
SUBSTITUTE SENATE BILL 5662

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Natural Resources (originally sponsored by Senators Owen, Swecker and Morton)

Read first time 02/27/95.

1 AN ACT Relating to clarifying the existing authority of the
2 department of ecology and the department of natural resources to
3 require performance security for metals mining and milling operations;
4 and amending RCW 78.56.110, 78.56.120, and 78.44.087.

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

6 **Sec. 1.** RCW 78.56.110 and 1994 c 232 s 11 are each amended to read
7 as follows:

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

- 15 (a) Bank letters of credit (~~((acceptable to both agencies))~~);
16 (b) A cash deposit;
17 (c) Negotiable securities (~~((acceptable to both agencies))~~);
18 (d) An assignment of a savings account;
19 (e) A savings certificate in a Washington bank; or

1 (f) A corporate surety bond executed in favor of the department of
2 ecology by a corporation authorized to do business in the state of
3 Washington under Title 48 RCW (~~and acceptable to both agencies~~).

4 The (~~agencies~~) department of ecology may, for any reason, refuse
5 any performance security not deemed adequate.

6 (2) The performance security shall be conditioned on the faithful
7 performance of the applicant or operator in meeting the following
8 obligations:

9 (a) Compliance with the environmental protection laws of the state
10 of Washington administered by the department of ecology, or permit
11 conditions administered by the department of ecology, associated with
12 the construction, operation, and closure pertaining to metals mining
13 and milling operations, and with the related (~~rules~~) environmental
14 protection ordinances and permit conditions established by (~~state~~
15 and) local government (~~with respect to those operations as defined in~~
16 ~~RCW 78.44.031(17) and the construction, operation, reclamation, and~~
17 ~~closure of a metals mining and milling operation)~~ when requested by
18 local government;

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

21 (c) Postclosure environmental monitoring as determined by the
22 department of ecology (~~and the department of natural resources~~); and

23 (~~(e)~~) (d) Provision of sufficient funding as determined by the
24 department of ecology for cleanup of potential problems revealed during
25 or after closure.

26 (3) The department of ecology (~~and the department of natural~~
27 ~~resources shall jointly~~) may, if it deems appropriate, adopt rules for
28 determining the amount of the performance security, requirements for
29 the performance security, requirements for the issuer of the
30 performance security, and any other requirements necessary for the
31 implementation of this section.

32 (4) The department of ecology (~~and the department of natural~~
33 ~~resources, acting jointly,~~) may increase or decrease the amount of the
34 performance security at any time to compensate for any alteration in
35 the operation that affects meeting the obligations in subsection (2) of
36 this section. At a minimum, the (~~agencies~~) department shall
37 (~~jointly~~) review the adequacy of the performance security every two
38 years.

1 (5) Liability under the performance security shall be maintained
2 until the obligations in subsection (2) of this section are met to the
3 satisfaction of the department of ecology (~~and the department of~~
4 ~~natural resources~~). Liability under the performance security may be
5 released only upon written notification by the department of ecology(~~(~~
6 ~~with the concurrence of the department of natural resources)~~)).

7 (6) Any interest or appreciation on the performance security shall
8 be held by the department of ecology until the obligations in
9 subsection (2) of this section have been met to the satisfaction of the
10 department of ecology (~~and the department of natural resources~~). At
11 such time, the interest shall be remitted to the applicant or operator.
12 However, if the applicant or operator fails to comply with the
13 obligations of subsection (2) of this section, the interest or
14 appreciation may be used by (~~either agency~~) the department of ecology
15 to comply with the obligations.

16 (7) A single performance security, when acceptable to both the
17 department of ecology and the department of natural resources, may be
18 utilized by both agencies to satisfy the requirements of this section
19 and RCW 78.44.087.

20 **Sec. 2.** RCW 78.56.120 and 1994 c 232 s 12 are each amended to read
21 as follows:

22 The department of ecology may, with staff, equipment, and material
23 under its control, or by contract with others, remediate or mitigate
24 any impact of a metals mining and milling operation when it finds that
25 the operator or permit holder has failed to comply with relevant
26 statutes, rules, or permits, and the operator or permit holder has
27 failed to take adequate or timely action to rectify these impacts.

