

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5502**

Chapter 518, Laws of 1993  
(partial veto)

53rd Legislature  
1993 Regular Session

SURFACE MINING REGULATION

EFFECTIVE DATE: 7/1/93

Passed by the Senate April 20, 1993  
YEAS 43 NAYS 1

JOEL PRITCHARD  
**President of the Senate**

Passed by the House April 18, 1993  
YEAS 90 NAYS 4

BRIAN EBERSOLE  
**Speaker of the  
House of Representatives**

Approved May 18, 1993, with the  
exception of sections 16 and 19, which  
are vetoed.

MIKE LOWRY  
**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the  
Senate of the State of Washington, do  
hereby certify that the attached is  
**ENGROSSED SECOND SUBSTITUTE SENATE  
BILL 5502** as passed by the Senate and  
the House of Representatives on the  
dates hereon set forth.

MARTY BROWN  
**Secretary**

FILED

May 18, 1993 - 10:45 p.m.

**Secretary of State  
State of Washington**

---

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5502

---

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Sutherland and Prentice)

Read first time 03/26/93.

1 AN ACT Relating to state and local government regulation of surface  
2 mining; amending RCW 78.44.010, 78.44.020, 78.44.040, 78.44.050,  
3 78.44.060, 78.44.070, 78.44.150, 78.44.170, and 78.44.910; adding a new  
4 section to chapter 36.70A RCW; adding new sections to chapter 78.44  
5 RCW; creating new sections; recodifying RCW 78.44.150, 78.44.170,  
6 78.44.175, and 78.44.910; repealing RCW 78.44.030, 78.44.035,  
7 78.44.080, 78.44.090, 78.44.100, 78.44.110, 78.44.120, 78.44.130,  
8 78.44.140, 78.44.160, and 78.44.180; prescribing penalties; providing  
9 an effective date; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature recognizes that the  
12 extraction of minerals through surface mining has historically included  
13 regulatory involvement by both state and local governments.

14 It is the intent of the legislature to clarify that surface mining  
15 is an appropriate land use, subject to reclamation authority exercised  
16 by the department of natural resources and land use and operation  
17 regulatory authority by counties, cities, and towns.

1       **Sec. 2.** RCW 78.44.010 and 1970 ex.s. c 64 s 2 are each amended to  
2 read as follows:

3       The legislature recognizes that the extraction of minerals by  
4 surface mining is ~~((a basic and))~~ an essential activity making an  
5 important contribution to the economic well-being of the state and  
6 nation. ~~((At the same time, proper reclamation of surface))~~ It is not  
7 possible to extract minerals without producing some environmental  
8 impacts. At the same time, comprehensive regulation of mining and  
9 thorough reclamation of mined lands is necessary to prevent  
10 ~~((undesirable land and water))~~ or mitigate conditions that would be  
11 detrimental to the environment and to protect the general welfare,  
12 health, safety, and property rights of the citizens of the state.  
13 Surface mining takes place in diverse areas where the geologic,  
14 topographic, climatic, biologic, and social conditions are  
15 significantly different, and reclamation specifications must vary  
16 accordingly. ~~((It is not practical to extract minerals required by our~~  
17 ~~society without disturbing the surface of the earth and producing waste~~  
18 ~~materials, and the very character of many types of surface mining~~  
19 ~~operations precludes complete restoration of the land to its original~~  
20 ~~condition. However, the legislature finds that reclamation of surface~~  
21 ~~mined lands as provided in this chapter will allow the mining of~~  
22 ~~valuable minerals and will provide for the protection and subsequent~~  
23 ~~beneficial use of the mined and reclaimed land.))~~ Therefore, the  
24 legislature finds that a balance between appropriate environmental  
25 regulation and the production and conservation of minerals is in the  
26 best interests of the citizens of the state.

27       **Sec. 3.** RCW 78.44.020 and 1970 ex.s. c 64 s 3 are each amended to  
28 read as follows:

29       The purposes of this chapter ~~((is))~~ are to:

30       (1) Provide that the usefulness, productivity, and scenic values of  
31 all lands and waters involved in surface mining within the state will  
32 receive the greatest practical degree of protection and ~~((restoration.~~  
33 ~~It is a further purpose of this chapter to provide a means of~~  
34 ~~cooperation between private and governmental entities in carrying this~~  
35 ~~chapter into effect))~~ reclamation at the earliest opportunity following  
36 completion of surface mining;

37       (2) Provide for the greatest practical degree of state-wide  
38 consistency in the regulation of surface mines;

1       (3) Apportion regulatory authority between state and local  
2 governments in order to minimize redundant regulation of mining;

3       (4) Ensure that reclamation is consistent with local land use  
4 plans; and

5       (5) Ensure the power of local government to regulate land use and  
6 operations pursuant to section 16 of this act.

7       NEW SECTION. Sec. 4. DEFINITIONS. Unless the context clearly  
8 indicates otherwise, the definitions in this section apply throughout  
9 this chapter.

10       (1) "Approved subsequent use" means the post surface-mining land  
11 use contained in an approved reclamation plan and approved by the local  
12 land use authority.

13       (2) "Completion of surface mining" means the cessation of mining  
14 and directly related activities in any segment of a surface mine that  
15 occurs when essentially all minerals that can be taken under the terms  
16 of the reclamation permit have been depleted except minerals required  
17 to accomplish reclamation according to the approved reclamation plan.

18       (3) "Department" means the department of natural resources.

19       (4) "Determination" means any action by the department including  
20 permit issuance, reporting, reclamation plan approval or modification,  
21 permit transfers, orders, fines, or refusal to issue permits.

22       (5) "Disturbed area" means any place where activities clearly in  
23 preparation for, or during, surface mining have physically disrupted,  
24 covered, compacted, moved, or otherwise altered the characteristics of  
25 soil, bedrock, vegetation, or topography that existed prior to such  
26 activity. Disturbed areas may include but are not limited to: Working  
27 faces, water bodies created by mine-related excavation, pit floors, the  
28 land beneath processing plant and stock pile sites, spoil pile sites,  
29 and equipment staging areas.

30       Disturbed areas do not include:

31       (a) Surface mine access roads unless these have characteristics of  
32 topography, drainage, slope stability, or ownership that, in the  
33 opinion of the department, make reclamation necessary; and

34       (b) Lands that have been reclaimed to all standards outlined in  
35 this chapter, rules of the department, any applicable SEPA document,  
36 and the approved reclamation plan.

1 (6) "Miner" means any person or persons, any partnership, limited  
2 partnership, or corporation, or any association of persons, including  
3 every public or governmental agency engaged in mining from the surface.

4 (7) "Minerals" means clay, coal, gravel, industrial minerals,  
5 metallic substances, peat, sand, stone, topsoil, and any other similar  
6 solid material or substance to be excavated from natural deposits on or  
7 in the earth for commercial, industrial, or construction use.

8 (8) "Operations" means all mine-related activities, exclusive of  
9 reclamation, that include, but are not limited to activities that  
10 affect noise generation, air quality, surface and ground water quality,  
11 quantity, and flow, glare, pollution, traffic safety, ground  
12 vibrations, and/or significant or substantial impacts commonly  
13 regulated under provisions of land use or other permits of local  
14 government and local ordinances, or other state laws.

