



LAWS OF ALASKA

2004

Source
CSHB 486(FIN)

Chapter No.

AN ACT

Relating to reclamation bonding and financial assurance for certain mines; relating to financial assurance limits for lode mines; establishing the mine reclamation trust fund; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

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1 Relating to reclamation bonding and financial assurance for certain mines; relating to
2 financial assurance limits for lode mines; establishing the mine reclamation trust fund; and
3 providing for an effective date.

4

5 * **Section 1.** AS 27.19.040 is amended to read:

6 **Sec. 27.19.040. Reclamation financial assurance [BONDING].** (a) The
7 commissioner shall require an individual **financial assurance** [PERFORMANCE
8 BOND] in an amount not to exceed an amount reasonably necessary to ensure the
9 faithful performance of the requirements of the approved reclamation plan. The
10 commissioner shall establish the amount of the **financial assurance**
11 [PERFORMANCE BOND] to reflect the reasonable and probable costs of
12 reclamation. **The assurance amount** [, BUT THE BOND] may not exceed \$750 for
13 each acre of mined area, **except that the \$750 an acre limitation does not apply to**
14 **the assurance amount required for a lode mine.**

1 (b) The commissioner shall establish a statewide bonding pool for mining
2 operations as an alternative to individual financial assurance. The commissioner
3 may determine which mining operations are eligible to participate in the bonding
4 pool based on the projected cost of reclamation in relation to the size of the
5 bonding pool; however, a mining operation may not be allowed to participate in
6 the bonding pool if the mining operation will chemically process ore or has the
7 potential to generate acid [PERFORMANCE BONDS]. A miner participating in the
8 bonding pool shall contribute an initial deposit not to exceed 15 percent of the
9 financial assurance amount [RECLAMATION BOND] plus an additional
10 nonrefundable annual fee not to exceed five percent of the financial assurance
11 amount [RECLAMATION BOND]. The commissioner shall refund the 15 percent
12 deposit upon satisfactory completion of the approved reclamation plan. If requested by
13 the miner, the commissioner may apply the deposit to a new reclamation plan. In
14 addition to its use for mining operations under this chapter, the commissioner shall
15 allow the bonding pool to be used to meet the requirements of AS 27.21.160. Income
16 and other earnings on the bonding pool shall be added to the bonding pool.

17 (c) If the commissioner determines that a miner has violated or permitted a
18 violation of the approved reclamation plan and has failed to comply with a lawful
19 order of the commissioner, the commissioner shall forfeit the financial assurance
20 [PERFORMANCE BOND] and deposit it [THE BOND] in the statewide bonding
21 pool. The commissioner shall use the reclamation and administrative costs recovered
22 under AS 27.19.070(a) to supplement the forfeited financial assurance [BOND]
23 deposited in the statewide bonding pool for reclamation of the site subject to the
24 forfeiture. If the commissioner is unable to recover the full cost of reclamation under
25 AS 27.19.070(a), the commissioner may use the bonding pool to reclaim the site to the
26 standards of this chapter, except that the commissioner may not use a deposit that
27 is refundable under (b) of this section to fulfill another miner's reclamation
28 obligation.

29 (d) A miner not required to post a financial assurance [BOND] may submit a
30 reclamation plan under AS 27.19.030(a) and participate in the bond pool.

31 * **Sec. 2.** AS 27.19.040 is amended by adding a new subsection to read:

1 (e) A miner may satisfy the requirement under this section for an individual
2 financial assurance by providing, in a form acceptable to and approved by the
3 commissioner, any of the following:

4 (1) a surety bond;

5 (2) a letter of credit;

6 (3) a certificate of deposit;

7 (4) a corporate guarantee that meets the financial tests set in regulation
8 by the commissioner;

9 (5) payments and deposits into the trust fund established in
10 AS 37.14.800; or

11 (6) any other form of financial assurance that meets the financial test
12 or other conditions set in regulation by the commissioner.

13 * **Sec. 3.** AS 27.19.050(d) is amended to read:

14 (d) A miner exempted from the requirements of AS 27.19.030(a) and
15 27.19.040 under (a) of this section that fails to reclaim a mining operation to the
16 standards of AS 27.19.020 is required for two consecutive years to conduct each
17 subsequent mining operation, regardless of size, under an approved reclamation plan
18 and to **provide an individual financial assurance** [POST A PERFORMANCE
19 BOND].

20 * **Sec. 4.** AS 27.19.070(a) is amended to read:

21 (a) A miner who violates or permits a violation of an approved reclamation
22 plan and fails to comply with a lawful order of the commissioner forfeits the **financial**
23 **assurance** [RECLAMATION BOND] or a portion of the **assurance** [BOND] and is
24 liable to the state in a civil action for the full amount of reclamation and administrative
25 costs incurred by the state related to the action. A miner exempted under
26 AS 27.19.050(a) is subject to civil action for the full amount of reclamation and
27 administrative costs incurred by the state related to the action if the commissioner
28 determines that reclamation was not conducted under AS 27.19.020.

