

**E2SSB 6175 - H AMD 1096**

By Representatives Sullivan, B.

ADOPTED 03/04/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 78.44.085 and 2001 1st sp.s. c 5 s 1 are each amended  
4 to read as follows:

5 (1) An applicant for ~~((a))~~ an expansion of a permitted surface  
6 mine, a new reclamation permit under RCW 78.44.081, or for combining  
7 existing public or private reclamation permits, shall pay a  
8 nonrefundable application fee to the department before being granted  
9 ~~((a surface mining))~~ the requested permit or permit expansion. The  
10 amount of the application fee shall be ~~((one))~~ two thousand five  
11 hundred dollars.

12 (2) Permit holders submitting a revision to an application for an  
13 existing reclamation plan that is not an expansion shall pay a  
14 nonrefundable reclamation plan revision fee of one thousand dollars.

15 (3) After June 30, ~~((2001))~~ 2006, each public or private permit  
16 holder shall pay an annual permit fee ~~((of one thousand dollars))~~ in an  
17 amount pursuant to this section. The annual permit fee shall be  
18 payable to the department prior to the reclamation permit being issued  
19 and on the ~~((first))~~ anniversary of the permit date ~~((and))~~ each year  
20 thereafter.

21 (4)(a) Except as otherwise provided in this subsection, each public  
22 or private permit holder must pay an annual fee under this section  
23 based on the categories of aggregate or mineral mined or extracted  
24 during the previous twelve months, as follows:

25 (i) Zero to fifty thousand tons: A fee of one thousand two hundred  
26 fifty dollars;

27 (ii) More than fifty thousand tons to three hundred fifty thousand  
28 tons: A fee of two thousand five hundred dollars;

29 (iii) More than three hundred fifty thousand tons: A fee of three  
30 thousand five hundred dollars.

1       **(b)** Annual fees paid by a county for mines used exclusively for  
2 public works projects and having less than seven acres of disturbed  
3 area per mine shall not exceed one thousand dollars.

4       **(c)** Annual fees are waived for all mines used primarily for public  
5 works projects if the mines are owned and primarily operated by  
6 counties with 1993 populations of less than twenty thousand persons,  
7 and if each mine has less than seven acres of disturbed area.

8       ~~((+3))~~ (5) Any production records, mineral assessments, and trade  
9 secrets submitted by a permit holder, mine operator, or landowner to  
10 the department are to be held as confidential and not released as part  
11 of a public records request under chapter 42.56 RCW.

12       **(6)** Appeals from any determination of the department shall not stay  
13 the requirement to pay any annual permit fee. Failure to pay the  
14 annual fees may constitute grounds for an order to suspend surface  
15 mining, pay fines, or ~~((cancellation of))~~ cancel the reclamation permit  
16 as provided in this chapter.

17       ~~((+4))~~ **(7)** All fees collected by the department shall be deposited  
18 into the surface mining reclamation account created in RCW 78.44.045.

19       ~~((+5))~~ **(8)** If the department delegates enforcement  
20 responsibilities to a county, city, or town, the department may  
21 allocate funds collected under this section to the county, city, or  
22 town.

23       ~~((+6))~~ **(9)** Within sixty days after receipt of ~~((a permit~~  
24 ~~application))~~ an application for a new or expanded permit, the  
25 department shall advise applicants of any information necessary to  
26 successfully complete the application.

27       **(10)** In addition to other enforcement authority, the department may  
28 refer matters to a collection agency licensed under chapter 19.16 RCW  
29 when permit fees or fines are past due. The collection agency may  
30 impose its own fees for collecting delinquent permit fees or fines.