15 Operations specifically include:

16 (a) The mining or extraction of rock, stone, gravel, sand, earth,  
17 and other minerals;

18 (b) Blasting, equipment maintenance, sorting, crushing, and  
19 loading;

20 (c) On-site mineral processing including asphalt or concrete  
21 batching, concrete recycling, and other aggregate recycling;

22 (d) Transporting minerals to and from the mine, on site road  
23 maintenance, road maintenance for roads used extensively for surface  
24 mining activities, traffic safety, and traffic control.

25 (9) "Overburden" means the earth, rock, soil, and topsoil that lie  
26 above mineral deposits.

27 (10) "Permit holder" means any person or persons, any partnership,  
28 limited partnership, or corporation, or any association of persons,  
29 either natural or artificial, including every public or governmental  
30 agency engaged in surface mining and/or the operation of surface mines,  
31 whether individually, jointly, or through subsidiaries, agents,  
32 employees, operators, or contractors who holds a state reclamation  
33 permit.

34 (11) "Reclamation" means rehabilitation for the appropriate future  
35 use of disturbed areas resulting from surface mining including areas  
36 under associated mineral processing equipment and areas under  
37 stockpiled materials. Although both the need for and the  
38 practicability of reclamation will control the type and degree of  
39 reclamation in any specific surface mine, the basic objective shall be

1 to reestablish on a perpetual basis the vegetative cover, soil  
2 stability, and water conditions appropriate to the approved subsequent  
3 use of the surface mine and to prevent or mitigate future environmental  
4 degradation.

5 (12) "Reclamation setbacks" include those lands along the margins  
6 of surface mines wherein minerals and overburden shall be preserved in  
7 sufficient volumes to accomplish reclamation according to the approved  
8 plan and the minimum reclamation standards. Maintenance of reclamation  
9 setbacks may not preclude other mine-related activities within the  
10 reclamation setback.

11 (13) "Recycling" means the reuse of minerals or rock products.

12 (14) "Screening" consists of vegetation, berms or other topography,  
13 fencing, and/or other screens that may be required to mitigate impacts  
14 of surface mining on adjacent properties and/or the environment.

15 (15) "Segment" means any portion of the surface mine that, in the  
16 opinion of the department:

17 (a) Has characteristics of topography, drainage, slope stability,  
18 ownership, mining development, or mineral distribution, that make  
19 reclamation necessary;

20 (b) Is not in use as part of surface mining and/or related  
21 activities; and

22 (c) Is larger than seven acres and has more than five hundred  
23 linear feet of working face except as provided in a segmental  
24 reclamation agreement approved by the department.

25 (16) "SEPA" means the state environmental policy act, chapter  
26 43.21C RCW and rules adopted thereunder.

27 (17)(a) "Surface mine" means any area or areas in close proximity  
28 to each other, as determined by the department, where extraction of  
29 minerals from the surface results in:

30 (i) More than three acres of disturbed area;

31 (ii) Mined slopes greater than thirty feet high and steeper than  
32 1.0 foot horizontal to 1.0 foot vertical; or

33 (iii) More than one acre of disturbed area within an eight acre  
34 area, when the disturbed area results from mineral prospecting or  
35 exploration activities.

36 (b) Surface mines include areas where mineral extraction from the  
37 surface occurs by the auger method or by reworking mine refuse or  
38 tailings, when these activities exceed the size or height thresholds  
39 listed in (a) of this subsection.

- 1 (c) Surface mining shall exclude excavations or grading used:  
2 (i) Primarily for on-site construction, on-site road maintenance,  
3 or on-site landfill construction;  
4 (ii) For the purpose of public safety or restoring the land  
5 following a natural disaster;  
6 (iii) For the purpose of removing stockpiles;  
7 (iv) For forest or farm road construction or maintenance on-site or  
8 on contiguous lands;  
9 (v) For sand authorized by RCW 43.51.685; and  
10 (vi) For underground mines.

11 (18) "Topsoil" means the naturally occurring upper part of a soil  
12 profile, including the soil horizon that is rich in humus and capable  
13 of supporting vegetation together with other sediments within four  
14 vertical feet of the ground surface.

15 NEW SECTION. **Sec. 5.** SEGMENTAL RECLAMATION. The permit holder  
16 shall reclaim each segment of the mine within two years of completion  
17 of surface mining on that segment except as provided in a segmental  
18 reclamation agreement approved in writing by the department. The  
19 primary objective of a segmental reclamation agreement should be to  
20 enhance final reclamation.

21 **Sec. 6.** RCW 78.44.040 and 1984 c 215 s 2 are each amended to read  
22 as follows:

23 The department of natural resources is charged with the  
24 administration of reclamation under this chapter. In order to  
25 implement ~~((the chapter's terms and provisions))~~ and enforce this  
26 chapter, the department, under the ~~((provisions of the))~~ administrative  
27 procedure act (chapter 34.05 RCW), ~~((as now or hereafter amended,))~~ may  
28 from time to time ~~((promulgate))~~ adopt those rules ~~((and regulations))~~  
29 necessary to carry out the purposes of this chapter.

30 **Sec. 7.** RCW 78.44.050 and 1970 ex.s. c 64 s 6 are each amended to  
31 read as follows:

32 The department shall have the exclusive authority to regulate  
33 surface mine reclamation except that, by contractual agreement, the  
34 department may delegate some or all of its enforcement authority to a  
35 county, city, or town. All counties, cities, or towns shall have the  
36 authority to zone surface mines and adopt ordinances regulating

1 operations pursuant to section 16 of this act, except that county,  
2 city, or town operations ordinances may be preempted by the department  
3 during the emergencies outlined in section 27 of this act and related  
4 rules.

5 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~  
6 provisions of the state fisheries laws (Title 75 RCW), the state water  
7 allocation and use laws (chapters 90.03 and 90.44 RCW), the state water  
8 pollution control laws (((Title 90)) chapter 90.48 RCW), the state  
9 ~~((game))~~ wildlife laws (Title 77 RCW), ((or any other state laws, and  
10 ~~shall be cumulative and nonexclusive))~~ state noise laws or air quality  
11 laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the  
12 state environmental policy act (chapter 43.21C RCW), state growth  
13 management (chapter 36.70A RCW), state drinking water laws (chapters  
14 43.20 and 70.119A RCW), or any other state statutes.

15 **Sec. 8.** RCW 78.44.060 and 1970 ex.s. c 64 s 7 are each amended to  
16 read as follows:

17 The department shall have the authority to conduct ~~((or)),~~  
18 authorize, and/or participate in investigations, research, experiments,  
19 and demonstrations, and to collect and disseminate information relating  
20 to surface mining and reclamation of surface mined lands.

21 **Sec. 9.** RCW 78.44.070 and 1970 ex.s. c 64 s 8 are each amended to  
22 read as follows:

23 The department may cooperate with other governmental and private  
24 agencies ~~((in this state and other states))~~ and agencies of the federal  
25 government, and may reasonably reimburse them for any services the  
26 department requests that they provide. The department may also receive  
27 any federal funds, state funds and any other funds and expend them for  
28 reclamation of land affected by surface mining and for purposes  
29 enumerated in RCW 78.44.060.

30 NEW SECTION. **Sec. 10.** SURFACE MINING RECLAMATION ACCOUNT. The  
31 surface mining reclamation account is created in the state treasury.  
32 Annual mining fees, funds received by the department from state, local,  
33 or federal agencies for research purposes, as well as other mine-  
34 related funds and fines received by the department shall be deposited  
35 into this account. The surface mine reclamation account may be used by  
36 the department only to:



- 1 (1) Administer its regulatory program pursuant to this chapter;
- 2 (2) Undertake research relating to surface mine regulation,  
3 reclamation of surface mine lands, and related issues; and
- 4 (3) Cover costs arising from appeals from determinations made under  
5 this chapter.

