

HOUSE BILL NO. 433

INTRODUCED BY P. CLARK, BUTCHER, COBB, ELLIOTT, WINDY BOY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE FINANCIAL RESPONSIBILITY METHODS ACCEPTABLE FOR RECLAMATION ASSURANCE UNDER THE METAL MINE RECLAMATION LAW; AMENDING SECTION 82-4-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, ~~or OR~~ an irrevocable letter of credit, ~~or other surety acceptable to the department, OR OTHER SURETY CONSIDERED TO BE PRUDENT AND APPROVED BY THE BOARD OF INVESTMENTS.~~ The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected. A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the

licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(C) (I) A BOND REQUIRED PURSUANT TO SUBSECTION (3)(A) OR (3)(B) MUST BE A SURETY BOND, A CASH DEPOSIT, AN ASSIGNMENT OF A CERTIFICATE OF DEPOSIT, AN IRREVOCABLE LETTER OF CREDIT, OR OTHER SURETY OR WRITTEN UNDERTAKING PROPOSED BY THE APPLICANT. OTHER SURETIES OR WRITTEN UNDERTAKINGS PROPOSED BY THE APPLICANT MUST MEET ALL OF THE FOLLOWING CRITERIA:

(A) THE SURETY OR WRITTEN UNDERTAKING MUST BE CAPABLE OF BEING EVALUATED BY AN INDEPENDENT APPRAISER WHO IS AN EXPERT IN THE FIELD;

(B) THE SURETY OR WRITTEN UNDERTAKING MUST BE CONVERTIBLE TO A LIQUID ASSET THAT HAS A CASH VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE REQUIRED BOND AMOUNT; AND

(C) THE TITLE TO THE SURETY OR WRITTEN UNDERTAKING MUST BE HELD IN THE NAME OF THE STATE OR IN A MANNER THAT MAXIMIZES THE STATE'S RECOVERY OF VALUE IN ANY SUBSEQUENT BANKRUPTCY OR OTHER INSOLVENCY OR COLLECTION PROCEEDING INITIATED BY OR AGAINST THE APPLICANT.

(II) THE DEPARTMENT SHALL CONSULT WITH THE BOARD OF INVESTMENTS AND ANY OTHER STATE AGENCIES THAT HAVE SIGNIFICANT EXPERTISE IN DETERMINING THE VALUE OF AN ASSET IN ACCORDANCE WITH THE CRITERIA IN SUBSECTION (3)(C)(I) AS IT RELATES TO ANY OTHER SURETY OR WRITTEN UNDERTAKING PROPOSED BY THE APPLICANT.

~~(D)~~ If a licensee or permittee fails to post bond in accordance with subsection (3)(a) ~~or (3)(b)~~, (3)(B), OR (3)(C) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those

activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (8) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(9) (A) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department.

(B) (i) A NEW BOND POSTED PURSUANT TO THIS SUBSECTION (9) MUST BE A SURETY BOND, A CASH DEPOSIT, AN

ASSIGNMENT OF A CERTIFICATE OF DEPOSIT, AN IRREVOCABLE LETTER OF CREDIT, OR OTHER SURETY OR WRITTEN UNDERTAKING PROPOSED BY THE APPLICANT. OTHER SURETIES OR WRITTEN UNDERTAKINGS PROPOSED BY THE APPLICANT MUST MEET ALL OF THE FOLLOWING CRITERIA:

(A) THE SURETY OR WRITTEN UNDERTAKING MUST BE CAPABLE OF BEING EVALUATED BY AN INDEPENDENT APPRAISER WHO IS AN EXPERT IN THE FIELD;

(B) THE SURETY OR WRITTEN UNDERTAKING MUST BE CONVERTIBLE TO A LIQUID ASSET THAT HAS A CASH VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE REQUIRED BOND AMOUNT; AND

(C) THE TITLE TO THE SURETY OR WRITTEN UNDERTAKING MUST BE HELD IN THE NAME OF THE STATE OR IN A MANNER THAT MAXIMIZES THE STATE'S RECOVERY OF VALUE IN ANY SUBSEQUENT BANKRUPTCY OR OTHER INSOLVENCY OR COLLECTION PROCEEDING INITIATED BY OR AGAINST THE APPLICANT.

(II) THE DEPARTMENT SHALL CONSULT WITH THE BOARD OF INVESTMENTS AND ANY OTHER STATE AGENCIES THAT HAVE SIGNIFICANT EXPERTISE IN DETERMINING THE VALUE OF AN ASSET IN ACCORDANCE WITH THE CRITERIA IN SUBSECTION (9)(B)(I) AS IT RELATES TO ANY OTHER SURETY OR WRITTEN UNDERTAKING PROPOSED BY THE APPLICANT."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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