

Senate Bill 423

Sponsored by Senator PROZANSKI (at the request of John English and John Tyler) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires State Department of Geology and Mineral Industries to consider certain information in review of applications for operating permits.

Provides that department may revoke, terminate or refuse to renew operating permit if operator fails to comply with conditions in operating permit.

Requires governing board of department to establish by rule procedures for public participation in process of renewal of operating permits. Requires department to consider certain comments before department may renew operating permit for surface mining operation.

Requires certain local jurisdictions to review and comment on applications for operating permits for surface mining operations within time period specified by department.

Requires department to send copies of applications for operating permits for surface mining operations to certain state agencies. Requires state agencies to respond to request for comment.

Allows governing board of department to impose certain civil penalties.

Requires department to study issues related to consultation and cooperation with other agencies. Sunsets study on January 2, 2015.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mineral resources; creating new provisions; amending ORS 517.790, 517.830 and 517.862;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 517.790 is amended to read:

6 517.790. (1) A landowner or operator may not allow or engage in surface mining on land not
7 surface mined on July 1, 1972, without holding a valid operating permit from the State Department
8 of Geology and Mineral Industries for the surface mining operation. A separate permit is required
9 for each separate surface mining operation. A person seeking an operating permit from the depart-
10 ment shall submit an application on a form provided by the department that contains the following
11 information:

12 (a) The name and address of the landowner and the operator and the names and addresses of
13 any persons designated by them as their agents for the service of process.

14 (b) The materials for which the operation is to be conducted.

15 (c) The type of surface mining to be employed in the operation.

16 (d) The proposed date for the initiation of the operation.

17 (e) The size and legal description of the lands that will be affected by the operation, and, if more
18 than 10 acres of land will be affected by the operation and if the department determines that the
19 conditions warrant it, a map of the lands to be surface mined that includes the boundaries of the
20 affected lands, topographic details of the lands, the location and names of all streams, roads, rail-
21 roads, utility facilities, wells, irrigation ditches, ponds, stockpiles, buffers, setbacks and excavation
22 boundaries within or adjacent to the lands, the location of all proposed access roads to be protected
23 or constructed in conducting the operation and the names and addresses of the owners of all surface
24 and mineral interests of the lands included within the surface mining area.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (f) If practicable, a plan for visual screening by vegetation or otherwise that will be established
 2 and maintained on the lands within the operation for the purpose of screening the operation from
 3 the view of persons using adjacent public highways, public parks and residential areas.

4 (g) The type of monitoring well abandonment procedures.

5 (h) A proposed reclamation plan that is acceptable to and approved by the department.

6 (i) Any other information that the department considers pertinent in its review of the applica-
 7 tion.

8 **(2) In addition to the information specified in subsection (1) of this section, the depart-**
 9 **ment shall consider the following information in its review of applications for operating**
 10 **permits:**

11 **(a) The historical use of the lands affected by the operation in relationship to the type**
 12 **of surface mining to be employed in the operation.**

13 **(b) The historical and aesthetic significance of the lands affected by the operation in re-**
 14 **lationship to the area surrounding the operation.**

15 **(c) Estimated noise and dust from the operation.**

16 **(d) Visual blight created by the operation and its effects on the value of real property**
 17 **near the operation.**

18 **(e) Effects of the operation on ground water resources.**

19 **(f) Traffic.**

20 **(g) Safety concerns related to pedestrians, bicyclists and equestrians.**

21 [(2)] **(3)** The department may waive the requirement for preparation and approval of a reclama-
 22 tion plan if:

23 (a) The operation is conducted as part of the on-site construction of a building, public works
 24 project or other physical improvement of the subject property;

25 (b) The operation is reasonably necessary for such construction; and

26 (c) The proposed improvements are authorized by the local jurisdiction with land use authority.

27 [(3)] **(4)** The department may not issue an operating permit to an operator other than the owner
 28 or owners of the surface and mineral interests of the lands included within the surface mining area
 29 unless the operator:

30 (a) Has written approval from the owner or owners of all surface and mineral interests of the
 31 lands included within the surface mining area; and

32 (b) Maintains a legal interest in the lands that is sufficient to ensure that the operator has the
 33 authority to operate and reclaim the lands as provided in the operating permit and reclamation plan.

34 [(4)] **(5)** The department may refuse to issue an operating permit to a person who has not, in the
 35 determination of the department, substantially complied with the conditions of an operating permit
 36 or reclamation plan, the provisions of this chapter or the rules adopted by the department to carry
 37 out the purposes of this chapter.

38 **SECTION 2.** ORS 517.830 is amended to read:

39 517.830. (1)**(a)** Upon receipt of an application for an operating permit, the State Department of
 40 Geology and Mineral Industries shall inspect the operating site described in the application. Within
 41 90 days after the date that the application and the required permit fee are received, the department
 42 shall issue the operating permit applied for or, if it considers the application incomplete, return the
 43 application to the applicant for correction of the deficiencies indicated by the department.