6 Fines, interest, and other penalties collected by the department  
7 under the provisions of this chapter shall be used to reclaim surface  
8 mines abandoned prior to 1971.

9 NEW SECTION. **Sec. 11.** RECLAMATION PERMITS REQUIRED--APPLICATIONS.  
10 After July 1, 1993, no miner or permit holder may engage in surface  
11 mining without having first obtained a reclamation permit from the  
12 department. Operating permits issued by the department between January  
13 1, 1971, and June 30, 1993, shall be considered reclamation permits  
14 provided such permits substantially meet the protections, mitigations,  
15 and reclamation goals of sections 12 and 20 of this act within five  
16 years after the effective date of this section. State agencies and  
17 local government shall be exempt from this time limit for inactive  
18 sites. Prior to the use of an inactive site, the reclamation plan must  
19 be brought up to current standards. A separate permit shall be  
20 required for each noncontiguous surface mine. The reclamation permit  
21 shall consist of the permit forms and any exhibits attached thereto.  
22 The permit holder shall comply with the provisions of the reclamation  
23 permit unless waived and explained in writing by the department.

24 Prior to receiving a reclamation permit, an applicant must submit  
25 an application on forms provided by the department that shall contain  
26 the following information and shall be considered part of the  
27 reclamation permit:

- 28 (1) Name and address of the legal landowner, or purchaser of the  
29 land under a real estate contract;
- 30 (2) The name of the applicant and, if the applicants are  
31 corporations or other business entities, the names and addresses of  
32 their principal officers and resident agent for service of process;
- 33 (3) A reasonably accurate description of the minerals to be surface  
34 mined;
- 35 (4) Type of surface mining to be performed;
- 36 (5) Estimated starting date, date of completion, and date of  
37 completed reclamation of surface mining;

- 1 (6) Size and legal description of the permit area and maximum  
2 lateral and vertical extent of the disturbed area;
- 3 (7) Expected area to be disturbed by surface mining during (a) the  
4 next twelve months, and (b) the following twenty-four months;
- 5 (8) Any applicable SEPA documents; and
- 6 (9) Other pertinent data as required by the department.

7 The reclamation permit shall be granted for the period required to  
8 deplete essentially all minerals identified in the reclamation permit  
9 on the land covered by the reclamation plan. The reclamation permit  
10 shall be valid until the reclamation is complete unless the permit is  
11 canceled by the department.

12 NEW SECTION. **Sec. 12.** RECLAMATION PLANS. An applicant shall  
13 provide a reclamation plan and copies acceptable to the department  
14 prior to obtaining a reclamation permit. The department shall have the  
15 sole authority to approve reclamation plans. Reclamation plans or  
16 modified reclamation plans submitted to the department after June 30,  
17 1993, shall meet or exceed the minimum reclamation standards set forth  
18 in this chapter and by the department in rule. Each applicant shall  
19 also supply copies of the proposed plans and final reclamation plan  
20 approved by the department to the county, city, or town in which the  
21 mine will be located. The department shall solicit comment from local  
22 government prior to approving a reclamation plan. The reclamation plan  
23 shall include:

24 (1) A written narrative describing the proposed mining and  
25 reclamation scheme with:

26 (a) A statement of a proposed subsequent use of the land after  
27 reclamation that is consistent with the local land use designation.  
28 Approval of the reclamation plan shall not vest the proposed subsequent  
29 use of the land;

30 (b) If the permit holder is not the sole landowner, a copy of the  
31 conveyance or a written statement that expressly grants or reserves the  
32 right to extract minerals by surface mining methods;

33 (c) A simple and accurate legal description of the permit area and  
34 disturbed areas;

35 (d) The maximum depth of mining;

36 (e) A reasonably accurate description of the minerals to be mined;

37 (f) A description of the method of mining;

1 (g) A description of the sequence of mining that will provide,  
2 within limits of normal procedures of the industry, for completion of  
3 surface mining and associated disturbance on each portion of the permit  
4 area so that reclamation can be initiated at the earliest possible time  
5 on each segment of the mine;

6 (h) A schedule for progressive reclamation of each segment of the  
7 mine;

8 (i) Where mining on flood plains or in river or stream channels is  
9 contemplated, a thoroughly documented hydrogeologic evaluation that  
10 will outline measures that would protect against or would mitigate  
11 avulsion and erosion as determined by the department;

12 (j) Where mining is contemplated within critical aquifer recharge  
13 areas, special protection areas as defined by chapter 90.48 RCW and  
14 implementing rules, public water supply watersheds, sole source  
15 aquifers, wellhead protection areas, and designated aquifer protection  
16 areas as set forth in chapter 36.36 RCW, a thoroughly documented  
17 hydrogeologic analysis of the reclamation plan may be required; and

18 (k) Additional information as required by the department including  
19 but not limited to: The positions of reclamation setbacks and  
20 screening, conservation of topsoil, interim reclamation, revegetation,  
21 postmining erosion control, drainage control, slope stability, disposal  
22 of mine wastes, control of fill material, development of wetlands,  
23 ponds, lakes, and impoundments, and rehabilitation of topography.

24 (2) Maps of the surface mine showing:

25 (a) All applicable data required in the narrative portion of the  
26 reclamation plan;

27 (b) Existing topographic contours;

28 (c) Contours depicting specifications for surface gradient  
29 restoration appropriate to the proposed subsequent use of the land and  
30 meeting the minimum reclamation standards;

31 (d) Locations and names of all roads, railroads, and utility lines  
32 on or adjacent to the area;

33 (e) Locations and types of proposed access roads to be built in  
34 conjunction with the surface mining;

35 (f) Detailed and accurate boundaries of the permit area, screening,  
36 reclamation setbacks, and maximum extent of the disturbed area; and

37 (g) Estimated depth to ground water and the locations of surface  
38 water bodies and wetlands both prior to and after mining.

1 (3) At least two cross sections of the mine including all  
2 applicable data required in the narrative and map portions of the  
3 reclamation plan.

4 (4) Evidence that the proposed surface mine has been approved under  
5 local zoning and land use regulations.

6 (5) Written approval of the reclamation plan by the landowner for  
7 mines permitted after June 30, 1993.

8 (6) Other supporting data and documents regarding the surface mine  
9 as reasonably required by the department.

10 If the department refuses to approve a reclamation plan in the form  
11 submitted by an applicant or permit holder, it shall notify the  
12 applicant or permit holder stating the reasons for its determination  
13 and describe such additional requirements to the applicant or permit  
14 holder's reclamation plan as are necessary for the approval of the plan  
15 by the department. If the department refuses to approve a complete  
16 reclamation plan within one hundred twenty days, the miner or permit  
17 holder may appeal this determination under the provisions of this  
18 chapter.

19 Only insignificant deviations may occur from the approved  
20 reclamation plan without prior written approval by the department for  
21 the proposed change.

22 The department retains the authority to require that the  
23 reclamation plan be updated to the satisfaction of the department at  
24 least every ten years.

25 NEW SECTION. **Sec. 13.** JOINT RECLAMATION PLANS. Where two or more  
26 surface mines join along a common boundary, the department may require  
27 submission of a joint reclamation plan in order to provide for optimum  
28 reclamation or to avoid waste of mineral resources. Such joint  
29 reclamation plans may be in the form of a single collaborative plan  
30 submitted by all affected permit holders or as individual reclamation  
31 plans in which the schedule of reclamation, finished contours, and  
32 revegetation match reclamation plans of adjacent permit holders.

