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By Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson

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1 AN ACT Relating to metals mining and milling operations; amending
2 RCW 90.03.350, 90.48.090, and 78.44.161; adding a new section to
3 chapter 70.94 RCW; adding a new section to chapter 70.105 RCW; adding
4 a new chapter to Title 78 RCW; creating new sections; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** It is in the interest of the state of
8 Washington that a safe and environmentally secure metals mining
9 industry be promoted. Mining is a valuable industrial activity
10 providing new materials, employment, and revenue. It is the intent of
11 the legislature that all statutes and regulations be interpreted by
12 both state agencies and local governments to allow industrial
13 development within the framework of environmental requirements. State
14 agencies are to follow the legislative mandate of environmentally sound
15 industrial development and are to work with the mining industry to
16 assure practical and reasonable application of statutes and rules that
17 will guarantee the long-term viability of the industry and the
18 integrity of the environment.

1 NEW SECTION. **Sec. 2.** Metals mining and milling operations are
2 subject to the requirements of this chapter in addition to the
3 requirements established in other statutes and rules.

4 NEW SECTION. **Sec. 3.** (1) An environmental impact statement must
5 be prepared for any proposed new metals mining and milling operation.
6 The department of ecology shall be the lead agency in coordinating the
7 environmental review process under chapter 43.21B RCW and in preparing
8 the environmental impact statement, except for uranium and thorium
9 operations regulated under Title 70 RCW.

10 (2) As part of the environmental review of metals mining and
11 milling operations regulated under this chapter, the department of fish
12 and wildlife shall identify potential impacts to fish and wildlife
13 associated with proposed operations and options for mitigating any
14 adverse impacts identified. The department of ecology will consult
15 with the department of fish and wildlife to incorporate measures to
16 mitigate adverse impacts to fish and wildlife into the department of
17 ecology's permit requirements for the proposed operation.

18 (3) In conducting the environmental review and preparing the
19 environmental impact statement, the department of ecology shall
20 cooperate with all affected local governments to the fullest extent
21 possible.

22 NEW SECTION. **Sec. 4.** The department of ecology shall appoint a
23 metals mining coordinator. The coordinator shall track the status of
24 any proposed metals mining and milling operation regulated under this
25 chapter from the preparation of the environmental impact statement
26 through the permitting and construction phases to the beginning of
27 operation of the project or until the proposal is no longer active.
28 The coordinator will act as a contact person for the applicant and for
29 interested members of the public and will serve as a source of
30 expertise to the agencies involved in reviewing and permitting the
31 proposed action.

32 NEW SECTION. **Sec. 5.** (1) State agencies with the responsibility
33 for inspecting metals mining and milling operations regulated under
34 this chapter shall conduct such inspections at least quarterly.

35 (2) The legislature encourages state agencies with inspection
36 responsibilities for metals mining and milling operations regulated

1 under this chapter to explore opportunities for cross-training of
2 inspectors among state agencies and programs. This cross-training
3 would be for the purpose of meeting the inspection responsibilities of
4 these agencies in a more efficient and cost-effective manner. If doing
5 so would be more efficient and cost-effective, state agency inspectors
6 are also encouraged to coordinate inspections with federal and local
7 government inspectors as well as with one another.

8 NEW SECTION. **Sec. 6.** In order to receive a waste discharge permit
9 from the department of ecology pursuant to the requirements of chapter
10 90.48 RCW, an applicant proposing a metals mining and milling operation
11 regulated under this chapter must meet the following additional
12 requirements:

13 (1) The tailings impoundment must meet the following standard:

14 (a) The applicant must employ all available and reasonable methods
15 for control of wastes and chemicals relative to the design,
16 construction, operation, and closure of the tailings impoundment;

17 (b) The tailings impoundment must have a liner, and leak detection
18 and leak collection systems to assure that any leak will be detected
19 before toxic materials escape from the liner system and are released to
20 the environment. These systems shall assure that a leak is found, and
21 that sufficient time is available to allow for the repair of the leak
22 and cleanup of any leaked material before there is a release to the
23 environment. Natural conditions, such as depth to ground water or net
24 rainfall, shall be considered as additional protection but not in lieu
25 of the protection required by the engineered liner system;

26 (c) The toxicity of mill tailings and the potential for long-term
27 cyanide and toxic metals release from mill tailings shall be reduced to
28 the greatest extent practicable through removal, reuse, or destruction
29 of chemical solutions prior to placement of tailings in the tailings
30 impoundment; and

31 (d) The closure of the tailings impoundment shall prevent future
32 release to the environment of residual potentially toxic chemicals
33 contained in the impoundment.

