall be satisfied to the extent of the value of the consideration*
81 *received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the*
82 *property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as*
83 *provided in this article, the Director may proceed to enforce the lien by a bill filed in the circuit court*
84 *having jurisdiction wherein the property or some portion thereof is located.*

85 **§ 45.1-197.8. Minerals Reclamation Fund.**

86 *There is hereby created in the State Treasurer's office state treasury a special nonreverting fund to be*
87 *known as the Minerals Reclamation Fund, hereinafter referred to in this section as "the Fund, which ."*
88 *The Fund shall be under the supervision established on the books of the Department. The Fund shall*
89 *consist of all Comptroller. All payments made into the Fund by operators in accordance with the*
90 *provisions of this article shall be paid into the state treasury and credited to the Fund. Interest earned*
91 *on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the*
92 *Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but*
93 *shall remain in the Fund. Moneys in the Fund shall be used solely for the reclamation of land pursuant*
94 *to this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on*
95 *warrants issued by the Comptroller upon written request signed by the Director.*

96 **§ 45.1-197.10. Release of bonds and other securities.**

97 ~~*When the size of the Fund shall have reached \$400,000, the All bonds and other securities previously*~~
98 ~~*posted, issued pursuant to § 45.1-183, by all members or 45.1-185 shall be released upon deposit to the*~~
99 ~~*Fund and payment of required fees.*~~

100 **§ 45.1-197.14. Decreases in size of the Fund.**

101 ~~*Whenever the size of the Fund shall decrease decreases to less than \$250,000 \$2 million, the*~~
102 ~~*Director shall suspend the return of payments pursuant to § 45.1-197.11 and shall assess all members an*~~
103 ~~*equal amount for each affected acre, for a total amount sufficient to raise increase the Fund to \$250,000*~~
104 ~~*\$2 million. In lieu of such an assessment, all members shall at the request of the Director post bonds or*~~
105 ~~*other securities, within six months after the Director so notifies the members. Failure to post bond or*~~
106 ~~*other surety or to pay the required assessment shall result in the revocation of the permit of the member*~~
107 ~~*and the forfeiture of the member's payments in accordance with § 45.1-197.12.*~~

108 **§ 45.1-197.18. Reclamation funding.**

109 *An amount equal to the average interest rate earned for all funds in the state treasury as applied to*
110 *the Fund shall be paid annually to the Department to be used only for the reclamation of orphaned lands*
111 *pursuant to Article 3 (§ 45.1-197.3 et seq.) of this chapter and is hereby allocated for such purposes.*
112 *Funds paid to the Department pursuant to this section shall not revert to the general fund.*