44 **(b) Upon receipt of an application, the State Department of Geology and Mineral Indus-**
 45 **tries shall send copies of the application for comment within the 90 days referred to in this**

1 subsection to the Department of Environmental Equality, the Water Resources Commission,
 2 the State Fish and Wildlife Commission, the Water Resources Department, the State
 3 Forestry Department, the State Department of Agriculture, the Department of Land Con-
 4 servation and Development and any other state agency that has regulatory responsibility
 5 with respect to the surface mining operation. The state agencies must respond to the State
 6 Department of Geology and Mineral Industries within the time period specified in this para-
 7 graph.

8 (c) Upon receipt of an application described in this subsection and prior to the renewal
 9 of an operating permit, the department shall send copies of the application for comment by
 10 certified mail with return receipt to each owner as defined in ORS 517.959 (1) of property
 11 located within one mile of the perimeter of the surface mining operation described in the
 12 application. Comments must be received by the department within 30 days of the date on
 13 the return receipt.

14 (2) Failure by the department to act upon the reclamation plan submitted with an application
 15 for an operating permit within the 90-day period referred to in subsection (1) of this section is not
 16 a denial by the department of the operating permit applied for. The department, pending final ap-
 17 proval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that
 18 may be prescribed by the department and conditioned upon the applicant's compliance with the bond
 19 and security requirements established by ORS 517.810.

20 (3)(a) Notwithstanding subsections (1) and (2) of this section, if an application involves an ag-
 21 gregate site that requires a permit issued pursuant to ORS 215.427 or 227.178, and if the local ju-
 22 risdiction requests that the application not be decided until the local jurisdiction has taken final
 23 action, the department shall make a final decision on the operating permit and reclamation plan no
 24 later than 165 days after the date a complete land use application is submitted to the local juris-
 25 diction, unless the applicant agrees to allow additional time under ORS 215.427, 215.429, 227.178 or
 26 227.179. If a plan amendment is required as part of issuance of a permit, the provisions of paragraph
 27 (b) of this subsection apply. The department may not approve an operating permit and reclamation
 28 plan if the land use application is denied.

29 (b) Notwithstanding subsections (1) and (2) of this section, if an application involves an aggre-
 30 gate site that requires amendment to a comprehensive plan, as defined in ORS 197.015, and if the
 31 local jurisdiction requests that the application not be decided until the local jurisdiction has taken
 32 final action on the plan amendment, the department may not make a final decision on the operating
 33 permit and reclamation plan until the local jurisdiction has taken final action on the plan amend-
 34 ment. The department shall make its final decision within 45 days of the date that the local juris-
 35 diction has taken final action on the plan amendment. The department may not approve an operating
 36 permit and reclamation plan if the plan amendment is denied.

37 (4) Conditions and requirements imposed on an operating permit and reclamation plan, and
 38 modifications thereto, issued subsequent to issuance of a local jurisdiction permit shall be compat-
 39 ible with the requirements and conditions of the local government permit, unless more stringent
 40 requirements are necessary to comply with the provisions of ORS 517.750 to 517.901.

41 (5) If a local jurisdiction does not request that the department delay a decision on an operating
 42 permit and reclamation plan as provided in subsection (3) of this section, the department shall:

43 (a) Give the local jurisdiction **notice of** the opportunity to review and comment on the
 44 application[; *and*]. **The department shall specify in the notice a time period for the local ju-**
 45 **risdiction to review and comment on the application. The local jurisdiction must review and**

1 **comment on the application within that time period.**

2 (b) Notify the local jurisdiction of the decision and requirements and conditions imposed by the
3 department.

4 (6) If the department refuses to approve a submitted reclamation plan, it shall notify the appli-
5 cant, in writing, of its reasons for the refusal to approve the reclamation plan, including additional
6 requirements as may be prescribed by the department for inclusion in the reclamation plan. Within
7 60 days after the receipt of the notice, the applicant shall comply with the additional requirements
8 prescribed by the department for the reclamation plan or file with the department a notice of appeal
9 from the decision of the department with respect to the reclamation plan. If a notice of appeal is
10 filed with the department by the applicant, the department may issue a provisional permit to the
11 applicant.

12 (7) If an application is submitted as part of the consolidated application process under ORS
13 517.952 to 517.989, review of the application and approval or denial of the application shall be in
14 accordance with ORS 517.952 to 517.989. However, the review and approval or denial shall take into
15 consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

16 **SECTION 3.** ORS 517.862 is amended to read:

17 517.862. (1) Except as provided in subsection (2) of this section, the State Department of Geology
18 and Mineral Industries may not revoke, terminate or refuse to renew an operating permit if
19 marketable reserves exist at the permitted site and if there is a significant potential for continued
20 mining opportunities given reasonably foreseeable economic conditions.

