
SUBSTITUTE SENATE BILL 6175

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senator Jacobsen; by request of Department
of Natural Resources)

READ FIRST TIME 01/26/06.

1 AN ACT Relating to regulation of surface mining by ensuring
2 adequate performance security to cover reclamation costs for mines and
3 providing fees for the operation of the surface mining program;
4 amending RCW 78.44.085, 78.44.087, and 42.56.270; adding new sections
5 to chapter 78.44 RCW; creating a new section; making an appropriation;
6 and providing an effective date.

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

8 **Sec. 1.** RCW 78.44.085 and 2001 1st sp.s. c 5 s 1 are each amended
9 to read as follows:

10 (1) An applicant for an expansion of the originally permitted area
11 or a new reclamation permit, or for combining a public or private
12 reclamation permit, shall pay a nonrefundable application fee to the
13 department before being granted ((a surface mining)) the requested
14 permit. The amount of the application fee shall be ((one)) two
15 thousand five hundred dollars.

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

1 (3) After June 30, ((2001)) 2006, each public or private permit
2 holder shall pay an annual permit fee ((of one thousand dollars)). The
3 annual permit fee shall be payable to the department prior to the
4 reclamation permit being issued and on the ((first)) anniversary of the
5 permit date ((and)) each year thereafter. Annual fees paid by a county
6 for mines used exclusively for public works projects and having less
7 than seven acres of disturbed area per mine shall not exceed one
8 thousand dollars. Annual fees are waived for all mines used primarily
9 for public works projects if the mines are owned and primarily operated
10 by counties with 1993 populations of less than twenty thousand persons,
11 and if each mine has less than seven acres of disturbed area.

12 ((3))) (4) After June 30, 2006, each public or private permit
13 holder shall pay an annual permit base fee of nine hundred dollars,
14 plus two cents per ton of aggregate or mineral mined or extracted
15 during the previous twelve months.

16 (5) Notwithstanding the per ton fee established in subsection (4)
17 of this section, the department may lower to zero or raise the per ton
18 fee up to twenty-five cents if necessary to provide financial certainty
19 to the department or to reflect actual expenses in administering this
20 chapter.

21 (6) Any production records, mineral assessments, and trade secrets
22 submitted by a permit holder, mine operator, or landowner to the
23 department are confidential.

24 (7) Appeals from any determination of the department shall not stay
25 the requirement to pay any annual permit fee. Failure to pay the
26 annual fees may constitute grounds for an order to suspend surface
27 mining, fines, or cancellation of the reclamation permit as provided in
28 this chapter.

29 ((4))) (8) All fees collected by the department shall be deposited
30 into the surface mining reclamation account.

31 ((5))) (9) If the department delegates enforcement
32 responsibilities to a county, city, or town, the department may
33 allocate funds collected under this section to the county, city, or
34 town.

35 ((6))) (10) Within sixty days after receipt of a new or expanded
36 permit application, the department shall advise applicants of any
37 information necessary to successfully complete the application.

1 (11) In addition to other enforcement authority, the department may
2 refer matters to a collection agency when permit fees or fines are past
3 due. The collection agency may impose its own fees for collecting
4 delinquent permit fees or fines.

5 (12) Annual permit fees for surface mines that are regulated by the
6 department under chapter 78.56 RCW, the metals mining and milling
7 operations, are subject to chapter 78.56 RCW and the estimates of the
8 annual fee by the department. The department of ecology shall transfer
9 the appropriate annual fees collected under RCW 78.56.080 to the
10 department for deposit directly to the surface mining reclamation
11 account.

12 **Sec. 2.** RCW 78.44.087 and 1997 c 186 s 1 are each amended to read
13 as follows:

14 (1) The department should ensure that sufficient funds are
15 available to reclaim the surface mine. The department shall not issue
16 a reclamation permit until the applicant has deposited with the
17 department an acceptable performance security on forms prescribed ((and
18 furnished)) by the department, and that is adequate to cover
19 reclamation costs. A public or governmental agency shall not be
20 required to post performance security. No person may create a
21 disturbed area that meets or exceeds the minimum threshold for a
22 reclamation permit without first submitting an adequate and acceptable
23 performance security to the department and complying with all
24 requirements of this chapter.

25 (2) ((This performance security may be)) The department may refuse
26 to accept any performance security that the department for any reason
27 deems to be inadequate to cover reclamation costs or not in an
28 acceptable form.

29 (3) Acceptable forms of performance security are:

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

33 (b) A cash deposit;

34 (c) ((Negotiable)) Other forms of performance securities acceptable
35 to the department as determined by rule;

36 (d) An assignment of a savings account;

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

3 (f) ((Assignments of interests in real property within the state of
4 Washington)) Approved participants in a state security pool if one is
5 established; or

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

9 ((+3))) (4) The performance security shall be conditioned upon the
10 faithful performance of the requirements set forth in this chapter
11 ((and of)), the rules adopted under it, and the reclamation permit.

12 ((+4))) (5)(a) The department ((shall have the authority to
13 determine the amount of the performance security using a standardized
14 performance security formula developed by the department. The amount
15 of the security shall be determined by the department and based on the
16 estimated costs of completing reclamation according to the approved
17 reclamation plan or minimum standards and related administrative
18 overhead for the area to be surface mined during (a) the next
19 twelve month period, (b) the following twenty four months, and (c) any
20 previously disturbed areas on which the reclamation has not been
21 satisfactorily completed and approved)) must determine the amount of
22 the performance security as prescribed by this subsection.

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

28 (c) The department may determine the amount of the performance
29 security based on an engineering cost estimate for reclamation that is
30 provided by the permit holder. The engineering cost estimate must be
31 prepared using engineering principles and methods that are acceptable
32 to the department. If the department does not approve the engineering
33 cost estimate, the department shall determine the amount of the
34 performance security using a standardized performance security formula
35 developed by the department by rule.

