
HOUSE BILL 2728

State of Washington 54th Legislature 1996 Regular Session

By Representatives Elliot, Sheldon and Thompson

Read first time 01/17/96. Referred to Committee on Natural Resources.

1 AN ACT Relating to metals mining and milling; amending RCW
2 78.56.110 and 78.44.161; and adding new sections to chapter 78.56 RCW.

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

4 **Sec. 1.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read
5 as follows:

6 (1) The department of ecology shall not issue necessary permits to
7 an applicant for a metals mining and milling operation until the
8 applicant has deposited with the department of ecology a performance
9 security which is acceptable to the department of ecology based on the
10 requirements of subsection (2) of this section. This performance
11 security may be:

12 (a) Bank letters of credit;

13 (b) A cash deposit;

14 (c) Negotiable securities;

15 (d) An assignment of a savings account;

16 (e) A savings certificate in a Washington bank; or

17 (f) A corporate surety bond executed in favor of the department of
18 ecology by a corporation authorized to do business in the state of
19 Washington under Title 48 RCW.

1 The department of ecology may, for any reason, refuse any
2 performance security not deemed adequate.

3 (2) The performance security shall be conditioned on the faithful
4 performance of the applicant or operator in meeting the following
5 obligations:

6 (a) Compliance with the environmental protection laws of the state
7 of Washington administered by the department of ecology, or permit
8 conditions administered by the department of ecology, associated with
9 the construction, operation, and closure pertaining to metals mining
10 and milling operations, and with the related environmental protection
11 ordinances and permit conditions established by local government when
12 requested by local government;

13 (b) Reclamation of metals mining and milling operations (~~that do~~
14 ~~not meet the threshold of surface mining as defined by RCW~~
15 ~~78.44.031(17))~~);

16 (c) Postclosure environmental monitoring as determined by the
17 department of ecology; and

18 (d) Provision of sufficient funding as determined by the department
19 of ecology for cleanup of potential problems revealed during or after
20 closure.

21 (3) The department of ecology may, if it deems appropriate, adopt
22 rules for determining the amount of the performance security,
23 requirements for the performance security, requirements for the issuer
24 of the performance security, and any other requirements necessary for
25 the implementation of this section.

26 (4) The department of ecology may increase or decrease the amount
27 of the performance security at any time to compensate for any
28 alteration in the operation that affects meeting the obligations in
29 subsection (2) of this section. At a minimum, the department of
30 ecology shall review the adequacy of the performance security every two
31 years.

32 (5) Liability under the performance security shall be maintained
33 until the obligations in subsection (2) of this section are met to the
34 satisfaction of the department of ecology. Liability under the
35 performance security may be released only upon written notification by
36 the department of ecology.

37 (6) Any interest or appreciation on the performance security shall
38 be held by the department of ecology until the obligations in
39 subsection (2) of this section have been met to the satisfaction of the

1 department of ecology. At such time, the interest shall be remitted to
2 the applicant or operator. However, if the applicant or operator fails
3 to comply with the obligations of subsection (2) of this section, the
4 interest or appreciation may be used by the department of ecology to
5 comply with the obligations.

6 (7) Only one agency may require a performance security to satisfy
7 the deposit requirements of ((RCW 78.44.087)) section 2 of this act,
8 and only one agency may require a performance security to satisfy the
9 deposit requirements of this section. However, a single performance
10 security, when acceptable to both the department of ecology and the
11 department of natural resources, may be utilized by both agencies to
12 satisfy the requirements of this section and ((RCW 78.44.087)) section
13 2 of this act.

14 NEW SECTION. Sec. 2. A new section is added to chapter 78.56 RCW
15 to read as follows:

16 (1) The department of natural resources shall not issue a
17 reclamation permit until the applicant has deposited with the
18 department of natural resources an acceptable performance security on
19 forms prescribed and furnished by the department of natural resources.
20 A public or governmental agency shall not be required to post
21 performance security nor shall a permit holder be required to post
22 metals mining and milling performance security with more than one state
23 or local agency.