21 (2) The department may revoke, terminate or refuse to renew an operating permit if the opera-
22 tor:

23 (a) Requests termination, provided that all reclamation requirements in the operating permit and
24 reclamation plan have been satisfied;

25 (b) Fails to pay a fee as required by ORS 517.800 within 60 days of the due date;

26 (c) Fails to provide or maintain a bond or security as required by ORS 517.810;

27 (d) Fails to comply with an order issued under ORS 517.860; or

28 (e) Fails to comply with a suspension order issued under ORS 517.880.

29 **(f) Fails to comply with any conditions of the operating permit.**

30 (3) If an operating permit is revoked, terminated or not renewed, the operator may not perform
31 any actions at the permitted site, except that the operator may, after receiving written approval
32 from the department:

33 (a) Perform actions at the permitted site that are necessary to comply with reclamation re-
34 quirements in the operating permit or reclamation plan, including but not limited to removal of
35 mining-related stockpiles;

36 (b) Excavate materials at the permitted site that are necessary for reclamation; and

37 (c) Remove any excavated materials from buffers, setbacks or other areas not approved for dis-
38 turbance and restore the areas to the approximate pre-mining contours with materials approved by
39 the department.

40 (4) The department, in lieu of or in addition to revoking, terminating or refusing to renew an
41 operating permit for the reasons specified in subsection (2) of this section, may recover against the
42 bond or security filed pursuant to ORS 517.810 and reclaim the area affected by surface mining.

43 **(5) By rule the governing board of the State Department of Geology and Mineral Indus-**
44 **tries shall establish procedures for public participation in the process of the renewal of op-**
45 **erating permits. Before the department renews an operating permit, the department shall**

1 consider any comments received under ORS 517.830 (1)(c) pursuant to the process for public
2 participation established by rules of the governing board.

3 **SECTION 4.** (1) In addition to any other penalty provided by law, the State Board of
4 Geology and Mineral Industries shall adopt by rule a schedule establishing the amount of
5 civil penalty that may be imposed for a particular violation of ORS 517.750 to 517.901. A civil
6 penalty may not exceed \$_____ per day.

7 (2) In imposing a civil penalty pursuant to the schedule authorized by this section, the
8 governing board of the State Department of Geology and Mineral Industries shall consider:

9 (a) The impact of the violation on public health and safety;

10 (b) The alleged violator's cooperativeness and effort to correct the violation; and

11 (c) Any other factors determined by the governing board to be relevant.

12 (3) A civil penalty under this section shall be imposed as provided in ORS 183.745.

13 (4) Civil penalties recovered under this section shall be paid into the State Treasury and
14 credited to the General Fund and are available for general governmental expenses.

15 **SECTION 5.** (1) The State Department of Geology and Mineral Industries shall undertake
16 a study of issues related to the department's cooperation with other state agencies con-
17 cerning the provisions of ORS 517.750 to 517.901, including but not limited to a study of co-
18 operation under ORS 517.795, 517.797 and 517.835.

19 (2) The department shall report the results of the study to the interim committees of the
20 Legislative Assembly related to environment and natural resources on or before November
21 1, 2013.

22 **SECTION 6.** (1) Except as provided in subsection (2) of this section, section 4 of this 2013
23 Act and the amendments to ORS 517.790, 517.830 and 517.862 by sections 1 to 3 of this 2013
24 Act become operative on November 1, 2013.

25 (2) The governing board of the State Department of Geology and Mineral Industries may
26 adopt rules before the operative date specified in subsection (1) of this section, or take any
27 other action before the operative date specified in subsection (1) of this section, that is nec-
28 essary to implement, on or after the operative date specified in subsection (1) of this section,
29 section 4 of this 2013 Act and the amendments to ORS 517.790, 517.830 and 517.862 by sections
30 1 to 3 of this 2013 Act.

31 (3)(a) The amendments to ORS 517.790 by section 1 of this 2013 Act apply to operating
32 permits first applied for, or renewed, on or after the operative date specified in subsection
33 (1) of this section.

34 (b) The amendments to ORS 517.830 by section 2 of this 2013 Act apply to applications for
35 operating permits received by the State Department of Geology and Mineral Industries on
36 or after the operative date specified in subsection (1) of this section.

37 (c) The amendments to ORS 517.862 by section 3 (5) of this 2013 Act apply to operating
38 permits renewed on or after the operative date specified in subsection (1) of this section.

39 (d) Section 4 of this 2013 Act applies to conduct occurring on or after the operative date
40 specified in subsection (1) of this section.

41 **SECTION 7.** Section 5 of this 2013 Act is repealed on January 2, 2015.

42 **SECTION 8.** This 2013 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
44 on its passage.