

2 ESHB 1574 - S COMM AMD
3 By Committee on Natural Resources

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 78.56.110 and 1994 c 232 s 11 are each amended to
8 read as follows:

9 (1) The department of ecology (~~and the department of natural~~
10 ~~resources~~) shall not issue necessary permits to an applicant for a
11 metals mining and milling operation until the applicant has deposited
12 with the department of ecology a performance security which is
13 acceptable to (~~both agencies~~) the department of ecology based on the
14 requirements of subsection (2) of this section. This performance
15 security may be:

16 (a) Bank letters of credit (~~acceptable to both agencies~~);

17 (b) A cash deposit;

18 (c) Negotiable securities (~~acceptable to both agencies~~);

19 (d) An assignment of a savings account;

20 (e) A savings certificate in a Washington bank; or

21 (f) A corporate surety bond executed in favor of the department of
22 ecology by a corporation authorized to do business in the state of
23 Washington under Title 48 RCW (~~and acceptable to both agencies~~).

24 The (~~agencies~~) department of ecology may, for any reason, refuse
25 any performance security not deemed adequate.

26 (2) The performance security shall be conditioned on the faithful
27 performance of the applicant or operator in meeting the following
28 obligations:

29 (a) Compliance with the environmental protection laws of the state
30 of Washington administered by the department of ecology, or permit
31 conditions administered by the department of ecology, associated with
32 the construction, operation, and closure pertaining to metals mining
33 and milling operations, and with the related (~~rules~~) environmental
34 protection ordinances and permit conditions established by (~~state~~
35 ~~and~~) local government (~~with respect to those operations as defined in~~
36 ~~RCW 78.44.031(17) and the construction, operation, reclamation, and~~

1 ~~closure of a metals mining and milling operation))~~ when requested by
2 local government;

3 (b) Reclamation of metals mining and milling operations that do not
4 meet the threshold of surface mining as defined by RCW 78.44.031(17);

5 (c) Postclosure environmental monitoring as determined by the
6 department of ecology ((and the department of natural resources)); and

7 ~~((e))~~ (d) Provision of sufficient funding as determined by the
8 department of ecology for cleanup of potential problems revealed during
9 or after closure.

10 (3) The department of ecology ~~((and the department of natural~~
11 ~~resources shall jointly))~~ may, if it deems appropriate, adopt rules for
12 determining the amount of the performance security, requirements for
13 the performance security, requirements for the issuer of the
14 performance security, and any other requirements necessary for the
15 implementation of this section.

16 (4) The department of ecology ~~((and the department of natural~~
17 ~~resources, acting jointly,))~~ may increase or decrease the amount of the
18 performance security at any time to compensate for any alteration in
19 the operation that affects meeting the obligations in subsection (2) of
20 this section. At a minimum, the ~~((agencies))~~ department shall
21 ~~((jointly))~~ review the adequacy of the performance security every two
22 years.

23 (5) Liability under the performance security shall be maintained
24 until the obligations in subsection (2) of this section are met to the
25 satisfaction of the department of ecology ~~((and the department of~~
26 ~~natural resources))~~. Liability under the performance security may be
27 released only upon written notification by the department of ecology~~((~~
28 ~~with the concurrence of the department of natural resources))~~.

29 (6) Any interest or appreciation on the performance security shall
30 be held by the department of ecology until the obligations in
31 subsection (2) of this section have been met to the satisfaction of the
32 department of ecology ~~((and the department of natural resources))~~. At
33 such time, the interest shall be remitted to the applicant or operator.
34 However, if the applicant or operator fails to comply with the
35 obligations of subsection (2) of this section, the interest or
36 appreciation may be used by ~~((either agency))~~ the department of ecology
37 to comply with the obligations.

38 (7) Only one agency may require a performance security to satisfy
39 the deposit requirements of RCW 78.44.087, and only one agency may

1 require a performance security to satisfy the deposit requirements of
2 this section. However, a single performance security, when acceptable
3 to both the department of ecology and the department of natural
4 resources, may be utilized by both agencies to satisfy the requirements
5 of this section and RCW 78.44.087.