24 (2) This performance security may be:

25 (a) Bank letters of credit acceptable to the department of natural
26 resources;

27 (b) A cash deposit;

28 (c) Negotiable securities acceptable to the department of natural
29 resources;

30 (d) An assignment of a savings account;

31 (e) A savings certificate in a Washington bank on an assignment
32 form prescribed by the department of natural resources;

33 (f) Assignments of interests in real property within the state of
34 Washington; or

35 (g) A corporate surety bond executed in favor of the department of
36 natural resources by a corporation authorized to do business in the
37 state of Washington under Title 48 RCW and authorized by the department
38 of natural resources.

1 (3) The performance security shall be conditioned upon the faithful
2 performance of the requirements set forth in this chapter and of the
3 rules adopted under it.

4 (4) The department of natural resources shall have the authority to
5 determine the amount of the performance security using a standardized
6 performance security formula developed by the department of natural
7 resources. The amount of the security shall be determined by the
8 department of natural resources and based on the estimated costs of
9 completing reclamation according to the approved reclamation plan or
10 minimum standards and related administrative overhead for the area to
11 be metals mined during (a) the next twelve-month period, (b) the
12 following twenty-four months, and (c) any previously disturbed areas on
13 which the reclamation has not been satisfactorily completed and
14 approved.

15 (5) The department of natural resources may increase or decrease
16 the amount of the performance security at any time to compensate for a
17 change in the disturbed area, the depth of excavation, a modification
18 of the reclamation plan, or any other alteration in the conditions of
19 the mine that affects the cost of reclamation. The department of
20 natural resources may, for any reason, refuse any performance security
21 not deemed adequate.

22 (6) Liability under the performance security shall be maintained
23 until reclamation is completed according to the approved reclamation
24 plan to the satisfaction of the department of natural resources unless
25 released as hereinafter provided. Liability under the performance
26 security may be released only upon written notification by the
27 department of natural resources. Notification shall be given upon
28 completion of compliance or acceptance by the department of natural
29 resources of a substitute performance security. The liability of the
30 surety shall not exceed the amount of security required by this section
31 and the department of natural resource's reasonable legal fees to
32 recover the security.

33 (7) Any interest or appreciation on the performance security shall
34 be held by the department of natural resources until reclamation is
35 completed to its satisfaction. At such time, the interest shall be
36 remitted to the permit holder; except that such interest or
37 appreciation may be used by the department of natural resources to
38 effect reclamation in the event that the permit holder fails to comply

1 with the provisions of this chapter and the costs of reclamation exceed
2 the face value of the performance security.

3 (8) Except as provided in this section, no other state agency or
4 local government shall require performance security for the purposes of
5 metals mine reclamation and only one agency of government shall require
6 and hold the performance security. The department of natural resources
7 may enter into written agreements with federal agencies in order to
8 avoid redundant bonding of metals mines straddling boundaries between
9 federally controlled and other lands within Washington state.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 78.56 RCW
11 to read as follows:

12 The department of natural resources may order at any time an
13 inspection of the disturbed area to determine if the miner or permit
14 holder has complied with the reclamation permit, rules, and this
15 chapter.

16 The department of natural resources shall inspect metals mining and
17 milling operations at least quarterly, unless prevented by inclement
18 weather conditions, in order to ensure that the permit holder is in
19 compliance with the reclamation permit, rules, and this chapter. The
20 department of natural resources shall conduct additional inspections as
21 needed during the construction phase of these mining operations in
22 order to ensure compliance with the reclamation permit, rules, and this
23 chapter.

24 **Sec. 4.** RCW 78.44.161 and 1994 c 232 s 22 are each amended to read
25 as follows:

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

29 ~~((The department shall have special inspection requirements for
30 metals mining and milling operations regulated under chapter 232, Laws
31 of 1994. The department shall inspect these mining operations at least
32 quarterly, unless prevented by inclement weather conditions, in order
33 to ensure that the permit holder is in compliance with the reclamation
34 permit, rules, and this chapter. The department shall conduct
35 additional inspections as needed during the construction phase of these~~

- 1 ~~mining operations in order to ensure compliance with the reclamation~~
- 2 ~~permit, rules, and this chapter.)~~)

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