

Senate Bill 2317

Presented by: Dean Moos, Director of AML / Reclamation
Public Service Commission

Before: House Energy and Natural Resources Committee
The Honorable Todd Porter, Chairman

Date: March 11, 2021

TESTIMONY

Mr. Chairman and committee members, I am Dean Moos, Director of the AML / Reclamation Divisions of the Public Service Commission.

The Public Service Commission (PSC) offers qualified support of SB 2317. It has the potential to result in lower mining costs and lower retail costs for customers.

North Dakota's surface mining program requires that the mining companies provide adequate bond coverage to complete reclamation of lands disturbed by mining activities if the mining company is unable to complete the reclamation (i.e., bond forfeiture).

NDCC 38-14.1-16 establishes the general criteria for performance bonds used by mining companies. NDAC 69-05.2-12 provides further clarification on the bonding requirements for mining companies. There are three types of bonds that are currently accepted by the Commission: surety bonds, collateral bonds, self-bonds, or a combination of the three types of acceptable bonds. The regulations establish the criteria for each type of bond. A self-bond is described as: "legally

binding corporate promises with separate surety or collateral, available to entities that meet certain financial tests.”

SB 2317 would establish a fourth type of acceptable bond – a real property collateral bond. Under this scenario, real estate owned by a mining company could be pledged as a collateral bond subject to certain criteria. Lands held in the trust would serve as the collateral.

Currently, the total bond amount held by the Commission for North Dakota mining companies is approximately \$351 million in the following types of bonds: \$119 million in surety bonds, \$21 million in collateral bonds, and \$211 million in self-bonds.

North Dakota’s surface mining laws and rules must be at least as stringent as the federal Surface Mining and Reclamation Act. Any changes to our surface mining laws or rules must be approved by the federal Office of Surface Mining. If SB 2317 were approved, the Commission’s administrative rules would need to be amended to allow for real estate collateral bonds. As an example of our law and rules being no less stringent than the federal law and rules: the federal rules state that lands that have been mined and reclaimed could not be pledged as collateral, therefore, such lands could not be used as real property collateral bonds.

Thank you for the opportunity to submit this information for the Committee’s consideration. Please don’t hesitate to contact the Commission if there are any questions.