33 NEW SECTION. **Sec. 14.** FEES. (1) An applicant for a public or  
34 private reclamation permit shall pay an application fee to the  
35 department before being granted a surface mining permit. The amount of  
36 the application fee shall be six hundred fifty dollars.

1 (2) After June 30, 1993, each public or private permit holder shall  
2 pay an annual permit fee of six hundred fifty dollars. The annual  
3 permit fee shall be payable to the department on the first anniversary  
4 of the permit date and each year thereafter. Annual fees paid by a  
5 county for small mines used exclusively for public works projects shall  
6 be paid on those small mines from which the county elects to extract  
7 minerals in the next calendar year and shall not exceed one thousand  
8 dollars.

9 (3) After July 1, 1995, the department may modify annual permit  
10 fees by rule if:

11 (a) The total annual permit fees are reasonably related to the  
12 approximate costs of administering the department's surface mining  
13 regulatory program;

14 (b) The annual fee does not exceed five thousand dollars; and

15 (c) The mines are small mines in remote areas that are used  
16 primarily for public service, then lower annual permit fees may be  
17 established.

18 (4) Appeals from any determination of the department shall not stay  
19 the requirement to pay any annual permit fee. Failure to pay the  
20 annual fee may constitute grounds for an order to suspend surface  
21 mining or cancellation of the reclamation permit as provided in this  
22 chapter.

23 (5) All fees collected by the department shall be deposited into  
24 the surface mining reclamation account.

25 (6) If the department delegates enforcement responsibilities to a  
26 county, city, or town, the department may allocate funds collected  
27 under this section to such county, city, or town.

28 NEW SECTION. **Sec. 15.** PERFORMANCE SECURITY. The department shall  
29 not issue a reclamation permit until the applicant has deposited with  
30 the department an acceptable performance security on forms prescribed  
31 and furnished by the department. A public or governmental agency shall  
32 not be required to post performance security nor shall a permit holder  
33 be required to post surface mining performance security with more than  
34 one state, local, or federal agency.

35 This performance security may be:

36 (1) Bank letters of credit acceptable to the department;

37 (2) A cash deposit;

38 (3) Negotiable securities acceptable to the department;

- 1 (4) An assignment of a savings account;
- 2 (5) A savings certificate in a Washington bank on an assignment  
3 form prescribed by the department;
- 4 (6) Assignments of interests in real property within the state of  
5 Washington; or
- 6 (7) 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 The performance security shall be conditioned upon the faithful  
10 performance of the requirements set forth in this chapter and of the  
11 rules adopted under it.

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

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

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

37 Any interest or appreciation on the performance security shall be  
38 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 No other state agency or local government shall require performance  
6 security for the purposes of surface mine reclamation and only one  
7 agency of government shall require and hold the performance security.  
8 The department may enter into written agreements with federal agencies  
9 in order to avoid redundant bonding of surface mines straddling  
10 boundaries between federally controlled and other lands within  
11 Washington state.

12 Notwithstanding any other provision of this section, nothing shall  
13 preclude the department of ecology from requiring a separate  
14 performance security for metallic minerals or uranium surface mines  
15 under any authority if any that may be presently vested in the  
16 department of ecology relating to such mines.

17 ***\*NEW SECTION.*** *Sec. 16. A new section is added to chapter 36.70A*  
18 *RCW to read as follows:*

19 *(1) Where the county has classified mineral lands pursuant to RCW*  
20 *36.70A.050 and mineral resource lands of long-term commercial*  
21 *significance exist, a county, city, or town shall designate sufficient*  
22 *mineral resource lands in the comprehensive plans to meet the projected*  
23 *twenty-year, county-wide need. Once designated, mineral resource uses,*  
24 *including operations as defined in section 4 of this act, shall be*  
25 *established as an allowed use in local development regulations subject*  
26 *to the permit process described in this section.*

27 *The county, city, or town shall designate mineral resource*  
28 *deposits, both active and inactive, in economically viable proximity to*  
29 *locations where the deposits are likely to be used.*

30 *Through its comprehensive plan and development regulations, as*  
31 *defined in RCW 36.70A.030, the county, city, or town shall discourage*  
32 *the siting of incompatible uses adjacent to mineral resource*  
33 *industries, deposits, and holdings.*

34 *For purposes of this section, "long-term commercial significance"*  
35 *includes the mineral composition of the land for long-term economically*  
36 *viable commercial production, in consideration with the mineral*  
37 *resource land's proximity to population areas, product markets, and the*  
38 *possibility of more intense uses of the land.*

1       (2)(a) Counties, cities, and towns may only regulate surface mining  
2 operations by ordinance and only in accordance with the requirements  
3 and limitations of this subsection.

4       (b) Local surface mining operating standards shall:

5       (i) Address only:

6       (A) Traffic;

7       (B) Light emission;

8       (C) Visual screening;

9       (D) Noise emission; and

10       (E) Other significant or substantial mining impacts that are not  
11 covered by a subject area of regulation embodied in any other state or  
12 federal law, including among others the subject areas pertaining to  
13 water allocation, use, and control and fisheries and wildlife habitat  
14 set forth in section 19 of this act.

15       (ii) Be performance-based, objective standards that:

16       (A) Are directly and proportionately related to limiting surface  
17 mining impacts;

18       (B) Are reasonable and generally capable of being achieved;

19       (C) Take into account existing and available technologies; and

20       (D) May be met by any lawful means selected by the applicant or  
21 operator that, in the judgment of the county, city, or town, achieve  
22 compliance with the standard.

23       (iii) Limit application and monitoring fees to the amount necessary  
24 to pay the costs of administering, processing, monitoring, and  
25 enforcing the regulation of surface mining in accordance with this  
26 section.

27       (iv) Except as otherwise provided in this section, implement the  
28 ordinance through an operating plan review and approval process. Such  
29 approval process shall:

30       (A) Require submittal of sufficient, complete, and accurate  
31 information, as specified by the local ordinance, to allow the decision  
32 maker to review the plan for compliance with local standards;

33       (B) At the option of the county, city, or town, provide for  
34 administrative approval subject to appeal or for initial consideration  
35 through a public hearing process; and

36       (C) Require that project-specific conditions or restrictions be  
37 based upon written findings of facts demonstrating their need to  
38 achieve compliance with local standards.



1 (v) Subject to subsection (3) of this section, provide that  
2 approvals issued will be valid for fifty years.

3 (3) Operating regulations and amendments thereto adopted pursuant  
4 to this section may be applied to lawfully preexisting mining  
5 operations only if the local ordinance:

6 (a) Limits application of subsection (2)(b)(i)(A) of this section  
7 relating to traffic to the designation of approved haul routes;

8 (b) Exempts such preexisting operations from any operating plan  
9 review and approval process;

10 (c) Provides reasonable time periods for compliance with new or  
11 amended local operating standards that in no event may be less than one  
12 year; and

13 (d) Includes a variance procedure to allow continuation of existing  
14 operations for a nonconforming surface mining operation where strict  
15 adherence to a local operating standard would be economically or  
16 operationally impractical due to conditions relating to site  
17 configuration, topography, or the nature of historic operations.

18 (4) Nothing in this section precludes a county, city, or town from  
19 exercising the express authority delegated to it by a state agency  
20 under state law, or from complying with state law when required as a  
21 regulated entity.