31       **Sec. 2.** RCW 78.44.045 and 1993 c 518 s 10 are each amended to read  
32 as follows:

33       **(1)** The surface mining reclamation account is created in the state  
34 treasury. Annual mining fees, funds received by the department from  
35 state, local, or federal agencies for research purposes, as well as  
36 other mine-related funds and fines received by the department shall be

1 deposited into this account. Except as otherwise provided in this  
2 section, the surface mine reclamation account may be used by the  
3 department only to:

4 ~~((1))~~ (a) Administer its regulatory program pursuant to this  
5 chapter;

6 ~~((2))~~ (b) Undertake research relating to surface mine regulation,  
7 reclamation of surface mine lands, and related issues; and

8 ~~((3))~~ (c) Cover costs arising from appeals from determinations  
9 made under this chapter.

10 (2) At the end of each fiscal biennium, any money collected from  
11 fees charged under RCW 78.44.085 that was not used for the  
12 administration and enforcement of surface mining regulation under this  
13 chapter must be used by the department for surveying and mapping sand  
14 and gravel sites in the state.

15 (3) Fines, interest, and other penalties collected by the  
16 department under the provisions of this chapter shall be used to  
17 reclaim surface mines abandoned prior to 1971.

18 **Sec. 3.** RCW 78.44.087 and 1997 c 186 s 1 are each amended to read  
19 as follows:

20 (1) The department should ensure that a sufficient performance  
21 security is available to reclaim each surface mine permitted under this  
22 chapter. To ensure sufficient funds are available:

23 (a) The department shall not issue a reclamation permit, except to  
24 public or governmental agencies, until the applicant has either  
25 deposited with the department an acceptable performance security on  
26 forms prescribed ~~((and furnished))~~ by the department that is deemed  
27 adequate by the department to cover reclamation costs or has complied  
28 with the blanket performance security option in section 4 of this act.  
29 A public or governmental agency shall not be required to post  
30 performance security.

31 (b) No person may create a disturbed area that meets or exceeds the  
32 minimum threshold for a reclamation permit without first submitting an  
33 adequate and acceptable performance security to the department and  
34 complying with all requirements of this chapter.

35 ~~((This performance security may be))~~ The department may refuse  
36 to accept any performance security that the department, for any reason,

1 deems to be inadequate to cover reclamation costs or is not in a form  
2 that is acceptable to the department.

3 (3) Acceptable forms of performance security are:

4 (a) Bank letters of credit acceptable to the department or  
5 irrevocable bank letters of credit from a bank or financial institution  
6 or organization authorized to transact business in the United States;

7 (b) A cash deposit;

8 (c) ~~((Negotiable))~~ Other forms of performance securities acceptable  
9 to the department as determined by rule;

10 (d) An assignment of a savings account;

11 (e) A savings certificate in a Washington bank on an assignment  
12 form prescribed by the department;

13 ~~((Assignments of interests in real property within the state of~~  
14 ~~Washington))~~ Approved participants in a state security pool if one is  
15 established; or

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

19 ~~((+3))~~ (4) The performance security shall be conditioned upon the  
20 faithful performance of the requirements set forth in this chapter  
21 ~~((and of)),~~ the rules adopted under it, and the reclamation permit.

22 ~~((+4))~~ (5)(a) The department ~~((shall have the authority to~~  
23 ~~determine the amount of the performance security using a standardized~~  
24 ~~performance security formula developed by the department. The amount~~  
25 ~~of the security shall be determined by the department and based on the~~  
26 ~~estimated costs of completing reclamation according to the approved~~  
27 ~~reclamation plan or minimum standards and related administrative~~  
28 ~~overhead for the area to be surface mined during (a) the next~~  
29 ~~twelve month period, (b) the following twenty four months, and (c) any~~  
30 ~~previously disturbed areas on which the reclamation has not been~~  
31 ~~satisfactorily completed and approved))~~ must determine the amount of  
32 the performance security as prescribed by this subsection.

33 (b) The department may determine the amount of the performance  
34 security based on the estimated cost of: (i) Completing reclamation  
35 according to the requirements of this chapter; or (ii) the reclamation  
36 permit for the area to be surface mined during the upcoming thirty-six  
37 months and any previously disturbed areas that have not been reclaimed.

