

THE STATE SENATE  
Monday, February 18, 2008

Committee Substitute for  
Senate Bill No. 1457

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1457 - By: RILEY of the  
Senate and BENGE of the House.

[ mines and mining - mining permits - authorizing  
municipalities to limit consideration of certain proof of  
compliance requests - municipal permits - modifying  
requirements -  
emergency ]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 45 O.S. 2001, Section 724, as last  
amended by Section 1, Chapter 221, O.S.L. 2005 (45 O.S. Supp. 2007,  
Section 724), is amended to read as follows:

Section 724. A. It shall be unlawful for any operator to  
engage in any mining operations in this state without first  
obtaining a permit from the Department of Mines for each separate  
mining operation. The Department shall determine what constitutes a  
separate mining operation by rules promulgated under the Mining  
Lands Reclamation Act.

B. 1. Any operator desiring to engage in surface mining shall  
make written application to the Department for a permit.  
Application for such permit shall be made upon a form furnished by  
the Department. The form shall contain a description of the tract  
or tracts of land and the estimated number of acres to be affected

1 by surface mining by the operator. The description shall include  
2 the section, township, range and county in which the land is located  
3 and shall otherwise describe the land with sufficient certainty so  
4 that it may be located and distinguished from other lands.

5 2. Transmission lines shall be plotted on a location map  
6 submitted with the application. A statement that the operator has  
7 the right and power by legal estate owned to mine by surface mining  
8 the land so described shall be included with the application.

9 C. 1. Any operator desiring to engage in underground mining  
10 shall make written application to the Department for a permit.  
11 Application for such permit shall be made upon a form furnished by  
12 the Department. The form shall contain a description of the tract  
13 or tracts of land to be used as refuse disposal areas. The  
14 description shall include the section, township, range and county in  
15 which the land is located and shall otherwise describe the land with  
16 sufficient certainty so that it may be located and distinguished  
17 from other lands.

18 2. A statement that the applicant has the right and power by  
19 legal estate owned to use the land so described as a refuse disposal  
20 area shall be included with the application.

21 D. Each application for a permit under subsections B and C of  
22 this section shall be accompanied by a plan of reclamation of the  
23 affected land that meets the requirements of the Mining Lands

1 Reclamation Act. The application shall set forth the proposed use  
2 to be made of the affected land, the grading to be accomplished, the  
3 type of revegetation, and shall include the approximate time of  
4 grading and initial revegetation effort.

5 E. Each application for a permit under subsections B and C of  
6 this section shall be accompanied by the bond or security meeting  
7 the requirements of Section 728 of this title, or proof that such  
8 bond or security is still in effect, and a fee of One Hundred  
9 Seventy-five Dollars (\$175.00) for each permit year, payable at the  
10 rate of One Hundred Seventy-five Dollars (\$175.00) per year on the  
11 anniversary date of the year in which the permit or permit renewal  
12 was issued. All application fees shall be submitted to the State  
13 Treasurer, who shall deposit them in the Department of Mines  
14 Revolving Fund.

15 F. 1. Upon the receipt of such application, bond or security  
16 and fee due from the operator, the Department may issue a permit to  
17 the applicant which shall entitle the applicant to engage in mining  
18 on the land therein described in accordance with the rules  
19 promulgated by the Department, for the life expectancy of the  
20 operation unless the operator is in violation of any state statute  
21 or rule of the Department in which case the Department shall take  
22 appropriate action against the operator.

1           2. All applications for renewal of existing permits shall be  
2 filed prior to the expiration of the existing permit in accordance  
3 with the rules promulgated by the Department.

4           3. No permit shall be issued except upon proper application and  
5 public hearing, if requested.

6           G. 1. a. Upon filing the application with the Department, the  
7                   applicant shall place an advertisement in a newspaper  
8                   of general circulation in the vicinity of the mining  
9                   operation, containing such information as is required  
10                  by the Department, at least once a week for four (4)  
11                  consecutive weeks.

12           b. The advertisement shall contain, at a minimum, the  
13                  following:

- 14                   (1) the name and business address of the applicant,  
15                   (2) a description which clearly shows or describes  
16                   the precise location and boundaries of the  
17                   proposed permit area and is sufficient to enable  
18                   local residents to readily identify the proposed  
19                   permit area. It may include towns, bodies of  
20                   water, local landmarks, and any other information  
21                   which would identify the location,  
22                   (3) the location where a copy of the application is  
23                   available for public inspection,

- 1                   (4) the name and address of the Department where  
2                   written comments, objections, or requests for  
3                   informal conferences on the application may be  
4                   submitted pursuant to subsection P of this  
5                   section,  
6                   (5) if an applicant seeks a permit to mine which  
7                   includes relocation or closing of a public road,  
8                   a copy of the county resolution pertaining to the  
9                   affected county road, and  
10                  (6) such other information as is required by the  
11                  Department.