22 \*Sec. 16 was vetoed, see message at end of chapter.

23 NEW SECTION. **Sec. 17.** A surface mining model ordinance advisory  
24 committee is hereby created. The committee shall be composed of  
25 representatives of local government, state agencies, surface mining  
26 interests, and the environmental community. The department of natural  
27 resources shall appoint the members of the committee and the department  
28 shall staff the committee. This temporary advisory committee shall  
29 draft model ordinances for different surface-mining settings and shall  
30 assist counties, cities, and towns in developing ordinances. The  
31 committee shall complete its work and shall expire by December 31,  
32 1994. Participants on the committee shall pay their own expenses, and  
33 the department of natural resources shall fund the department's  
34 involvement.

35 NEW SECTION. **Sec. 18.** RECLAMATION SETBACKS. Reclamation setbacks  
36 shall be as follows unless waived by the department:

1 (1) The reclamation setback for unconsolidated deposits within  
2 mines permitted after June 30, 1993, shall be equal to the maximum  
3 anticipated height of the adjacent working face or as determined by the  
4 department. Setbacks and buffers may be destroyed as part of final  
5 reclamation of each segment if approved by the department.

6 (2) The minimum reclamation setback for consolidated materials  
7 within mines permitted after June 30, 1993, shall be thirty feet or as  
8 determined by the department.

9 (3) An exemption from this section may be granted by the department  
10 following a written request. The department may consider submission of  
11 a plan for backfilling acceptable to the department, a geotechnical  
12 slope-stability study, proof of a dedicated source of fill materials,  
13 written approval of contiguous landowners, and other information before  
14 granting an exemption.

15 ***\*NEW SECTION.** Sec. 19. WATER CONTROL. (1) Water control as*  
16 *regulated by the department shall be limited to those provisions*  
17 *necessary to effect surface mine reclamation and to protect ground and*  
18 *surface water resources after reclamation is complete and shall be*  
19 *consistent with existing water control laws. The department shall*  
20 *solicit recommendations from all agencies with expertise in relevant*  
21 *water control laws when evaluating reclamation plans for surface mines*  
22 *in or near water.*

23 (2) *As to surface mining projects, control of surface mine water*  
24 *shall be pursuant to chapter 90.48 RCW; water availability, hydraulic*  
25 *continuity, allocation, and use shall be pursuant to chapters 90.03,*  
26 *90.44, and 90.54 RCW; regulation of drinking water shall be pursuant to*  
27 *Titles 43 and 70 RCW; and protection of fisheries and wildlife shall be*  
28 *regulated pursuant to Title 75 RCW (fisheries laws) and Title 77 RCW*  
29 *(wildlife laws) as well as chapters 90.03, 90.44, 90.48, and 90.54 RCW,*  
30 *federal storm water regulations, and/or national pollutant discharge*  
31 *elimination system regulations. The department of ecology upon request*  
32 *by a county, city, or town, may consult with the affected parties and*  
33 *incorporate additional site-specific requirements into individual*  
34 *surface mine national pollutant discharge elimination system permits*  
35 *where such requirements are appropriate.*

36 A county, city, or town may regulate the impacts on water through  
37 local ordinances and regulations that:

1       (a) Cover significant or substantial impacts that are not covered  
2 by a subject area of regulation embodied in any other state or federal  
3 law; or

4       (b) Implement regulatory and/or enforcement authority that has been  
5 expressly authorized to it by a state agency.

6 \*Sec. 19 was vetoed, see message at end of chapter.

7       NEW SECTION.   **Sec. 20.**   RECLAMATION.   The need for, and the  
8 practicability of, reclamation shall control the type and degree of  
9 reclamation in any specific instance. However, the basic objective of  
10 reclamation is to reestablish on a continuing basis the vegetative  
11 cover, slope stability, water conditions, and safety conditions  
12 suitable to the proposed subsequent use consistent with local land use  
13 plans for the surface mine site.

14       Each permit holder shall comply with the minimum reclamation  
15 standards in effect on the date the permit was issued and any  
16 additional reclamation standards set forth in the approved reclamation  
17 plan.

18       Reclamation activities, particularly those relating to control of  
19 erosion and mitigation of impacts of mining to adjacent areas, shall,  
20 to the extent feasible, be conducted simultaneously with surface  
21 mining, and in any case shall be initiated at the earliest possible  
22 time after completion of surface mining on any segment of the permit  
23 area.

24       All reclamation activities shall be completed not more than two  
25 years after completion or abandonment of surface mining on each segment  
26 of the area for which a reclamation permit is in force.

27       The department may by contract delegate enforcement of provisions  
28 of reclamation plans to counties, cities, and towns. A county, city,  
29 or town performing enforcement functions may not impose any additional  
30 fees on permit holders.

31       NEW SECTION.   **Sec. 21.**   MINIMUM RECLAMATION STANDARDS. Reclamation  
32 of surface mines permitted after June 30, 1993, and reclamation of  
33 surface mine segments addressed by reclamation plans modified after  
34 June 30, 1994, shall meet the following minimum standards except as  
35 waived in writing by the department.

36       (1) Prior to surface mining, permit holders shall carefully  
37 stockpile all topsoil on the site for use in reclamation, or

1 immediately move topsoil to reclaim adjacent segments, except when the  
2 approved subsequent use does not require replacing the topsoil.  
3 Topsoil needed for reclamation shall not be sold as a mineral nor mixed  
4 with sterile soils. Stockpiled materials used as screening shall not  
5 be used for reclamation until such time as the appropriate county or  
6 municipal government has given its approval.

7 (2) The department may require that clearly visible, permanent  
8 monuments delineating the permit boundaries and maximum extent of the  
9 disturbed area be set at appropriate places around the mine site. The  
10 permit holder shall maintain the monuments until termination of the  
11 reclamation permit.

12 (3) All minimum reclamation standards may be waived in writing by  
13 the department in order to accommodate unique and beneficial  
14 reclamation schemes such as parks, swimming facilities, buildings, and  
15 wildlife reserves. Such waivers shall be granted only after written  
16 approval by the department of a reclamation plan describing the  
17 variances to the minimum reclamation standards, receipt of  
18 documentation of SEPA compliance, and written approvals from the  
19 landowner and by the local land use authority.

20 (4) All surface-mined slopes shall be reclaimed to the following  
21 minimum standards:

22 (a) In surface mines in soil, sand, gravel, and other  
23 unconsolidated materials, all reclaimed slopes shall:

24 (i) Have varied steepness;

25 (ii) Have a sinuous appearance in both profile and plan view;

26 (iii) Have no large rectilinear topographic elements;

27 (iv) Generally have slopes of between 2.0 and 3.0 feet horizontal  
28 to 1.0 foot vertical or flatter except in limited areas where steeper  
29 slopes are necessary in order to create sinuous topography and to  
30 control drainage;

31 (v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as  
32 necessary to blend with adjacent natural slopes;

33 (vi) Be compacted if significant backfilling is required to produce  
34 the final reclaimed slopes and if the department determines that  
35 compaction is necessary.

36 (b) Slopes in consolidated materials shall have no prescribed slope  
37 angle or height, but where a severely hazardous condition is created by  
38 mining and that is not indigenous to the immediate area, the slopes  
39 shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper

1 slopes shall be acceptable in areas where evidence is submitted that  
2 demonstrates that the geologic or topographic characteristics of the  
3 site preclude reclamation of slopes to such angle or height or that  
4 such slopes constitute an acceptable subsequent use under local land  
5 use regulations.