1        (c) The department may determine the amount of the performance  
2 security based on an engineering cost estimate for reclamation that is  
3 provided by the permit holder. The engineering cost estimate must be  
4 prepared using engineering principles and methods that are acceptable  
5 to the department. If the department does not approve the engineering  
6 cost estimate, the department shall determine the amount of the  
7 performance security using a standardized performance security formula  
8 developed by the department by rule.

9        ~~((+5))~~ (6) The department may ~~((increase or decrease the amount of~~  
10 ~~the performance security at any time to compensate for a change in the~~  
11 ~~disturbed area, the depth of excavation, a modification of the~~  
12 ~~reclamation plan, or any other alteration in the conditions of the mine~~  
13 ~~that affects the cost of reclamation. The department may, for any~~  
14 ~~reason, refuse any performance security not deemed adequate))~~  
15 recalculate a surface mine's performance security based on subsection  
16 (5) of this section. When the department recalculates a performance  
17 security, the new calculation will not be prejudiced by the existence  
18 of any previous calculation. A new performance security must be  
19 submitted to the department within thirty days of the department's  
20 written request.

21        ~~((+6))~~ (7) Liability under the performance security and the permit  
22 holder's obligation to maintain the calculated performance security  
23 amount shall be maintained until ~~((reclamation is completed according~~  
24 ~~to the approved reclamation plan to the satisfaction of the~~  
25 ~~department))~~ the surface mine is reclaimed, unless released as  
26 hereinafter provided. Partial drawings will proportionately reduce the  
27 value of a performance security but will not extinguish the remaining  
28 value. Liability under the performance security may be released only  
29 ~~((upon written notification by the department. Notification shall be~~  
30 ~~given upon completion of compliance or acceptance by the department of~~  
31 ~~a substitute performance security))~~ when the surface mine is reclaimed  
32 as evidenced by the department in writing or after the department  
33 receives and approves a substitute performance security. The  
34 department will notify the permit holder, and surety if applicable,  
35 when reclamation is accepted by the department as complete or upon the  
36 department's acceptance of an alternate security. The liability of the  
37 surety shall not exceed the amount of security required by this section  
38 and the department's reasonable legal fees to recover the security.

1       ~~((7))~~ (8) Any interest or appreciation on the performance  
2 security shall be held by the department until ~~((reclamation is~~  
3 ~~completed to its satisfaction. At such time, the interest shall be~~  
4 ~~remitted to the permit holder; except that such interest or~~  
5 ~~appreciation may be used by the department to effect reclamation in the~~  
6 ~~event that the permit holder fails to comply with the provisions of~~  
7 ~~this chapter and the costs of reclamation exceed the face value of the~~  
8 ~~performance security))~~ the surface mine is reclaimed. The department  
9 may collect and use appreciation or interest accrued on a performance  
10 security to the same extent as for the underlying performance security.  
11 If the permit holder meets its obligations under this chapter, rules  
12 adopted under this chapter, and its approved reclamation permit and  
13 plan by completing reclamation, the department will return any unused  
14 performance security and accrued interest or appreciation.

15       ~~((8))~~ (9) No other state agency or local government other than  
16 the department shall require performance security for the purposes of  
17 surface mine reclamation. However, nothing in this section prohibits  
18 a state agency or local government from requiring a performance  
19 security when the state agency or local government is acting in its  
20 capacity as a landowner and contracting for extraction-related  
21 activities on state or local government property.

22       (10) The department may enter into written agreements with federal  
23 agencies in order to avoid redundant bonding of any surface ~~((mines~~  
24 ~~straddling boundaries between federally controlled and other lands~~  
25 ~~within))~~ mine that is located on both federal and nonfederal lands in  
26 Washington state.

