

STATE OF NEW YORK

1265

2023-2024 Regular Sessions

IN SENATE

January 11, 2023

Introduced by Sens. BORRELLO, ORTT -- read twice and ordered printed,
and when printed to be committed to the Committee on Energy and Tele-
communications

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 Assem-
bly, do enact as follows:

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

3 § 66-u. 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.

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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.