34 Only those metals mining and milling operations regulated under
35 this chapter which are under construction or constructed after the
36 effective date of this act must meet the requirements of this
37 subsection.

1 (2) The metals mining and milling operator or applicant, the
2 department of ecology, and the county legislative authority for the
3 county in which the operation is located shall jointly develop a system
4 or plan for private citizen participation in the taking of water
5 samples required by the federal clean water act and the statutes of the
6 state. The system or plan will be adopted in rule by the department of
7 ecology and must include the following concepts:

8 (a) A mechanism for establishing a roster of interested private
9 citizens from the area of the mining and milling operation; and

10 (b) A means for randomly selecting an interested citizen from the
11 roster who will be allowed to accompany the person taking the water
12 samples and who shall attest in writing to the time, place, and method
13 of taking the samples. Sampling, accompanied by a citizen, shall occur
14 a minimum of every six months at each metals mining and milling
15 operation regulated under this chapter. Records of state, local, and
16 the mining and milling operation's water quality tests and results
17 shall be kept on file with the relevant county and shall be available
18 for inspection during normal working hours.

19 NEW SECTION. **Sec. 7.** (1) A single bond with good and sufficient
20 surety, or the equivalent, acceptable to the department of ecology
21 after consulting with the department of natural resources and other
22 affected agencies and local government shall be required for each
23 metals mining and milling operation regulated under this chapter. The
24 bond shall be conditioned on compliance with the laws of the state of
25 Washington and the rules and permit conditions issued by state and
26 local government.

27 (2) The bond is security for the satisfactory compliance with
28 respect to:

29 (a) Exploration, planning and construction, operation, reclamation,
30 and closure;

31 (b) Twenty years of postclosure environmental monitoring; and

32 (c) Sufficient funding for cleanup of problems revealed during or
33 after closure.

34 (3) The bond shall be executed in favor of and approved by the
35 department of ecology, in consultation with the department of natural
36 resources. The department of ecology shall adopt rules for the
37 management of the bond required under subsection (1) of this section
38 and to establish and monitor the requirements and conditions of this

1 section. In establishing the bond requirements, the department of
2 ecology shall make every effort to coordinate bonding of state and
3 local government. State bonding may be required in amounts and for
4 activities greater than those required by federal law.

5 (4) In cooperation with the mine operator, the department of
6 ecology shall review all bond requirements at least once every two
7 years. The review shall include an analysis of the adequacy of the
8 bond. The bond requirements may be adjusted for increased needs or for
9 items no longer needed.

10 NEW SECTION. **Sec. 8.** (1) The legislature finds that the
11 construction and operation of large-scale metals mining and milling
12 facilities may create new job opportunities and enhance local tax
13 revenues. However, the legislature also finds that such operations may
14 also result in new demands on public facilities owned and operated by
15 local government entities, such as public streets and roads; publicly
16 owned parks, open space, and recreation facilities; school facilities;
17 and fire protection facilities in jurisdictions that are not part of a
18 fire district. It is important for these economic impacts to be
19 identified as part of any proposal for a large-scale metals mining and
20 milling operation. It is then appropriate for the county legislative
21 authority to balance expected revenues and costs associated with the
22 operation to determine to what degree any new costs require mitigation
23 by the metals mining applicant.

24 (2) An applicant for a large-scale metals mining and milling
25 operation regulated under this chapter must submit to the relevant
26 county legislative authority an impact analysis describing the economic
27 impact of the proposed mining operation on local governmental units.
28 For the purposes of this section, a metals mining operation is "large-
29 scale" if, in the construction or operation of the mine and the
30 associated milling facility, the applicant and contractors at the site
31 employ more than seventy-five persons during any consecutive six-month
32 period. The relevant county is the county in which the mine and mill
33 are to be sited, unless the economic impacts to local governmental
34 units are projected to affect more than one county. In that case, the
35 impact plan must be submitted to the legislative authority of all
36 affected counties. Local governmental units include counties, cities,
37 towns, school districts, and special purpose districts.

1 (3) The economic impact analysis shall include at least the
2 following information:

3 (a) A timetable for development of the mining operation, including
4 the opening date of the operation and the estimated closing date;

5 (b) The estimated number of persons coming into the impacted area
6 as a result of the development of the mining operation; and

7 (c) An estimate of the increased capital and operating costs to
8 local governmental units for providing services necessary as a result
9 of the development of the mining operation.