27       ~~((9) When acting in its capacity as a regulator, no other state~~  
28 ~~agency or local government may require a surface mining operation~~  
29 ~~regulated under this chapter to post performance security unless that~~  
30 ~~state agency or local government has express statutory authority to do~~  
31 ~~so. A state agency's or local government's general authority to~~  
32 ~~protect the public health, safety, and welfare does not constitute~~  
33 ~~express statutory authority to require a performance security.~~  
34 ~~However, nothing in this section prohibits a state agency or local~~  
35 ~~government from requiring a performance security when the state agency~~  
36 ~~or local government is acting in its capacity as a landowner and~~  
37 ~~contracting for extraction related activities on state or local~~  
38 ~~government property.))~~

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 78.44 RCW  
2 to read as follows:

3        (1) A permit holder, in lieu of an individual performance security  
4 for each mining site, may file a blanket performance security with the  
5 department for their group of permits.

6        (2) The department may reduce the required performance security  
7 calculated from its standard method prescribed in RCW 78.44.087, to an  
8 amount not to exceed the sum of reclamation security calculated by the  
9 department for the two surface mines with the largest performance  
10 security obligations, for nonmetal and nonfuel surface mines that meet  
11 the following conditions:

12        (a) The permit holder has had a valid reclamation permit for more  
13 than ten years and can demonstrate exemplary mining and reclamation  
14 practices that have been accepted by the department;

15        (b) The landowner agrees to allow the permit holder to hold a  
16 blanket security. The department must include, on forms to be signed  
17 by the landowner, notice of the risk of a lien on the landowner's  
18 lands; and

19        (c) The permit holder can demonstrate substantial financial ability  
20 to perform the reclamation in the approved reclamation plan and permit.

21        (3) Permit holders are not eligible for blanket securities if they  
22 are in violation of a final order of the department.

23        (4) The department must consider the compliance history and the  
24 state of the existing surface mines of the permit holder before  
25 approving any blanket performance security.

26        (5) Lands covered by a blanket performance security are subject to  
27 a lien placed by the department in the event of abandonment.

28        (6) In lieu of the performance security required of the permit  
29 holder, the department may accept a similar security from the  
30 landowner, equal to the estimated cost of reclamation as determined by  
31 the department.

32        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 78.44 RCW  
33 to read as follows:

34        (1) To the extent a performance security is insufficient to cover  
35 the cost of reclamation performed by the department, a lien shall be  
36 established in favor of the department upon all of the permit holder's  
37 real and personal property.

1 (2) The lien attaches upon the filing of a notice of claim of lien  
2 with the county clerk of the county in which the property is located.  
3 The notice of lien claim must contain a true statement of the demand,  
4 the insufficiency of the performance security to compensate the  
5 department, and the failure of the permit holder to perform the  
6 reclamation required.

7 (3) The lien becomes effective when filed.

8 (4) The lien created by this section may be foreclosed by a suit in  
9 the superior court in the manner provided by law for the foreclosure of  
10 other liens on real or personal property.

11 **Sec. 6.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to  
12 read as follows:

13 The following financial, commercial, and proprietary information is  
14 exempt from disclosure under this chapter:

15 (1) Valuable formulae, designs, drawings, computer source code or  
16 object code, and research data obtained by any agency within five years  
17 of the request for disclosure when disclosure would produce private  
18 gain and public loss;

19 (2) Financial information supplied by or on behalf of a person,  
20 firm, or corporation for the purpose of qualifying to submit a bid or  
21 proposal for (a) a ferry system construction or repair contract as  
22 required by RCW 47.60.680 through 47.60.750 or (b) highway construction  
23 or improvement as required by RCW 47.28.070;

24 (3) Financial and commercial information and records supplied by  
25 private persons pertaining to export services provided under chapters  
26 43.163 and 53.31 RCW, and by persons pertaining to export projects  
27 under RCW 43.23.035;

28 (4) Financial and commercial information and records supplied by  
29 businesses or individuals during application for loans or program  
30 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
31 or during application for economic development loans or program  
32 services provided by any local agency;