6 (c) Surface mines in which the seasonal or permanent water tables  
7 have been penetrated, thereby creating swamps, ponds, or lakes useful  
8 for recreational, wildlife habitat, water quality control, or other  
9 beneficial wetland purposes shall be reclaimed in the following manner:

10 (i) For slopes that are below the permanent water table in soil,  
11 sand, gravel, and other unconsolidated materials, the slope angle shall  
12 be no steeper than 1.5 feet horizontal to 1.0 foot vertical;

13 (ii) Generally, solid rock banks shall be shaped so that a person  
14 can escape from the water, however steeper slopes and lack of water  
15 egress shall be acceptable in rural, forest, or mountainous areas or  
16 where evidence is provided that such slopes would constitute an  
17 acceptable subsequent use under local land use regulations;

18 (iii) Both standpipes and armored spillways or other measures to  
19 prevent undesirable overflow or seepage shall be provided to stabilize  
20 all such water bodies within the disturbed area; and

21 (iv) Where lakes, ponds, or swamps are created, the permit holder  
22 shall provide measures to establish a beneficial wetland by developing  
23 natural wildlife habitat and incorporating such measures as irregular  
24 shoreline configurations, sinuous bathymetry and shorelines, varied  
25 water depths, peninsulas, islands, and subaqueous areas less than 1.5  
26 foot deep during summer low-water levels. Clay-bearing material placed  
27 below water level may be required to avoid creating sterile wetlands.

28 (d) Final topography shall generally comprise sinuous contours,  
29 chutes and buttresses, spurs, and rolling mounds and hills, all of  
30 which shall blend with adjacent topography to a reasonable extent.  
31 Straight planar slopes and right angles should be avoided.

32 (e) The floors of mines shall generally grade gently into  
33 postmining drainages to preclude sheet-wash erosion during intense  
34 precipitation, except where backgrading is appropriate for drainage  
35 control, to establish wetlands, or to trap sediment.

36 (f) Topsoil shall be restored as necessary to promote effective  
37 revegetation and to stabilize slopes and mine floors. Where limited  
38 topsoil is available, topsoil shall be placed and revegetated in such  
39 a way as to ensure that little topsoil is lost to erosion.

1 (g) Where surface mining has exposed natural materials that may  
2 create polluting conditions, including but not limited to acid-forming  
3 coals and metalliferous rock or soil, such conditions shall be  
4 addressed according to a method approved by the department. The final  
5 ground surface shall be graded so that surface water drains away from  
6 these materials.

7 (h) All grading and backfilling shall be made with nonnoxious,  
8 noncombustible, and relatively incompactible solids unless the permit  
9 holder provides:

10 (i) Written approval from all appropriate solid waste regulatory  
11 agencies; and

12 (ii) Any and all revisions to such written approval during the  
13 entire time the reclamation permit is in force.

14 (i) Final reclaimed slopes should be left roughly graded,  
15 preserving equipment tracks, depressions, and small mounds to trap  
16 clay-bearing soil and promote natural revegetation. Where reasonable,  
17 final equipment tracks should be oriented in order to trap soil and  
18 seeds and to inhibit erosion.

19 (j) Pit floors should be bulldozed or ripped to foster  
20 revegetation.

21 (5) Drainages shall be graded and contain adequate energy  
22 dissipation devices so that essentially natural conditions of water  
23 velocity, volume, and turbidity are reestablished within six months of  
24 reclamation of each segment of the mine. Ditches and other artificial  
25 drainages shall be constructed on each reclaimed segment to control  
26 surface water, erosion, and siltation and to direct runoff to a safe  
27 outlet. Diversion ditches including but not limited to channels,  
28 flumes, tightlines and retention ponds shall be capable of carrying the  
29 peak flow at the mine site that has the probable recurrence frequency  
30 of once in twenty-five years as determined from data for the twenty-  
31 five year, twenty-four hour precipitation event published by the  
32 national oceanic and atmospheric administration. The grade of such  
33 ditches and channels shall be constructed to limit erosion and  
34 siltation. Natural and other drainage channels shall be kept free of  
35 equipment, wastes, stockpiles, and overburden.

36 (6) Impoundment of water shall be an acceptable reclamation  
37 technique provided that approvals of other agencies with jurisdiction  
38 are obtained and:

1 (a) Proper measures are taken to prevent undesirable seepage that  
2 could cause flooding outside the permitted area or adversely affect the  
3 stability of impoundment dikes or adjacent slopes;

4 (b) Both standpipes and armored spillways or other measures  
5 necessary to control overflow are provided.

6 (7) Revegetation shall be required as appropriate to stabilize  
7 slopes, generate new topsoil, reduce erosion and turbidity, mask  
8 rectilinear contours, and restore the scenic value of the land to the  
9 extent feasible as appropriate to the approved subsequent use.  
10 Although the scope of and necessity for revegetation will vary  
11 according to the geography, precipitation, and approved subsequent use  
12 of the site, the objective of segmental revegetation is to reestablish  
13 self-sustaining vegetation and conditions of slope stability, surface  
14 water quality, and appearance before release of the reclamation permit.  
15 Revegetation shall normally meet the following standards:

16 (a) Revegetation shall commence during the first proper growing  
17 season following restoration of slopes on each segment unless the  
18 department has granted the permit holder a written time extension.

19 (b) In eastern Washington, the permit holder may not be able to  
20 achieve continuous ground cover owing to arid conditions or sparse  
21 topsoil. However, revegetation shall be as continuous as reasonably  
22 possible as determined by the department.

23 (c) Revegetation generally shall include but not be limited to  
24 diverse evergreen and deciduous trees, shrubs, grasses, and deep-rooted  
25 ground cover.

26 (i) For western Washington, nitrogen-fixing species including but  
27 not limited to alder, white clover, and lupine should be included in  
28 dry areas. In wet areas, tubers, sedges, wetland grasses, willow,  
29 cottonwood, cedar, and alder are appropriate.

30 (ii) In eastern Washington, lupine, white clover, Russian olive,  
31 black locust, junipers, and pines are among appropriate plants. In wet  
32 areas, cottonwood, tubers, and sedges are appropriate.

33 (d) The requirements for revegetation may be reduced or waived by  
34 the department where erosion will not be a problem in rural areas where  
35 precipitation exceeds thirty inches per annum, or where revegetation is  
36 inappropriate for the approved subsequent use of the surface mine.

37 (e) In areas where revegetation is critical and conditions are  
38 harsh, the department may require irrigation, fertilization, and

1 importation of clay or humus-bearing soils to establish effective  
2 vegetation.

3 (f) The department may refuse to release a reclamation permit or  
4 performance security until it deems that effective revegetation has  
5 commenced.

6 NEW SECTION. **Sec. 22.** PERMIT TRANSFERS. Reclamation permits  
7 shall be transferred to a subsequent permit holder and the department  
8 shall release the former permit holder from the duties imposed by this  
9 chapter if:

10 (1) Both permit holders comply with all rules of the department  
11 addressing requirements for transferring a permit; and

12 (2) Unless waived by the department, the mine and all others  
13 operated by both the former and subsequent permit holders and their  
14 principal officers or owners are in compliance with this chapter and  
15 rules.