12           2. Any property owner or resident of an occupied dwelling who  
13 may be adversely affected located within one (1) mile of the mining  
14 operation shall have the right to protest the issuance of a permit  
15 and request a public hearing.

16           3. The Department shall notify the surface owners of any  
17 hearings in connection with applications or permits in the same  
18 manner as the operator is notified.

19           4. Such protests must be received by the Department within  
20 fourteen (14) days after the date of publication of the newspaper  
21 advertisement. If a public hearing is requested, the Department  
22 shall then hold an informal hearing in the vicinity of the proposed  
23 mining.

1           5. Upon completion of findings after the hearing, the  
2 Department shall determine whether to issue or deny the permit, and  
3 shall notify all parties of its decision.

4           6. Any decision regarding the issuance of a permit under this  
5 section shall be appealable when entered, as provided in the  
6 Administrative Procedures Act.

7           H. Each application for a new operation shall contain, where  
8 applicable, a list of all other licenses and permits needed by the  
9 applicant to conduct the proposed mining operation. This list shall  
10 identify each license and permit by:

11           1. Type of permit or license;

12           2. Name and address of issuing authority;

13           3. Identification number or a copy of the application for  
14 permits or licenses or, if issued, a copy of the permit or license;  
15 and

16           4. If a decision has been made, the date of approval or  
17 disapproval by each issuing authority.

18           An existing operation which does not have on file a list of the  
19 applicable licenses or permits with the Department on the date of  
20 enactment of this act shall not be out of compliance with the  
21 provisions of this section. Any renewal of an existing permit or  
22 expansion or amendment to an existing operation upon time of

1 application shall submit a copy of all approved licenses and permits  
2 issued by other agencies or jurisdictions.

3 Identifications of all permits and licenses shall include local  
4 government agencies with jurisdiction over or an interest in the  
5 area of the proposed mining operation including, but not limited to,  
6 planning agencies, water and sewer authorities; and all state and  
7 federal government agencies with authority to issue permits and  
8 licenses applicable to the proposed mining operation, including all  
9 state environmental agencies, U.S. Army Corps of Engineers, U.S.  
10 Department of Agriculture Soil Conservation Service district office,  
11 and federal fish and wildlife agencies.

12 I. An operator desiring to have such operator's permit amended  
13 to cover additional land may file an amended application with the  
14 Department. Upon receipt of the amended application, and such  
15 additional bond as may be required under the provisions of the  
16 Mining Lands Reclamation Act, the Department shall issue an  
17 amendment to the original permit covering the additional land  
18 described in the amended application, without the payment of any  
19 additional fee.

20 J. An operator may withdraw any land covered by a permit,  
21 deleting affected land therefrom, by notifying the Department, in  
22 which case the penalty of the bond or security filed by such

1 operator pursuant to the provisions of the Mining Lands Reclamation  
2 Act shall be reduced proportionately.

3 K. Permits issued to an operator may be transferable to another  
4 operator, provided the new operator can demonstrate to the  
5 Department, prior to the transfer of ownership, that conditions and  
6 obligations required for the permit will be met and the new operator  
7 has submitted a performance bond or other guarantee, or has obtained  
8 the bond coverage of the original permittee.

9 L. The perimeter of the permit area shall be clearly marked by  
10 durable and recognizable markers or by other means approved by the  
11 Department.

12 M. The Department shall determine the blasting distance to  
13 transmission lines by rule.

14 N. 1. If any mining operations where blasting is required  
15 occur within the limits of a municipality with a population in  
16 excess of three hundred thousand (300,000) according to the latest  
17 Federal Decennial Census or within the limits of a municipality  
18 within a county with a population in excess of three hundred  
19 thousand (300,000) according to the latest Federal Decennial Census,  
20 the application for a permit pursuant to subsections B and C of this  
21 section shall be accompanied by proof that the operator is in full  
22 compliance with all applicable regulations of the municipality.  
23 Certified copies of any required municipal permits and any other

1 required written municipal approvals shall be attached to the  
2 application when submitted to the Department. No mining permit  
3 shall be issued by the Department unless the applicant first  
4 complies with the requirements of this subsection. A municipality  
5 is authorized to limit the number of requests for proof of  
6 compliance it will consider, related to the same site, from a person  
7 seeking such proof pursuant to this subsection.

8 2. The provisions of paragraph 1 of this subsection shall not  
9 apply to existing permitted operations, revisions or amendments  
10 thereto, or any application on file with the Department prior to the  
11 effective date of this act. In addition, the provisions of  
12 paragraph 1 of this subsection shall not apply to any future  
13 operation on property directly adjacent to property on which a  
14 permitted operation is located, provided that the operation is  
15 permitted and the adjacent property is owned or leased by the  
16 operator on the effective date of this act. For purposes of this  
17 subsection, properties separated by a public road shall be  
18 considered to be adjacent.

