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 Telecommunications

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:

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

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

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

3. The financial security shall remain in full force and effect until the commission has approved the reclamation. At the discretion of the commission, the permittee may secure the release of that portion of the financial security for affected land on which reclamation has been 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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4. If the financial security shall for any reason be cancelled, within thirty days after receiving notice thereof, the permittee shall provide a valid replacement under the same conditions as described in this section. Failure to provide a replacement bond within such period may, at the discretion of the commission, result in the immediate suspension of the permit.

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

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

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

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

9. Financial security for reclamation for solar and wind electric generating systems. (a) Before the office may issue a siting permit for a solar or wind electric generating system or find a solar or wind electric generating system in compliance with any terms and conditions set forth in any siting permit already issued, the applicant shall furnish financial security to ensure the performance of reclamation as provided in the approved pre-application public involvement program plan for a solar or wind electric generating system and naming the state as beneficiary. Financial security shall be in the form of a bond from a corporate surety licensed to do business as such in the state or any other form the office deems acceptable. Any interest accruing as a result of such security shall be the exclusive property of the permittee.

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

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

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

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

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

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

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