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SENATE BILL 5662

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State of Washington                      54th Legislature                      1995 Regular Session

By Senators Owen, Swecker and Morton

Read first time 01/31/95. Referred to Committee on Natural Resources.

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~~) compliance by the applicant or operator in meeting the  
8 following obligations:

9 (a) Compliance (~~with the laws of the state of Washington~~  
10 ~~pertaining to metals mining and milling operations and with the related~~  
11 ~~rules and permit conditions established by state and local government~~  
12 ~~with respect to those operations as defined in RCW 78.44.031(17) and~~  
13 ~~the construction, operation, reclamation, and closure of a metals~~  
14 ~~mining and milling operation~~) by the applicant or operator with the  
15 requirements established by the department of ecology pursuant to  
16 chapter 78.56 RCW or in permits or other approval documents issued by  
17 the department of ecology for a metals mining and milling operation;

18 (b) Postclosure environmental monitoring as determined by the  
19 department of ecology (~~and the department of natural resources~~); and

20 (c) Provision of sufficient funding as determined by the department  
21 of ecology for cleanup of potential problems revealed during or after  
22 closure.

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

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

36 (5) Liability under the performance security shall be maintained  
37 until the obligations in subsection (2) of this section are met to the  
38 satisfaction of the department of ecology (~~and the department of~~  
39 ~~natural resources~~). Liability under the performance security may be

1 released only upon written notification by the department of ecology(~~(7~~  
2 ~~with the concurrence of the department of natural resources))~~).

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

12 (7) A single performance security, when acceptable to both the  
13 department of ecology and the department of natural resources, may be  
14 utilized by both agencies to satisfy the requirements of this section  
15 and RCW 78.44.087.

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

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

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

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

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

38 (1) Remediation or mitigation;

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

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

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

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

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

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

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

29 (3) This performance security may be:

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

31 ~~((+2))~~ (b) A cash deposit;

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

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

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

36 ~~((+6))~~ (f) Assignments of interests in real property within the  
37 state of Washington; or

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

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

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

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

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

33       (8) Any interest or appreciation on the performance security shall  
34 be held by the department until reclamation is completed to its  
35 satisfaction. At such time, the interest shall be remitted to the  
36 permit holder; except that such interest or appreciation may be used by  
37 the department to effect reclamation in the event that the permit  
38 holder fails to comply with the provisions of this chapter and the  
39 costs of reclamation exceed the face value of the performance security.

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

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

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

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