19 O. Within a reasonable time, as established by the Department,  
20 written comments or objections on permit or bond release  
21 applications may be submitted to the Department by public entities  
22 including but not limited to the local soil conservation district,

1 with respect to the effects of the proposed mining operations on the  
2 environment.

3 P. Any person having an interest in or who is or may be  
4 adversely affected by the decision on a permit or bond release  
5 application, or any federal, state or local agency, shall have the  
6 right to request in writing that the Department hold an informal  
7 conference on the application. The Department shall hold the  
8 informal conference within a reasonable time following the receipt  
9 of the written request at a location in the vicinity of the proposed  
10 or active surface mining or reclamation operation.

11 SECTION 2. AMENDATORY Section 1, Chapter 18, O.S.L. 2003  
12 (11 O.S. Supp. 2007, Section 43-113), is amended to read as follows:

13 Section 43-113. A. As used in this act, "specific use permit"  
14 means a permit granted by a municipal governing body, after notice  
15 and a hearing and preliminary review and recommendation of a  
16 municipal planning commission, for a specific use within any zoning  
17 district. Municipalities may enact an ordinance provision for  
18 specific use permit. Any municipality enacting an ordinance  
19 providing for specific use permits shall enumerate a list of uses  
20 which it has determined more intensely dominate the area in which  
21 they are to be located or their effects on the general public are  
22 broader in scope than other types of uses which are permitted in a  
23 zoning district. An entity with a use which is enumerated on the

1 list may, by application for a specific use permit, locate in a  
2 zoning district for which such use would not normally be allowed or  
3 could be allowed, but due to its potential impact on surrounding  
4 properties, must secure a specific use permit.

5 B. The types of uses for which a specific use permit may be  
6 required shall be those types of uses which, because of the size of  
7 the land they require or the specialized nature of the use, may more  
8 intensely dominate the area in which they are located and their  
9 effects on the general public are broader in scope than other uses  
10 permitted in the district.

11 C. The designation of a specific use as possible on the  
12 specific use list shall not constitute an authorization or an  
13 assurance that such use will be permitted. Rather, each specific  
14 use permit application shall be viewed as to its probable effect on  
15 the adjacent properties and community welfare and may be approved or  
16 denied as the findings indicate appropriate.

17 D. In granting a specific use permit, the governing body of the  
18 municipality may require conditions related to the use of land,  
19 including, but not limited to, permitted uses, lot sizes, setback,  
20 height limits, required facilities, buffers, open space areas,  
21 lighting, signage, landscaping, parking and loading, compatibility,  
22 land use density, bonding, insurance and such other development  
23 standards and operational conditions and safeguards as are indicated

1 to be important to the welfare and protection of adjacent property  
2 and the community as a whole. This may include having the property  
3 platted and/or the requirement of the dedication of sufficient  
4 right-of-way or easement as necessary to further the public good.  
5 Such conditions shall be determined in accordance with the  
6 regulations specified in the zoning ordinance. The conditions need  
7 not be uniform with regard to each type of land use if equitable  
8 procedures recognizing due process principles and avoiding arbitrary  
9 decisions have been followed in making regulatory decisions.

10 E. The specific use permit regulations established by a  
11 municipality shall specify the following:

- 12 1. The body which shall review and approve specific use permit  
13 requests and amend the same;
- 14 2. The conditions which create specific use permit eligibility,  
15 the persons and agencies involved in the review process, if any, and  
16 the requirements and standards upon which applications will be  
17 reviewed and approval granted; and
- 18 3. The procedures required for application, review and  
19 approval.

20 F. Following receipt of a request for a specific use permit, at  
21 least one public hearing shall be held. An ordinance may provide  
22 for one or more preapplication conferences before submission of a  
23 request, the submission of a deposit necessary for payment of

1 application and permit expenses, and the submission of preliminary  
2 site plans before the public hearing. Notification of the public  
3 hearing shall be given by mail in the same manner as required by  
4 Section 43-106 of Title 11 of the Oklahoma Statutes for public  
5 hearings on proposed zoning changes. Within a reasonable time  
6 following the public hearing, the body responsible for approving a  
7 specific use permit shall deny the request, approve the request, or  
8 approve the request with the following conditions:

9       1. The planning commission shall conduct a public hearing and  
10 make recommendations on the specific use permit request which shall  
11 be transmitted to the municipal governing body for consideration in  
12 making a final decision. If an amendment of a zoning ordinance is  
13 required by the specific use permit regulations of a municipal  
14 zoning ordinance, the requirements for amendment of a zoning  
15 ordinance shall be followed; and

16       2. If the specific use permit regulations of a municipal zoning  
17 ordinance do not require amendment of the ordinance with review and  
18 approval of specific use permits, the municipal governing body may  
19 approve, approve with conditions, or deny a request.

20       G. In establishing specific use permit ordinances, the  
21 municipal governing body may incorporate by reference other  
22 available and applicable ordinances or statutes which regulate land  
23 development.

1           SECTION 3. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-11-08  
6 - DO PASS, As Amended and Coauthored.