29 * **Sec. 5.** AS 27.19.070(c) is amended to read:

30 (c) A miner who has forfeited a **financial assurance** [RECLAMATION
31 BOND] or has been held liable in a civil action under (a) of this section may conduct

1 future mining operations only after posting a reclamation risk assessment fee equal to
2 five times the **amount of financial assurance established under AS 27.19.040(a)**
3 [BOND LIABILITY] for the proposed mining operation. The reclamation assessment
4 fee shall be refunded after two consecutive years of operation consistent with this
5 chapter.

6 * **Sec. 6.** AS 27.19.080 is amended by adding a new subsection to read:

7 (b) The commissioner may adopt regulations to carry out the purposes of this
8 chapter.

9 * **Sec. 7.** AS 27.19.100 is amended by adding a new paragraph to read:

10 (9) "lode mine" means a mining operation that removes the minerals
11 from consolidated rock rather than from a placer deposit.

12 * **Sec. 8.** AS 37.14 is amended by adding new sections to read:

13 **Article 9. Mine Reclamation Trust Fund.**

14 **Sec. 37.14.800. Mine reclamation trust fund established.** (a) The mine
15 reclamation trust fund is established as a separate trust fund of the state. The principal
16 and earnings of the fund shall be held by the state for the purpose of protecting the
17 public interest in reclaiming mine sites in the state. The fund is composed of the mine
18 reclamation trust fund income account and the mine reclamation trust fund operating
19 account.

20 (b) The mine reclamation trust fund income account consists of payments and
21 deposits made by miners to satisfy the miners' reclamation bonding or financial
22 assurance obligation under AS 27.19.040 or AS 27.21.160 and earnings on the income
23 account. The mine reclamation trust fund operating account consists of appropriations
24 by the legislature of the annual balance of the mine reclamation trust fund income
25 account and any earnings on those appropriations while in the operating account.

26 (c) Before payments are accepted into the mine reclamation trust fund income
27 account for a particular mining operation, the commissioner of natural resources and
28 the miner may execute a memorandum of understanding that outlines a schedule of
29 expected payments into the trust fund and the relationship of the payments and
30 accumulated earnings in the trust fund to reclamation obligations of the miner under
31 AS 27.19.040 or AS 27.21.160. The memorandum of understanding may also address

1 expected use of the fund under AS 37.14.820. If the memorandum of understanding
2 addresses investment of the fund with respect to payments made by the miner, the
3 commissioner of revenue must also sign the memorandum.

4 (d) Nothing in this section creates a dedicated fund.

5 **Sec. 37.14.810. Powers and duties of the commissioner of revenue.** The
6 commissioner of revenue is a fiduciary to the fund. The commissioner shall manage
7 both the mine reclamation trust fund income account and the mine reclamation trust
8 fund operating account and shall invest their assets in accordance with AS 37.10.071.

9 **Sec. 37.14.820. Use of the mine reclamation trust fund operating account.**

10 (a) The commissioner of natural resources may make expenditures from the mine
11 reclamation trust fund operating account for the following purposes:

12 (1) reclamation of mining operations for which a payment or deposit
13 has been made into the fund;

14 (2) maintenance of dams and other permanent features related to a
15 mining operation;

16 (3) monitoring of site stability and water quality related to a mining
17 operation;

18 (4) control and treatment of acid rock drainage and other leachate
19 related to a mining operation;

20 (5) protection and treatment of surface water and groundwater related
21 to a mining operation;

22 (6) long-term site management of a mining operation;

23 (7) refunds to miners of the deposits to the fund upon satisfactory
24 completion of reclamation tasks as determined by the Department of Natural
25 Resources.

26 (b) Subject to appropriation, the mine reclamation trust fund operating account
27 may be used to pay the expenses incurred by the commissioner of revenue in
28 managing the fund and administrative expenses incurred by the Department of Natural
29 Resources in administering the fund and programs under AS 27.19 and AS 27.21.

30 (c) The Department of Natural Resources may not spend money deposited in
31 the fund for one mining operation at another mining operation.

1 (d) In accordance with AS 37.14.800(b), and except as provided in (b) of this
2 section, earnings on the mine reclamation trust fund operating account are added to
3 that account and are available for expenditure without further appropriation.

4 **Sec. 37.14.830. Regulations.** The commissioner of natural resources may
5 adopt regulations necessary to carry out the purposes of AS 37.14.800 and 37.14.820 -
6 37.14.840.

7 **Sec. 37.14.840. Definition.** Unless the context otherwise requires, in
8 AS 37.14.800 - 37.14.840, "fund" means the mine reclamation trust fund established
9 in AS 37.14.800.

10 * **Sec. 9.** This Act takes effect July 1, 2004.