36 ((+5))) (6) The department may ((increase or decrease the amount of
37 the performance security at any time to compensate for a change in the
38 disturbed area, the depth of excavation, a modification of the

1 reclamation plan, or any other alteration in the conditions of the mine
2 that affects the cost of reclamation. The department may, for any
3 reason, refuse any performance security not deemed adequate))
4 recalculate a surface mine's performance security based on subsection
5 (5) of this section. When the department recalculates a performance
6 security, the new calculation will not be prejudiced by the existence
7 of any previous calculation. A new performance security must be
8 submitted to the department within thirty days of the department's
9 written request.

10 ((6)) (7) Liability under the performance security and the permit
11 holder's obligation to maintain the calculated performance security
12 amount shall be maintained until ((reclamation is completed according
13 to the approved reclamation plan to the satisfaction of the
14 department)) the surface mine is reclaimed, unless released as
15 hereinafter provided. Partial drawings will proportionately reduce the
16 value of a performance security but will not extinguish the remaining
17 value. Liability under the performance security may be released only
18 ((upon written notification by the department. Notification shall be
19 given upon completion of compliance or acceptance by the department of
20 a substitute performance security)) when the surface mine is reclaimed
21 as evidenced by the department in writing or after the department
22 receives and approves a substitute performance security. The
23 department will notify the permit holder, and surety if applicable,
24 when reclamation is accepted by the department as complete or upon the
25 department's acceptance of an alternate security. The liability of the
26 surety shall not exceed the amount of security required by this section
27 and the department's reasonable legal fees to recover the security.

28 ((7)) (8) Any interest or appreciation on the performance
29 security shall be held by the department until ((reclamation is
30 completed to its satisfaction. At such time, the interest shall be
31 remitted to the permit holder; except that such interest or
32 appreciation may be used by the department to effect reclamation in the
33 event that the permit holder fails to comply with the provisions of
34 this chapter and the costs of reclamation exceed the face value of the
35 performance security)) the surface mine is reclaimed. The department
36 may collect and use appreciation or interest accrued on a performance
37 security to the same extent as for the underlying performance security.
38 If the permit holder meets its obligations under this chapter, rules

1 adopted under this chapter, and its approved reclamation permit and
2 plan by completing reclamation, the department will return any unused
3 performance security and accrued interest or appreciation.

4 ((+8)) (9) No other state agency or local government other than
5 the department shall require performance security for the purposes of
6 surface mine reclamation. The department may enter into written
7 agreements with federal agencies in order to avoid redundant bonding of
8 any surface ((mines straddling boundaries between federally controlled
9 and other lands within)) mine that is located on both federal and
10 nonfederal lands in Washington state. Nothing in this section
11 prohibits a state agency or local government from requiring a
12 performance security when the state agency or local government is
13 acting in its capacity as a landowner and contracting for
14 extraction-related activities on state or local government property.

15 ((+9) When acting in its capacity as a regulator, no other state
16 agency or local government may require a surface mining operation
17 regulated under this chapter to post performance security unless that
18 state agency or local government has express statutory authority to do
19 so. A state agency's or local government's general authority to
20 protect the public health, safety, and welfare does not constitute
21 express statutory authority to require a performance security.
22 However, nothing in this section prohibits a state agency or local
23 government from requiring a performance security when the state agency
24 or local government is acting in its capacity as a landowner and
25 contracting for extraction-related activities on state or local
26 government property.))

27 NEW SECTION. Sec. 3. A new section is added to chapter 78.44 RCW
28 to read as follows:

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

32 (2) The department may reduce the required performance security
33 calculated from its standard method, to an amount not to exceed the sum
34 of reclamation security calculated by the department for the two
35 surface mines with the largest performance security obligations, for
36 nonmetal and nonfuel surface mines that meet the following conditions:

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

4 (b) The land owner agrees to allow the permit holder to hold a
5 blanket security. The department must include, on forms to be signed
6 by the landowner, notice of the risk of a lien on the landowner's
7 lands; and

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

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

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

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

17 (6) In lieu of the performance security required of the permit
18 holder, the department may accept a similar security from the
19 landowner, equal to the estimated cost of reclamation as determined by
20 the department.

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

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

27 (2) The lien attaches upon the filing of a notice of claim of lien
28 with the county clerk of the county in which the property is located.
29 The notice of lien claim must contain a true statement of the demand,
30 the insufficiency of the performance security to compensate the
31 department, and the failure of the permit holder to perform the
32 reclamation required.

33 (3) The lien becomes effective when filed.

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

1 NEW SECTION. **Sec. 5.** The department of natural resources shall
2 establish a surface mining advisory committee that will recommend
3 long-term stable funding mechanisms, effective methods of accomplishing
4 reclamation, and address other issues deemed appropriate by the
5 committee for the effective administration of chapter 78.44 RCW. The
6 committee is comprised of but not limited to representatives of mining
7 interests, state and local government, environmental groups, and
8 private landowners. The state geologist will select the members of the
9 committee. The department of natural resources must submit a report to
10 the legislature containing the committee's findings by September 1,
11 2006.

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

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

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

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

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

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

34 (5) Financial information, business plans, examination reports, and
35 any information produced or obtained in evaluating or examining a
36 business and industrial development corporation organized or seeking
37 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.** The sum of five hundred thousand dollars, or
16 as much thereof as may be necessary, is appropriated for the biennium
17 ending June 30, 2007, from the surface mining reclamation account to the
18 department of natural resources for the purposes of surface mine
19 reclamation.

20 NEW SECTION. **Sec. 8.** Section 6 of this act takes effect July 1,
21 2006.

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