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

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

14 If the department intends to remediate or mitigate such impacts,
15 the department shall issue an order to submit performance security
16 requiring the permit holder or surety to submit to the department the
17 amount of moneys posted pursuant to (~~chapter 232, Laws of 1994~~) RCW
18 78.56.110. If the amount specified in the order to submit performance
19 security is not paid within twenty days after issuance of the notice,
20 the attorney general upon request of the department shall bring an
21 action on behalf of the state in a superior court to recover the amount
22 specified and associated legal fees.

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

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

- 28 (1) Remediation or mitigation;
29 (2) A reasonable charge for the services performed by the state's
30 personnel and the state's equipment and materials utilized; and
31 (3) Administrative and legal expenses related to remediation or
32 mitigation.

33 The department shall refund to the surety or permit holder all
34 amounts received in excess of the amount of expenses incurred. If the
35 amount received is less than the expenses incurred, the attorney
36 general, upon request of the department of ecology, may bring an action
37 against the permit holder on behalf of the state in the superior court
38 to recover the remaining costs listed in this section.

1 ((If the department of natural resources finds that reclamation has
2 not occurred according to the standards required under chapter 78.44
3 RCW in a metals mining and milling operation, then the department of
4 natural resources may cause reclamation to occur pursuant to RCW
5 78.44.240. Upon approval of the department of ecology, the department
6 of natural resources may reclaim part or all of the metals mining and
7 milling operation using that portion of the surety posted pursuant to
8 chapter 232, Laws of 1994 that has been identified for reclamation.))

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

11 (1) The department shall not issue a reclamation permit until the
12 applicant has deposited with the department an acceptable performance
13 security on forms prescribed and furnished by the department. A public
14 or governmental agency shall not be required to post performance
15 security nor shall a permit holder be required to post surface mining
16 performance security with more than one state or local agency.

17 (2) This performance security may be:

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

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

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

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

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

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

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

29 (3) The performance security shall be conditioned upon the faithful
30 performance of the requirements set forth in this chapter and of the
31 rules adopted under it.

32 (4) The department shall have the authority to determine the amount
33 of the performance security using a standardized performance security
34 formula developed by the department. The amount of the security shall
35 be determined by the department and based on the estimated costs of
36 completing reclamation according to the approved reclamation plan or
37 minimum standards and related administrative overhead for the area to
38 be surface mined during (a) the next twelve-month period, (b) the

1 following twenty-four months, and (c) any previously disturbed areas on
2 which the reclamation has not been satisfactorily completed and
3 approved.

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

10 (6) Liability under the performance security shall be maintained
11 until reclamation is completed according to the approved reclamation
12 plan to the satisfaction of the department unless released as
13 hereinafter provided. Liability under the performance security may be
14 released only upon written notification by the department.
15 Notification shall be given upon completion of compliance or acceptance
16 by the department of a substitute performance security. The liability
17 of the surety shall not exceed the amount of security required by this
18 section and the department's reasonable legal fees to recover the
19 security.

20 (7) Any interest or appreciation on the performance security shall
21 be held by the department until reclamation is completed to its
22 satisfaction. At such time, the interest shall be remitted to the
23 permit holder; except that such interest or appreciation may be used by
24 the department to effect reclamation in the event that the permit
25 holder fails to comply with the provisions of this chapter and the
26 costs of reclamation exceed the face value of the performance security.

27 (8) Except as provided in this section, no other state agency or
28 local government shall require performance security for the purposes of
29 surface mine reclamation and only one agency of government shall
30 require and hold the performance security. The department may enter
31 into written agreements with federal agencies in order to avoid
32 redundant bonding of surface mines straddling boundaries between
33 federally controlled and other lands within Washington state.

34 (~~The department and the department of ecology shall jointly~~
35 ~~require performance security for metals mining and milling operations~~
36 ~~regulated under chapter 232, Laws of 1994.))"~~

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4 On page 1, line 3 of the title, after "operations;" strike the
5 remainder of the title and insert "and amending RCW 78.56.110,
6 78.56.120, and 78.44.087."

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