10 (4) The county legislative authority of a county planning under
11 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to
12 address economic impacts associated with development of the mining
13 operation. The county legislative authority shall hold at least one
14 public hearing on the economic impact analysis and any proposed
15 mitigation measures.

16 (5) The county legislative authority of a county which is not
17 planning under chapter 36.70A RCW may negotiate with the applicant on
18 a strategy to address economic impacts associated with development of
19 the mining operation. The county legislative authority shall hold at
20 least one public hearing on the economic impact analysis and any
21 proposed mitigation measures.

22 (6) The county legislative authority must approve or disapprove the
23 impact analysis and any associated proposals from the applicant to
24 address economic impacts to local governmental units resulting from
25 development of the mining operation. If the applicant does not submit
26 an acceptable impact analysis to the relevant county legislative
27 authority or if the county legislative authority does not find the
28 applicant's proposals to be acceptable, the county legislative
29 authority may refuse to issue any permits under its jurisdiction
30 necessary for the construction or operation of the mine and associated
31 mill.

32 (7) The requirements established in this section apply to metals
33 mining operations under construction or constructed after the effective
34 date of this act.

35 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of
36 this section, any person may commence a civil action on his or her own
37 behalf:

1 (a) Against any person, including the state and any other
2 governmental instrumentality or agency, who is alleged to be in
3 violation of a standard or limitation under Washington state law or an
4 order issued by the state with respect to such a standard or
5 limitation;

6 (b) Against the director of a state agency if there is alleged a
7 failure of the director to perform any act or duty under state law
8 which is not discretionary with the director; or

9 (c) Against any person who proposes to construct or constructs any
10 new or modified major facility without a permit required under
11 Washington state law or who is alleged to be in violation of any
12 condition of such permit.

13 The superior courts shall have jurisdiction to enforce a standard
14 or limitation, or an order, or to order the state to perform such act
15 or duty, as the case may be.

16 (2) No action may be commenced:

17 (a) Under subsection (1)(a) of this section:

18 (i) Prior to sixty days after the plaintiff has given notice of the
19 violation to the state, and to any alleged violator of the standard,
20 limitation, or order; or

21 (ii) If the state has commenced and is diligently prosecuting a
22 civil action in a court of the state or of the United States to require
23 compliance with the standard, limitation, or order, but in any such
24 action any person may intervene as a matter of right.

25 (b) Under subsection (1)(b) of this section prior to sixty days
26 after the plaintiff has given notice of such action to the state.

27 (3)(a) Any action respecting a violation by a stationary source of
28 a standard or limitation or an order respecting such standard or
29 limitation may be brought only in the judicial district in which such
30 source is located.

31 (b) In such action under this section, the state, if not a party,
32 may intervene as a matter of right.

33 (4) The court, in issuing any final order in any action brought
34 pursuant to subsection (1) of this section, may award costs of
35 litigation, including reasonable attorney and expert witness fees, to
36 any party, wherever the court determines such award is appropriate.
37 The court may, if a temporary restraining order or preliminary
38 injunction is sought, require the filing of a bond or equivalent
39 security in accordance with the rules of civil procedure.

1 (5) Nothing in this section restricts any right which any person,
2 or class of persons, may have under any statute or common law to seek
3 enforcement of any standard or limitation or to seek any other relief,
4 including relief against the state or a state agency. Nothing in this
5 section shall be construed to prohibit, exclude, or restrict any state,
6 local, or interstate authority from:

7 (a) Bringing any enforcement action or obtaining any judicial
8 remedy or sanction in any state or local court; or

9 (b) Bringing any administrative enforcement action or obtaining any
10 administrative remedy or sanction in any state or local administrative
11 agency, department, or instrumentality,
12 against the state or any agency of the state, or any officer, agent, or
13 employee thereof under state or local law respecting control and
14 abatement of pollution.

15 NEW SECTION. **Sec. 10.** (1) On the effective date of this act,
16 there shall be a moratorium on metals mining and milling operations
17 using the open pit cyanide heap leach extraction process. This
18 moratorium shall remain in effect until the division of geology and
19 earth resources of the department of natural resources in cooperation
20 with the department of ecology develops rules regarding this process
21 and the rules are reviewed by the legislature.

22 (2) Metals mining using the process of in situ extraction is
23 permanently prohibited in the state of Washington.

