

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 4

An Act 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 liens on mineral mining sites.

[H 1509]

Approved February 13, 2017

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 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 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 subsection A of § 45.1-186.4, on land owned by the operator and 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 subsection B of § 45.1-186.4.

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

A. *Except as provided in subsection B, 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, in the clerk's office of the court of the county or city in which the land or any part thereof is located, a statement consisting of the names of all owners of record of the property sought to be charged; an itemized account of moneys expended for the reclamation work; 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 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 lien exceed the increase in fair market value resulting from reclamation or (ii) if reclamation is necessitated by an unforeseen occurrence, the reclamation will not result in a significant increase in the fair market value of the land.*

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

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

§ 45.1-186.6. Priority of lien.

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

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

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

§ 45.1-186.8. Satisfaction of lien.

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

§ 45.1-197.8. Creation of Fund.

There is hereby created in the State Treasurer's office state treasury a special nonreverting fund to be known as the Minerals Reclamation Fund, hereinafter referred to in this section as "the Fund," which shall be under the supervision of the Department. The Fund shall consist of all payments made into the Fund by operators in accordance with the provisions of this article. The Fund shall be established on the books of the Comptroller. All payments made by operators in accordance with the provisions of this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the reclamation of mining operations pursuant to § 45.1-197.12. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

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

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

§ 45.1-197.14. Decreases in size of Fund.

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

§ 45.1-197.18. Reclamation funding.

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