28 If the department intends to remediate or mitigate such impacts,
29 the department shall issue an order to submit performance security
30 requiring the permit holder or surety to submit to the department the
31 amount of moneys posted pursuant to (~~chapter 232, Laws of 1994~~) RCW
32 78.56.110. If the amount specified in the order to submit performance
33 security is not paid within twenty days after issuance of the notice,
34 the attorney general upon request of the department shall bring an
35 action on behalf of the state in a superior court to recover the amount
36 specified and associated legal fees.

37 The department may proceed at any time after issuing the order to
38 submit performance security to remediate or mitigate adverse impacts.

1 The department shall keep a record of all expenses incurred in
2 carrying out any remediation or mitigation activities authorized under
3 this section, including:

4 (1) Remediation or mitigation;

5 (2) A reasonable charge for the services performed by the state's
6 personnel and the state's equipment and materials utilized; and

7 (3) Administrative and legal expenses related to remediation or
8 mitigation.

9 The department shall refund to the surety or permit holder all
10 amounts received in excess of the amount of expenses incurred. If the
11 amount received is less than the expenses incurred, the attorney
12 general, upon request of the department of ecology, may bring an action
13 against the permit holder on behalf of the state in the superior court
14 to recover the remaining costs listed in this section.

15 ~~((If the department of natural resources finds that reclamation has
16 not occurred according to the standards required under chapter 78.44
17 RCW in a metals mining and milling operation, then the department of
18 natural resources may cause reclamation to occur pursuant to RCW
19 78.44.240. Upon approval of the department of ecology, the department
20 of natural resources may reclaim part or all of the metals mining and
21 milling operation using that portion of the surety posted pursuant to
22 chapter 232, Laws of 1994 that has been identified for reclamation.))~~

23 **Sec. 3.** RCW 78.44.087 and 1994 c 232 s 23 are each amended to read
24 as follows:

25 (1) The department shall not issue a reclamation permit until the
26 applicant has deposited with the department an acceptable performance
27 security on forms prescribed and furnished by the department.

28 (2) A public or governmental agency shall not be required to post
29 surface mine reclamation performance security nor shall a permit holder
30 be required to post surface ~~((mining))~~ mine reclamation performance
31 security with ~~((more than one state or local agency))~~ any agency other
32 than the department.

33 (3) This performance security may be:

34 ~~((1))~~ (a) Bank letters of credit acceptable to the department;

35 ~~((2))~~ (b) A cash deposit;

36 ~~((3))~~ (c) Negotiable securities acceptable to the department;

37 ~~((4))~~ (d) An assignment of a savings account;

1 (~~(5)~~) (e) A savings certificate in a Washington bank on an
2 assignment form prescribed by the department;

3 (~~(6)~~) (f) Assignments of interests in real property within the
4 state of Washington; or

5 (~~(7)~~) (g) A corporate surety bond executed in favor of the
6 department by a corporation authorized to do business in the state of
7 Washington under Title 48 RCW and authorized by the department.

8 (4) The performance security shall be conditioned upon the faithful
9 performance of the requirements set forth in this chapter and of the
10 rules adopted under it.

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

21 (6) The department may increase or decrease the amount of the
22 performance security at any time to compensate for a change in the
23 disturbed area, the depth of excavation, a modification of the
24 reclamation plan, or any other alteration in the conditions of the mine
25 that affects the cost of reclamation. The department may, for any
26 reason, refuse any performance security not deemed adequate.

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

37 (8) Any interest or appreciation on the performance security shall
38 be held by the department until reclamation is completed to its
39 satisfaction. At such time, the interest shall be remitted to the

1 permit holder; except that such interest or appreciation may be used by
2 the department to effect reclamation in the event that the permit
3 holder fails to comply with the provisions of this chapter and the
4 costs of reclamation exceed the face value of the performance security.

5 ~~((Except as provided in this section, no other state agency or
6 local government shall require performance security for the purposes of
7 surface mine reclamation and only one agency of government shall
8 require and hold the performance security.))~~ (9) A single performance
9 security, when acceptable to both the department of natural resources
10 and the department of ecology, may be utilized to satisfy the
11 requirements of this section and RCW 78.56.110.

12 (10) The department may enter into written agreements with federal
13 agencies in order to avoid redundant bonding of surface mines
14 straddling boundaries between federally controlled and other lands
15 within Washington state.

16 ~~((The department and the department of ecology shall jointly
17 require performance security for metals mining and milling operations
18 regulated under chapter 232, Laws of 1994.))~~

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