33 (5) Financial information, business plans, examination reports, and  
34 any information produced or obtained in evaluating or examining a  
35 business and industrial development corporation organized or seeking  
36 certification under chapter 31.24 RCW;



1 (6) Financial and commercial information supplied to the state  
2 investment board by any person when the information relates to the  
3 investment of public trust or retirement funds and when disclosure  
4 would result in loss to such funds or in private loss to the providers  
5 of this information;

6 (7) Financial and valuable trade information under RCW 51.36.120;

7 (8) Financial, commercial, operations, and technical and research  
8 information and data submitted to or obtained by the clean Washington  
9 center in applications for, or delivery of, program services under  
10 chapter 70.95H RCW;

11 (9) Financial and commercial information requested by the public  
12 stadium authority from any person or organization that leases or uses  
13 the stadium and exhibition center as defined in RCW 36.102.010;

14 (10) Financial information, including but not limited to account  
15 numbers and values, and other identification numbers supplied by or on  
16 behalf of a person, firm, corporation, limited liability company,  
17 partnership, or other entity related to an application for a liquor  
18 license, gambling license, or lottery retail license;

19 (11) Proprietary data, trade secrets, or other information that  
20 relates to: (a) A vendor's unique methods of conducting business; (b)  
21 data unique to the product or services of the vendor; or (c)  
22 determining prices or rates to be charged for services, submitted by  
23 any vendor to the department of social and health services for purposes  
24 of the development, acquisition, or implementation of state purchased  
25 health care as defined in RCW 41.05.011; (~~and~~)

26 (12)(a) When supplied to and in the records of the department of  
27 community, trade, and economic development:

28 (i) Financial and proprietary information collected from any person  
29 and provided to the department of community, trade, and economic  
30 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

31 (ii) Financial or proprietary information collected from any person  
32 and provided to the department of community, trade, and economic  
33 development or the office of the governor in connection with the  
34 siting, recruitment, expansion, retention, or relocation of that  
35 person's business and until a siting decision is made, identifying  
36 information of any person supplying information under this subsection  
37 and the locations being considered for siting, relocation, or expansion  
38 of a business;

1 (b) When developed by the department of community, trade, and  
2 economic development based on information as described in (a)(i) of  
3 this subsection, any work product is not exempt from disclosure;

4 (c) For the purposes of this subsection, "siting decision" means  
5 the decision to acquire or not to acquire a site;

6 (d) If there is no written contact for a period of sixty days to  
7 the department of community, trade, and economic development from a  
8 person connected with siting, recruitment, expansion, retention, or  
9 relocation of that person's business, information described in (a)(ii)  
10 of this subsection will be available to the public under this chapter;  
11 and

12 (13) Any production records, mineral assessments, and trade secrets  
13 submitted by a permit holder, mine operator, or landowner to the  
14 department of natural resources under RCW 78.44.085.

15 NEW SECTION. Sec. 7. Section 6 of this act takes effect July 1,  
16 2006.

17 NEW SECTION. Sec. 8. The department of natural resources shall  
18 establish a surface mining advisory committee that will recommend  
19 effective methods of accomplishing reclamation and address other issues  
20 deemed appropriate by the committee for the effective administration of  
21 chapter 78.44 RCW. The committee is comprised of but not limited to  
22 representatives of mining interests, state and local government,  
23 environmental groups, and private landowners. The state geologist will  
24 select the members of the committee. The department of natural  
25 resources must submit a report to the appropriate committees of the  
26 legislature containing the committee's findings by September 1, 2006."

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By Representatives Sullivan, B.

**ADOPTED 03/04/2006**

27 On page 1, line 3 of the title, after "program;" strike the  
28 remainder of the title and insert "amending RCW 78.44.085, 78.44.045,

1 78.44.087, and 42.56.270; adding new sections to chapter 78.44 RCW;  
2 creating a new section; and providing an effective date."

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