16 NEW SECTION. **Sec. 23.** MODIFICATION OF RECLAMATION PLANS. The  
17 department and the permit holder may modify the reclamation plan at any  
18 time during the term of the permit for any of the following reasons:

19 (1) To modify the requirements so that they do not conflict with  
20 existing or new laws;

21 (2) If the department determines that the previously adopted  
22 reclamation plan is impossible or impracticable to implement and  
23 maintain; or

24 (3) The previously approved reclamation plan is not accomplishing  
25 the intent of this chapter as determined by the department.

26 Modified reclamation plans shall be reviewed by the department as  
27 lead agency under SEPA. Such SEPA analyses shall consider only those  
28 impacts relating directly to the proposed modifications. Copies of  
29 proposed and approved modifications shall be sent to the appropriate  
30 county, city, or town.

31 NEW SECTION. **Sec. 24.** REPORTS. On the anniversary date of the  
32 reclamation permit and each year thereafter until reclamation is  
33 completed and approved, the permit holder shall file a report of  
34 activities completed during the preceding year. The report shall be on  
35 a form prescribed by the department.



1        NEW SECTION.    **Sec. 25.**    INSPECTION OF PERMIT AREA.    The department  
2 may order at any time an inspection of the disturbed area to determine  
3 if the miner or permit holder has complied with the reclamation permit,  
4 rules, and this chapter.

5        NEW SECTION.    **Sec. 26.**    ORDER TO RECTIFY DEFICIENCIES.    The  
6 department may issue an order to rectify deficiencies when a miner or  
7 permit holder is conducting surface mining in any manner not authorized  
8 by:

- 9            (1) This chapter;
- 10           (2) The rules adopted by the department;
- 11           (3) The authorized reclamation plan; or
- 12           (4) The reclamation permit.

13        The order shall describe the deficiencies and shall require that  
14 the miner or permit holder correct all deficiencies no later than sixty  
15 days from issuance of the order.    The department may extend the period  
16 for correction for delays clearly beyond the miner or permit holder's  
17 control, but only when the miner or permit holder is, in the opinion of  
18 the department, making every reasonable effort to comply.

19        NEW SECTION.    **Sec. 27.**    EMERGENCY NOTICE AND ORDER TO RECTIFY  
20 DEFICIENCIES--EMERGENCY ORDER TO SUSPEND SURFACE MINING.    When the  
21 department finds that a permit holder is conducting surface mining in  
22 any manner not authorized by:

- 23            (1) This chapter;
- 24           (2) The rules adopted by the department;
- 25           (3) The approved reclamation plan; or
- 26           (4) The reclamation permit;

27        and that activity has created a situation involving an immediate danger  
28 to the public health, safety, welfare, or environment requiring  
29 immediate action, the department may issue an emergency notice and  
30 order to rectify deficiencies, and/or an emergency order to suspend  
31 surface mining.    These orders shall be effective when entered.    The  
32 department may take such action as is necessary to prevent or avoid the  
33 danger to the public health, safety, welfare, or environment that  
34 justifies use of emergency adjudication.    The department shall give  
35 such notice as is practicable to the permit holder or miner who is  
36 required to comply with the order.    The order shall comply with the  
37 requirements of the administrative procedure act.

1 Regulations of surface mining operations administered by other  
2 state and local agencies shall be preempted by this section to the  
3 extent that the time schedule and procedures necessary to rectify the  
4 emergency situation, as determined by the department, conflict with  
5 such local regulation.

6 NEW SECTION. **Sec. 28.** ORDER TO SUSPEND SURFACE MINING. Upon the  
7 failure of a miner or permit holder to comply with a department order  
8 to rectify deficiencies, the department may issue an order to suspend  
9 surface mining when a miner or permit holder is conducting surface  
10 mining in any manner not authorized by:

- 11 (1) This chapter;
- 12 (2) The rules adopted by the department;
- 13 (3) The approved reclamation plan;
- 14 (4) The reclamation permit; or
- 15 (5) If the miner or permit holder fails to comply with any final  
16 order of the department.

17 The order to suspend surface mining shall require the miner or  
18 permit holder to suspend part or all of the miner's or permit holder's  
19 mining operations until the conditions resulting in the issuance of the  
20 order have been mitigated to the satisfaction of the department.

21 The attorney general may take the necessary legal action to enjoin,  
22 or otherwise cause to be stopped, surface mining in violation of an  
23 order to suspend surface mining.

24 NEW SECTION. **Sec. 29.** DECLARATION OF ABANDONMENT. The department  
25 may issue a declaration of abandonment when it determines that all  
26 surface mining has ceased for a period of one hundred eighty  
27 consecutive days not set forth in the permit holder's reclamation plan  
28 or when, by reason of inspection of the permit area, or by any other  
29 means, the department determines that the mine has in fact been  
30 abandoned by the permit holder except that abandonment shall not  
31 include normal interruptions of surface mining resulting from labor  
32 disputes, economic conditions associated with lack of smelting capacity  
33 or availability of appropriate transportation, war, social unrest,  
34 demand for minerals, maintenance and repairs, and acts of God.

35 Following a declaration of abandonment, the department shall  
36 require the permit holder to complete reclamation in accordance with  
37 this chapter. If the permit holder fails to do so, the department

1 shall proceed to do the necessary reclamation work pursuant to section  
2 31 of this act.

3 If another miner applies for a permit on a site that has been  
4 declared abandoned, the department may, in its discretion, cancel the  
5 reclamation permit of the permit holder and issue a new reclamation  
6 permit to the applicant. The department shall not issue a new permit  
7 unless it determines that such issuance will be an effective means of  
8 assuring that the site will ultimately be reclaimed. The applicant  
9 must agree to assume the reclamation responsibilities left unfinished  
10 by the first miner, in addition to meeting all requirements for  
11 issuance of a new permit.

12 NEW SECTION. **Sec. 30.** CANCELLATION OF THE RECLAMATION PERMIT.  
13 When the department determines that a surface mine has been abandoned,  
14 it may cancel the reclamation permit. The permit holder shall be  
15 informed of such actions by a department notification of illegal  
16 abandonment and cancellation of the reclamation permit.

17 NEW SECTION. **Sec. 31.** ORDER TO SUBMIT PERFORMANCE SECURITY--  
18 RECLAMATION BY THE DEPARTMENT. The department may, with the staff,  
19 equipment, and material under its control, or by contract with others,  
20 reclaim the disturbed areas when it finds that reclamation has not  
21 occurred in any segment of a surface mine within two years of  
22 completion of mining or of declaration of abandonment and the permit  
23 holder is not actively pursuing reclamation.

24 If the department intends to undertake the reclamation, the  
25 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 section 15 of this act. If the  
28 amount specified in the order to submit performance security is not  
29 paid within twenty days after issuance of the notice, the attorney  
30 general upon request of the department shall bring an action on behalf  
31 of the state in a superior court to recover the amount specified and  
32 associated legal fees.

33 The department may proceed at any time after issuing the order to  
34 submit performance security with reclamation of the site according to  
35 the approved reclamation plan or according to a plan developed by the  
36 department that meets the minimum reclamation standards.

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

4 (1) Reclamation;

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 reclamation of the  
8 surface mine.

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, may bring an action against  
13 the permit holder on behalf of the state in the superior court to  
14 recover the remaining costs listed in this section.

