

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 45.1-241 of the Code of Virginia, relating to mine reclamation*
 3 *performance bonds.*

[H 2392]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 45.1-241 of the Code of Virginia is amended and reenacted as follows:**

8 § 45.1-241. Performance bonds.

9 A. After a coal surface mining permit application has been approved, but before such permit is
 10 issued, the applicant shall file with the Director on a form prescribed and furnished by the Director, a
 11 bond for performance payable to the Commonwealth and conditioned upon faithful performance of all
 12 the requirements of this chapter and the permit. The bond shall cover that area of land within the permit
 13 area upon which the operator will initiate and conduct surface coal mining and reclamation operations
 14 within the initial term of the permit. As succeeding increments of coal surface mining and reclamation
 15 operations are initiated and conducted within the permit area, the permittee shall file with the Director
 16 an additional bond or bonds to cover such increments in accordance with this section. The amount of
 17 the bond required for each bonded area shall depend upon the reclamation requirements of the approved
 18 permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as
 19 topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the
 20 Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if
 21 the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond
 22 for the entire area under one permit be less than \$10,000.

23 B. Liability under the bond shall be for the duration of the coal surface mining and reclamation
 24 operation and for a period coincident with the operator's responsibility for revegetation as required under
 25 regulations promulgated pursuant to § 45.1-242. The bond shall be executed by the operator and a
 26 corporate surety licensed to do business in the Commonwealth, except that the operator may elect to
 27 deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable
 28 certificates of deposit of any bank organized for transacting business in the United States. The cash
 29 deposit or market value of such securities shall be equal to or greater than the amount of the bond
 30 required for the bonded area.

31 C. The Director may accept the bond of the applicant itself without separate surety when the
 32 applicant demonstrates to the satisfaction of the Director, pursuant to regulations, the existence of a
 33 suitable agent to receive service of process and a history of financial solvency and continuous operation
 34 sufficient for authorization to self-insure or bond such amount. *The Director may also accept a letter of*
 35 *credit on certain designated funds issued by a financial institution authorized to do business in the*
 36 *United States. Each letter of credit can only be issued up to the amount which can be insured by the*
 37 *FDIC. Any letter of credit issued by a non-Virginia lending institution shall be confirmed by an*
 38 *approved Virginia lending institution. The letters of credit shall be irrevocable, unconditional, shall be*
 39 *payable to the Department upon demand, and shall afford to the Department protection equivalent to a*
 40 *corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and*
 41 *the Department of any notice received or action filed alleging the insolvency or bankruptcy of the*
 42 *issuer, or alleging any violations of regulatory requirements which could result in suspension or*
 43 *revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to*
 44 *fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the*
 45 *permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency*
 46 *or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper*
 47 *performance bond coverage and shall promptly notify the Department, and the Department shall then*
 48 *issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to*
 49 *replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the*
 50 *permittee shall cease coal extraction and coal processing operations and shall immediately begin to*
 51 *conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal*
 52 *processing operations shall not resume until the Department has determined that an acceptable bond*
 53 *has been posted. If an acceptable bond has not been posted by the end of the period allowed, the*
 54 *Department may suspend the permit until acceptable bond is posted. The letter of credit shall be*
 55 *provided on the form and format established by the Director. Nothing herein shall relieve the permittee*
 56 *of responsibility under the permit or the issuer of liability on the letter of credit. The Director is further*

57 authorized to develop and promulgate an alternative system that will achieve the objectives and purposes
58 of the bonding program established under this section.

59 D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which
60 surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable
61 certificate of deposit.

62 E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's
63 bond shall be adjusted by the Director from time to time as affected land acreages are increased or
64 decreased or where the cost of future reclamation changes.