

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5662**

Chapter 223, Laws of 1995

54th Legislature  
1995 Regular Session

PERFORMANCE SECURITY FOR METALS MINING AND MILLING--CLARIFICATION  
OF AUTHORITY OF DEPARTMENT OF ECOLOGY AND DEPARTMENT OF  
NATURAL RESOURCES

EFFECTIVE DATE: 7/23/95

Passed by the Senate April 19, 1995  
YEAS 47 NAYS 0

JOEL PRITCHARD

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**President of the Senate**

Passed by the House April 4, 1995  
YEAS 96 NAYS 0

CLYDE BALLARD

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**Speaker of the  
House of Representatives**

Approved May 3, 1995

MIKE LOWRY

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**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 SUBSTITUTE SENATE BILL 5662** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

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**Secretary**

FILED

May 3, 1995 - 11:49 a.m.

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE SENATE BILL 5662

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AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

State of Washington                      54th Legislature                      1995 Regular Session

By Senate Committee on Natural Resources (originally sponsored by  
Senators Owen, Swecker and Morton)

Read first time 02/27/95.

1            AN ACT Relating to clarifying the existing authority of the  
2 department of ecology and the department of natural resources to  
3 require performance security for metals mining and milling operations;  
4 and amending RCW 78.56.110, 78.56.120, and 78.44.087.

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

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

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

- 15            (a) Bank letters of credit (~~(acceptable to both agencies)~~);
- 16            (b) A cash deposit;
- 17            (c) Negotiable securities (~~(acceptable to both agencies)~~);
- 18            (d) An assignment of a savings account;
- 19            (e) A savings certificate in a Washington bank; or

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

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

6 (2) The performance security shall be conditioned on the faithful  
7 performance of the applicant or operator in meeting the following  
8 obligations:

9 (a) Compliance with the environmental protection laws of the state  
10 of Washington administered by the department of ecology, or permit  
11 conditions administered by the department of ecology, associated with  
12 the construction, operation, and closure pertaining to metals mining  
13 and milling operations, and with the related (~~rules~~) environmental  
14 protection ordinances and permit conditions established by (~~state~~  
15 ~~and~~) local government (~~with respect to those operations as defined in~~  
16 ~~RCW 78.44.031(17) and the construction, operation, reclamation, and~~  
17 ~~closure of a metals mining and milling operation~~) when requested by  
18 local government;

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

21 (c) Postclosure environmental monitoring as determined by the  
22 department of ecology (~~and the department of natural resources~~); and

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

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

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

1 (5) Liability under the performance security shall be maintained  
2 until the obligations in subsection (2) of this section are met to the  
3 satisfaction of the department of ecology (~~and the department of~~  
4 ~~natural resources~~). Liability under the performance security may be  
5 released only upon written notification by the department of ecology(~~(~~  
6 ~~with the concurrence of the department of natural resources)~~).

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

16 (7) Only one agency may require a performance security to satisfy  
17 the deposit requirements of RCW 78.44.087, and only one agency may  
18 require a performance security to satisfy the deposit requirements of  
19 this section. However, a single performance security, when acceptable  
20 to both the department of ecology and the department of natural  
21 resources, may be utilized by both agencies to satisfy the requirements  
22 of this section and RCW 78.44.087.

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

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

31 If the department intends to remediate or mitigate such impacts,  
32 the department shall issue an order to submit performance security  
33 requiring the permit holder or surety to submit to the department the  
34 amount of moneys posted pursuant to (~~chapter 232, Laws of 1994~~) RCW  
35 78.56.110. If the amount specified in the order to submit performance  
36 security is not paid within twenty days after issuance of the notice,  
37 the attorney general upon request of the department shall bring an

1 action on behalf of the state in a superior court to recover the amount  
2 specified and associated legal fees.

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

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

8 (1) Remediation or mitigation;

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

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

13 The department shall refund to the surety or permit holder all  
14 amounts received in excess of the amount of expenses incurred. If the  
15 amount received is less than the expenses incurred, the attorney  
16 general, upon request of the department of ecology, may bring an action  
17 against the permit holder on behalf of the state in the superior court  
18 to recover the remaining costs listed in this section.

19 ~~((If the department of natural resources finds that reclamation has  
20 not occurred according to the standards required under chapter 78.44  
21 RCW in a metals mining and milling operation, then the department of  
22 natural resources may cause reclamation to occur pursuant to RCW  
23 78.44.240. Upon approval of the department of ecology, the department  
24 of natural resources may reclaim part or all of the metals mining and  
25 milling operation using that portion of the surety posted pursuant to  
26 chapter 232, Laws of 1994 that has been identified for reclamation.))~~

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

29 (1) The department shall not issue a reclamation permit until the  
30 applicant has deposited with the department an acceptable performance  
31 security on forms prescribed and furnished by the department. A public  
32 or governmental agency shall not be required to post performance  
33 security nor shall a permit holder be required to post surface mining  
34 performance security with more than one state or local agency.

35 (2) This performance security may be:

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

37 ~~((2))~~ (b) A cash deposit;

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

1       (~~(4)~~) (d) An assignment of a savings account;  
2       (~~(5)~~) (e) A savings certificate in a Washington bank on an  
3 assignment form prescribed by the department;  
4       (~~(6)~~) (f) Assignments of interests in real property within the  
5 state of Washington; or  
6       (~~(7)~~) (g) A corporate surety bond executed in favor of the  
7 department by a corporation authorized to do business in the state of  
8 Washington under Title 48 RCW and authorized by the department.

9       (3) 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       (4) The department shall have the authority to determine the amount  
13 of 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       (5) 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       (6) Liability under the performance security shall be maintained  
29 until reclamation is completed according to the approved reclamation  
30 plan to the satisfaction of the department unless released as  
31 hereinafter provided. Liability under the performance security may be  
32 released only upon written notification by the department.  
33 Notification shall be given upon completion of compliance or acceptance  
34 by the department of a substitute performance security. The liability  
35 of the surety shall not exceed the amount of security required by this  
36 section and the department's reasonable legal fees to recover the  
37 security.

38       (7) Any interest or appreciation on the performance security shall  
39 be held by the department until reclamation is completed to its

1 satisfaction. At such time, the interest shall be remitted to the  
2 permit holder; except that such interest or appreciation may be used by  
3 the department to effect reclamation in the event that the permit  
4 holder fails to comply with the provisions of this chapter and the  
5 costs of reclamation exceed the face value of the performance security.

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

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

Passed the Senate April 19, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.