15 NEW SECTION. **Sec. 32.** FINES. Each order of the department may  
16 impose a fine or fines in the event that a miner or permit holder fails  
17 to obey the order of the department. When a miner or permit holder  
18 fails to comply with an order of the department, the miner or permit  
19 holder shall be subject to a civil penalty in an amount not more than  
20 ten thousand dollars for each violation plus interest based upon a  
21 schedule of fines set forth by the department in rule. Procedures for  
22 imposing a penalty and setting the amount of the penalty shall be as  
23 provided in RCW 90.48.144. Each day on which a miner or permit holder  
24 continues to disobey any order of the department shall constitute a  
25 separate violation. If the penalty and interest is not paid to the  
26 department after it becomes due and payable, the attorney general, upon  
27 the request of the department, may bring an action in the name of the  
28 state of Washington to recover the penalty, interest, mitigation for  
29 environmental damages, and associated legal fees. Decisions of the  
30 department are subject to review by the pollution control hearings  
31 board.

32 All fines, interest, penalties, and other damage recovery costs  
33 from mines regulated by the department shall be credited to the surface  
34 mining reclamation account.

35 NEW SECTION. **Sec. 33.** REFUSAL TO ISSUE PERMITS. The department  
36 shall refuse to issue a reclamation permit if it is determined during

1 the SEPA process that the impacts of a proposed surface mine cannot be  
2 adequately mitigated.

3 The department or county, city, or town may refuse to issue any  
4 other permit at any other location to any miner or permit holder who  
5 fails to rectify deficiencies set forth in an order of the department  
6 within the requisite time schedule. However, the department or county,  
7 city, or town shall issue all appropriate permits when all deficiencies  
8 are corrected at each surface mining site.

9 **Sec. 34.** RCW 78.44.150 and 1970 ex.s. c 64 s 16 are each amended  
10 to read as follows:

11 Any (~~operator~~) miner or permit holder conducting surface mining  
12 within the state of Washington without a valid (~~operating~~)  
13 reclamation permit shall be guilty of a gross misdemeanor. Surface  
14 mining outside of the permitted area shall constitute illegal mining  
15 without a valid reclamation permit. Each day of (~~operation~~) mining  
16 without a valid reclamation permit shall constitute a separate offense.

17 **Sec. 35.** RCW 78.44.170 and 1989 c 175 s 166 are each amended to  
18 read as follows:

19 Appeals from department determinations under this chapter shall be  
20 made as follows:

21 Appeals from department determinations made under this chapter  
22 shall be made under the provisions of the Administrative Procedure Act  
23 (chapter 34.05 RCW), and shall be considered an adjudicative proceeding  
24 within the meaning of the Administrative Procedure Act, chapter 34.05  
25 RCW. Only a person aggrieved within the meaning of RCW 34.05.530 has  
26 standing and can file an appeal.

27 **Sec. 36.** RCW 78.44.910 and 1970 ex.s. c 64 s 22 are each amended  
28 to read as follows:

29 (~~This act shall not direct itself to the reclamation of land~~  
30 ~~mined)) Miners and permit holders shall not be required to reclaim any  
31 segment where all surface mining was completed prior to January 1,  
32 1971. However, the department shall make an effort to reclaim  
33 previously abandoned or completed surface mining segments.~~

34 NEW SECTION. **Sec. 37.** RECLAMATION AWARDS ESTABLISHED. The  
35 department shall create reclamation awards in recognition of excellence

1 in reclamation or reclamation research. Such awards shall be presented  
2 to individuals, miners, operators, companies, or government agencies  
3 performing exemplary surface mining reclamation in the state of  
4 Washington. The department shall designate a percent of the state  
5 annual fees as funding of the awards.

6 NEW SECTION. **Sec. 38.** RECLAMATION SERVICE ESTABLISHED. The  
7 department may establish a no-cost consulting service within the  
8 department to assist miners, permit holders, local government, and the  
9 public in technical matters related to mine regulation, mine  
10 operations, and reclamation. The department may prepare concise,  
11 printed information for the public explaining surface mining  
12 activities, timelines for permits and reviews, laws, and the role of  
13 governmental agencies involved in surface mining, including how to  
14 contact all regulators. The department shall not be held liable for  
15 any negligent advice.

16 NEW SECTION. **Sec. 39.** The following acts or parts of acts are  
17 each repealed:

- 18 (1) RCW 78.44.030 and 1987 c 258 s 1, 1984 c 215 s 1, & 1970 ex.s.  
19 c 64 s 4;
- 20 (2) RCW 78.44.035 and 1987 c 258 s 3;
- 21 (3) RCW 78.44.080 and 1970 ex.s. c 64 s 9;
- 22 (4) RCW 78.44.090 and 1970 ex.s. c 64 s 10;
- 23 (5) RCW 78.44.100 and 1984 c 215 s 3 & 1970 ex.s. c 64 s 11;
- 24 (6) RCW 78.44.110 and 1987 c 258 s 2, 1984 c 215 s 4, & 1970 ex.s.  
25 c 64 s 12;
- 26 (7) RCW 78.44.120 and 1984 c 215 s 5, 1977 c 66 s 1, & 1970 ex.s.  
27 c 64 s 13;
- 28 (8) RCW 78.44.130 and 1970 ex.s. c 64 s 14;
- 29 (9) RCW 78.44.140 and 1989 c 230 s 1, 1984 c 215 s 6, & 1970 ex.s.  
30 c 64 s 15;
- 31 (10) RCW 78.44.160 and 1984 c 215 s 7 & 1970 ex.s. c 64 s 17; and  
32 (11) RCW 78.44.180 and 1970 ex.s. c 64 s 20.

33 NEW SECTION. **Sec. 40.** The code reviser may recodify, as  
34 necessary, RCW 78.44.150, 78.44.170, 78.44.175, and 78.44.910 within  
35 chapter 78.44 RCW to accomplish the reorganization of chapter 78.44 RCW  
36 as intended in this act.

1        NEW SECTION.    **Sec. 41.**    Captions used in this act do not constitute  
2 any part of the law.

3        NEW SECTION.    **Sec. 42.**    Sections 4, 5, 10 through 15, 18 through  
4 33, 37, and 38 of this act are each added to chapter 78.44 RCW.

5        NEW SECTION.    **Sec. 43.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 44.**    This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and shall take  
12 effect July 1, 1993.

      Passed the Senate April 20, 1993.

      Passed the House April 18, 1993.

      Approved by the Governor May 18, 1993, with the exception of  
      certain items which were vetoed.

      Filed in Office of Secretary of State May 18, 1993.

1        Note: Governor's explanation of partial veto is as follows:

2        "I am returning herewith, without my approval as to sections 16 and  
3 19, Engrossed Second Substitute Senate Bill No. 5502, entitled:

4        "AN ACT Relating to state and local government regulation of  
5 surface mining;"

6        This legislation will greatly enhance the state's ability to  
7 regulate surface mining reclamation and to protect public resources.  
8 However, certain sections of the bill clearly restrict the ability of  
9 local governments to regulate surface mining itself.

10        Section 16 imposes state direction on the designation of mineral  
11 resource lands, which the Growth Management Act allows counties free  
12 authority to designate. Section 16 also limits the ability of local  
13 jurisdictions to regulate surface mining and to provide local  
14 protection of air and water resources. Section 19 precludes local  
15 jurisdictions from dealing with water impacts of surface mines. Both  
16 of these sections limit local jurisdictions regulatory ability to those  
17 areas not already regulated by the state or federal governments. This  
18 unnecessarily restricts the ability of local government to adequately  
19 regulate surface mining.

20        For these reasons, I am vetoing sections 16 and 19.

21        With the exception of sections 16 and 19, Engrossed Second  
22 Substitute Senate Bill No. 5502 is approved."