

# FINAL BILL REPORT

## ESHB 2521

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C 232 L 94  
Synopsis as Enacted

**Brief Description:** Regulating metals mining and milling operations.

By House Committee on Appropriations (originally sponsored by Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson).

House Committee on Natural Resources & Parks  
House Committee on Appropriations  
Senate Committee on Natural Resources  
Senate Committee on Ways & Means

**Background:** Metals mining and milling operations are regulated under a number of different federal, state, and local government laws and rules. Last session, the Legislature created a Metals Mining Advisory Group to review the existing regulatory framework.

**Summary:** A comprehensive new state regulatory law is adopted concerning metals mining and milling operations.

### Application of New Act

Metals mining and milling operations are subject to the requirements established by this act, in addition to requirements established in other statutes and rules. An expansion of an existing operation or any new metals mining operation is subject to the new requirements if the expansion or new operation is likely to result in a significant, adverse environmental impact under the State Environmental Policy Act. (SEPA) Separate metals milling operations are also subject to many of the provisions established in the new act.

### Disclosure

An applicant submitting a SEPA checklist for a metals mining and milling operation must disclose the ownership and each controlling interest in the proposed operation. The applicant must also disclose all other mining operations within the United States which the applicant operates or in which the applicant has ownership or controlling interest. In addition, the applicant must disclose and may describe the circumstances of past or present bankruptcies,

abandonment of superfund or similar sites, penalties in excess of \$10,000 assessed for violations of the Federal Clean Air or Clean Water acts, and any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements.

#### State Environmental Policy Act

An environmental impact statement is required for any proposed metals mining and milling operation. The Department of Ecology is designated as the lead agency for the SEPA review. The SEPA review must include the collection of baseline data adequate to document pre-mining conditions at the proposed site of the operation. The Department of Ecology is to incorporate measures to mitigate significant probable adverse impacts to fish and wildlife into the department's permit requirements for the proposed operation. In conducting the SEPA review, the department will also cooperate with affected local governments to the fullest extent practicable.

#### Metals Mining Coordinator

The Department of Ecology is directed to appoint a metals mining coordinator. The coordinator will maintain current information on metals mining and milling operations and will act as a contact person for the industry and for the public. This provision takes effect July 1, 1995.

#### Inspections

State agencies with the responsibility for inspecting metals mining and milling operations shall conduct these inspections at least quarterly. The Legislature encourages these state agencies to explore opportunities for cross-training of inspectors and to look at efficient and cost-effective ways to coordinate inspections with each other and with federal and local government agencies. This provision takes effect July 1, 1995.

#### Metals Mining Account

The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation and may only be used for the additional inspections by state agencies described above and for the metals mining coordinator. The Department of Revenue is directed to assess a fee to be paid by each active and proposed metals mining and milling operation in order to generate revenue sufficient to cover these two categories of expenses. The provision creating the new account and establishing fees takes effect July 1, 1995, unless the Legislature adopts an

alternative approach based on the recommendations of the advisory group created in the act.

#### Siting of Tailings Facilities

The Department of Ecology is to consider site-specific criteria in determining a preferred location for the tailings facility associated with a metals mining and milling operation. A two-phase evaluation process is created to address the siting of tailings facilities, consisting of a primary screening phase and a secondary technical site investigation phase.

#### Waste Discharge Permit Requirements

In order to receive a waste discharge permit from the Department of Ecology or in order to operate a tailings facility, a metals mining and milling operation must meet four additional requirements. First, there are specific requirements for the design and operation of the tailings facility. Second, the applicant must have an approved plan for management of the waste rock generated by the operation. Third, the operator or applicant must work with the Department of Ecology to make arrangements for citizen observation and verification of the taking of water samples, if an interested citizen or citizen group so requests. Fourth, the applicant or operator must complete a plan for voluntary waste reduction.

#### Performance Security

The Department of Ecology and the Department of Natural Resources may not issue the necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the Department of Ecology a performance security which is acceptable to both agencies. The performance security is conditioned on the applicant or operator meeting the following obligations: (1) satisfactory compliance with the laws of the state pertaining to these operations as well as related rules and permit conditions; (2) postclosure environmental monitoring; and (3) provision of sufficient funding for cleanup of potential problems revealed during or after closure.

#### Economic Impact Analysis

An applicant for a large-scale metals mining and milling operation must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local government units. An operation is "large-scale" if it employs more than 35 persons during any consecutive six-month period. Counties

may assess impact fees pursuant to chapter 82.02 RCW. If the applicant does not submit an adequate impact analysis or if the county does not find an applicant's proposals for mitigating any adverse economic impacts to be acceptable, the county will refuse to issue permits under its jurisdiction necessary for the construction or operation of the mine and mill.

#### Citizen Suits

An aggrieved person may commence a civil action against (1) any person who is alleged to be in violation of a law, rule, order or permit pertaining to metals mining and milling operations; (2) a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty pertaining to these operations; or (3) any person who constructs one of these operations without the permits and authorizations required by state law.

#### Heap Leach/In Situ Extraction

Restrictions are placed on using chemical solutions to extract metal ore from its natural setting, or from a heap not contained in a vat or tank.

Until June 30, 1996, there is a moratorium on metals mining and milling operations using the heap leach extraction process. By December, 1994, the Department of Natural Resources and the Department of Ecology shall jointly review existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment and shall report their findings to the Legislature. In situ extraction is permanently prohibited in Washington.

#### Regulatory Overlap

The Department of Ecology is directed to work with the mining industry and with relevant federal, state and local government agencies to identify areas of regulatory overlap among regulators of metals mining and milling operations. The department is also to identify possible solutions to overlap problems and to report to the Legislature on its findings by January 1, 1995.

#### Metals Mining Advisory Group

The Department of Ecology is also to establish a metals mining advisory group, to focus on the following four tasks: (1) a review of the adequacy of the methods used by state agencies in identifying the costs associated with the additional inspection requirements of metals mining and

milling operations; (2) development of measures to evaluate the performance of the metals mining coordinator; (3) examination of possible new inspection requirements for the Department of Fish and Wildlife; and (4) identification and evaluation of the alternatives for distributing new costs associated with this act among existing and proposed metals mining and milling operations. This group is also to report to the Legislature by January 1, 1995.

**Votes on Final Passage:**

House	96	0	
Senate	39	10	(Senate amended)
House	94	0	(House concurred)

**Effective:** April 1, 1994  
July 1, 1995 (Sections 6 - 8, and 18 - 22)