24 NEW SECTION. **Sec. 11.** The department of ecology will work with
25 the metals mining industry and relevant federal and local governmental
26 agencies to identify areas of regulatory overlap among regulators of
27 mining and milling operations. The department shall also identify
28 possible solutions for eliminating or reducing regulatory overlap. The
29 department shall report back to the legislature on its findings and
30 possible solutions by January 1, 1995.

31 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.94 RCW
32 to read as follows:

33 If a metals mining and milling operation is issued a permit
34 pursuant to this chapter, then it will be subject to special inspection
35 requirements. The department of ecology or the local air pollution
36 control authority shall inspect these mining operations at least

1 quarterly in order to ensure that the operation is in compliance with
2 the conditions of any permit issued to it pursuant to this chapter.
3 The department or local air pollution control authority shall conduct
4 additional inspections during the construction phase of the mining and
5 milling operation in order to ensure compliance with this chapter.

6 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.105
7 RCW to read as follows:

8 If a metals mining and milling operation is issued a permit
9 pursuant to this chapter, then it will be subject to special inspection
10 requirements. The department of ecology shall inspect these mining
11 operations at least quarterly in order to ensure that the operation is
12 in compliance with the conditions of any permit issued to it pursuant
13 to this chapter. The department shall conduct additional inspections
14 during the construction phase of the mining operation in order to
15 ensure compliance with this chapter.

16 **Sec. 14.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to
17 read as follows:

18 Any person, corporation or association intending to construct or
19 modify any dam or controlling works for the storage of ten acre feet or
20 more of water, shall before beginning said construction or
21 modification, submit plans and specifications of the same to the
22 department for examination and approval as to its safety. Such plans
23 and specifications shall be submitted in duplicate, one copy of which
24 shall be retained as a public record, by the department, and the other
25 returned with its approval or rejection endorsed thereon. No such dam
26 or controlling works shall be constructed or modified until the same or
27 any modification thereof shall have been approved as to its safety by
28 the department. Any such dam or controlling works constructed or
29 modified in any manner other than in accordance with plans and
30 specifications approved by the department or which shall not be
31 maintained in accordance with the order of the department shall be
32 presumed to be a public nuisance and may be abated in the manner
33 provided by law, and it shall be the duty of the attorney general or
34 prosecuting attorney of the county wherein such dam or controlling
35 works, or the major portion thereof, is situated to institute abatement
36 proceedings against the owner or owners of such dam or controlling
37 works, whenever he or she is requested to do so by the department.

1 A metals mining and milling operation regulated under chapter . . . ,
2 Laws of 1994 (this act) is subject to additional dam safety inspection
3 requirements due to the special hazards associated with failure of a
4 tailings pond impoundment. The department shall inspect these metals
5 mining operations at least quarterly in order to ensure the safety of
6 the dam or controlling works. The department shall conduct additional
7 inspections as needed during the construction phase of the mining
8 operation in order to ensure the safe construction of the tailings
9 impoundment.

10 **Sec. 15.** RCW 90.48.090 and 1987 c 109 s 127 are each amended to
11 read as follows:

12 The department or its duly appointed agent shall have the right to
13 enter at all reasonable times in or upon any property, public or
14 private, for the purpose of inspecting and investigating conditions
15 relating to the pollution of or the possible pollution of any of the
16 waters of this state.

17 The department shall have special inspection requirements for
18 metals mining and milling operations regulated under chapter . . . ,
19 Laws of 1994 (this act). The department shall inspect these mining and
20 milling operations at least quarterly in order to ensure compliance
21 with the intent and any permit issued pursuant to this chapter. The
22 department shall conduct additional inspections as needed during the
23 construction phase of these mining operations in order to ensure
24 compliance with this chapter.

25 **Sec. 16.** RCW 78.44.161 and 1993 c 518 s 25 are each amended to
26 read as follows:

27 The department may order at any time an inspection of the disturbed
28 area to determine if the miner or permit holder has complied with the
29 reclamation permit, rules, and this chapter.

30 The department shall have special inspection requirements for
31 metals mining and milling operations regulated under chapter . . . ,
32 Laws of 1994 (this act). The department shall inspect these mining
33 operations at least quarterly in order to ensure that the permit holder
34 is in compliance with the reclamation permit, rules, and this chapter.
35 The department shall conduct additional inspections as needed during
36 the construction phase of these mining operations in order to ensure
37 compliance with the reclamation permit, rules, and this chapter.

1 NEW SECTION. **Sec. 17.** Sections 2 through 10 of this act shall
2 constitute a new chapter in Title 78 RCW.

3 NEW SECTION. **Sec. 18.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect immediately.

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