

# STATE OF NEW YORK

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7420

2021-2022 Regular Sessions

## IN SENATE

October 6, 2021

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Introduced by Sen. BORRELLO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public service law and the executive law, in relation to requiring financial security for reclamation for solar and wind electric generating systems

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public service law is amended by adding a new section  
2 66-s to read as follows:

3 § 66-s. Financial security for reclamation for solar and wind electric  
4 generating systems. 1. Before the commission may issue a permit or find  
5 a solar or wind electric generating system in compliance with any terms  
6 and conditions set forth in any permit already issued, the applicant  
7 shall furnish financial security to ensure the performance of reclama-  
8 tion as provided in the approved plan for a solar or wind electric  
9 generating system and naming the state as beneficiary. Financial securi-  
10 ty shall be in the form of a bond from a corporate surety licensed to do  
11 business as such in the state or any other form the commission deems  
12 acceptable. Any interest accruing as a result of such security shall be  
13 the exclusive property of the permittee.

14 2. The commission shall determine the amount, condition, and terms of  
15 the financial security. The amount shall be based upon the estimated  
16 cost of reclaiming the affected land, which shall be based on informa-  
17 tion contained in the permit application and upon such information as an  
18 investigation by the commission may disclose.

19 3. The financial security shall remain in full force and effect until  
20 the commission has approved the reclamation. At the discretion of the  
21 commission, the permittee may secure the release of that portion of the  
22 financial security for affected land on which reclamation has been  
23 completed and approved by the commission.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD13183-01-1

1 4. If the financial security shall for any reason be cancelled, within  
2 thirty days after receiving notice thereof, the permittee shall provide  
3 a valid replacement under the same conditions as described in this  
4 section. Failure to provide a replacement bond within such period may,  
5 at the discretion of the commission, result in the immediate suspension  
6 of the permit.

7 5. If a permit is suspended or revoked, the commission may require the  
8 permittee to commence reclamation upon thirty days notice.

9 6. If the permittee fails to commence or to complete the reclamation  
10 as required, the commission may attach the financial security furnished  
11 by the permittee. In any event, the full cost of completing reclamation  
12 shall be the personal liability of the permittee and/or the person  
13 owning or operating the solar or wind electric generating system and the  
14 commission, acting by the attorney general, may bring suit to recover  
15 all costs to secure the reclamation not covered by the financial securi-  
16 ty. The materials, machinery, implements and tools of every description  
17 which may be found at the solar or wind electric generating system site,  
18 or other assets of the permittee and/or the person owning or operating  
19 the solar or wind electric generating system shall be subject to a lien  
20 of the commission for the amount expended for reclamation of affected  
21 lands and shall not be removed without the written consent of the  
22 commission. Such lien may be foreclosed by the attorney general in the  
23 same manner as a mechanic's lien.

24 7. Political subdivisions, municipalities, the United States and any  
25 of its agencies and agencies of the state shall be exempt from the  
26 requirements of this section.

27 § 2. Section 94-c of the executive law is amended by adding a new  
28 subdivision 9 to read as follows:

29 9. Financial security for reclamation for solar and wind electric  
30 generating systems. (a) Before the office may issue a siting permit for  
31 a solar or wind electric generating system or find a solar or wind elec-  
32 tric generating system in compliance with any terms and conditions set  
33 forth in any siting permit already issued, the applicant shall furnish  
34 financial security to ensure the performance of reclamation as provided  
35 in the approved pre-application public involvement program plan for a  
36 solar or wind electric generating system and naming the state as benefi-  
37 ciary. Financial security shall be in the form of a bond from a corpo-  
38 rate surety licensed to do business as such in the state or any other  
39 form the office deems acceptable. Any interest accruing as a result of  
40 such security shall be the exclusive property of the permittee.

41 (b) The office shall determine the amount, condition, and terms of the  
42 financial security. The amount shall be based upon the estimated cost of  
43 reclaiming the affected land, which shall be based on information  
44 contained in the siting permit application and upon such information as  
45 an investigation by the office may disclose.

46 (c) The financial security shall remain in full force and effect until  
47 the office has approved the reclamation. At the discretion of the  
48 office, the permittee may secure the release of that portion of the  
49 financial security for affected land on which reclamation has been  
50 completed and approved by the office.

51 (d) If the financial security shall for any reason be cancelled, with-  
52 in thirty days after receiving notice thereof, the permittee shall  
53 provide a valid replacement under the same conditions as described in  
54 this section. Failure to provide a replacement bond within such period  
55 may, at the discretion of the office, result in the immediate suspension  
56 of the siting permit.

1 (e) If a siting permit is suspended or revoked, the office may require  
2 the permittee to commence reclamation upon thirty days notice.

3 (f) If the permittee fails to commence or to complete the reclamation  
4 as required, the office may attach the financial security furnished by  
5 the permittee. In any event, the full cost of completing reclamation  
6 shall be the personal liability of the permittee and/or the person  
7 owning or operating the solar or wind electric generating system and the  
8 office, acting by the attorney general, may bring suit to recover all  
9 costs to secure the reclamation not covered by the financial security.  
10 The materials, machinery, implements and tools of every description  
11 which may be found at the solar or wind electric generating system site,  
12 or other assets of the permittee and/or the person owning or operating  
13 the solar or wind electric generating system shall be subject to a lien  
14 of the office for the amount expended for reclamation of affected lands  
15 and shall not be removed without the written consent of the office. Such  
16 lien may be foreclosed by the attorney general in the same manner as a  
17 mechanic's lien.

18 (g) Political subdivisions, municipalities, the United States and any  
19 of its agencies and agencies of the state shall be exempt from the  
20 requirements of this section.

21 § 3. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law; provided, however, that the amendments to  
23 section 94-c of the executive law, made by section two of this act,  
24 shall not affect the repeal of such section and shall be deemed repealed  
25 therewith. Effective immediately, the addition, amendment and/or repeal  
26 of any rule or regulation necessary for the implementation of this act  
27 on its effective date are authorized to be made and completed on or  
28 before such effective date.