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SECOND SUBSTITUTE SENATE BILL 6175

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State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senator Jacobsen; by request of Department of Natural Resources)

READ FIRST TIME 02/7/06.

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

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

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

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

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

18 (3) After June 30, ~~((2001))~~ 2006, each public or private permit  
19 holder shall pay an annual permit fee ~~((of one thousand dollars))~~. The

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

10 (~~(+3)~~) (4) After June 30, 2006, each public or private permit  
11 holder shall pay an annual permit base fee of nine hundred dollars,  
12 plus two cents per ton of aggregate or mineral mined or extracted  
13 during the previous twelve months.

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

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

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

27 (~~(+4)~~) (8) All fees collected by the department shall be deposited  
28 into the surface mining reclamation account.

29 (~~(+5)~~) (9) If the department delegates enforcement  
30 responsibilities to a county, city, or town, the department may  
31 allocate funds collected under this section to the county, city, or  
32 town.

33 (~~(+6)~~) (10) Within sixty days after receipt of a new or expanded  
34 permit application, the department shall advise applicants of any  
35 information necessary to successfully complete the application.

36 (11) In addition to other enforcement authority, the department may  
37 refer matters to a collection agency when permit fees or fines are past

1 due. The collection agency may impose its own fees for collecting  
2 delinquent permit fees or fines.

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

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

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

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

27 (3) Acceptable forms of performance security are:

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

31 (b) A cash deposit;

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

34 (d) An assignment of a savings account;

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

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

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

7           ~~((3))~~ (4) The performance security shall be conditioned upon the  
8 faithful performance of the requirements set forth in this chapter  
9 ~~((and of))~~, the rules adopted under it, and the reclamation permit.

10           ~~((4))~~ (5)(a) The department ~~((shall have the authority to~~  
11 ~~determine the amount of the performance security using a standardized~~  
12 ~~performance security formula developed by the department. The amount~~  
13 ~~of the security shall be determined by the department and based on the~~  
14 ~~estimated costs of completing reclamation according to the approved~~  
15 ~~reclamation plan or minimum standards and related administrative~~  
16 ~~overhead for the area to be surface mined during (a) the next~~  
17 ~~twelve month period, (b) the following twenty four months, and (c) any~~  
18 ~~previously disturbed areas on which the reclamation has not been~~  
19 ~~satisfactorily completed and approved))~~ must determine the amount of  
20 the performance security as prescribed by this subsection.

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

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

34           ~~((5))~~ (6) The department may ~~((increase or decrease the amount of~~  
35 ~~the performance security at any time to compensate for a change in the~~  
36 ~~disturbed area, the depth of excavation, a modification of the~~  
37 ~~reclamation plan, or any other alteration in the conditions of the mine~~  
38 ~~that affects the cost of reclamation. The department may, for any~~

1 ~~reason, refuse any performance security not deemed adequate))~~  
2 recalculate a surface mine's performance security based on subsection  
3 (5) of this section. When the department recalculates a performance  
4 security, the new calculation will not be prejudiced by the existence  
5 of any previous calculation. A new performance security must be  
6 submitted to the department within thirty days of the department's  
7 written request.

8 ~~((+6))~~ (7) Liability under the performance security and the permit  
9 holder's obligation to maintain the calculated performance security  
10 amount shall be maintained until ((reclamation is completed according  
11 to the approved reclamation plan to the satisfaction of the  
12 department)) the surface mine is reclaimed, unless released as  
13 hereinafter provided. Partial drawings will proportionately reduce the  
14 value of a performance security but will not extinguish the remaining  
15 value. Liability under the performance security may be released only  
16 ((upon written notification by the department. Notification shall be  
17 given upon completion of compliance or acceptance by the department of  
18 a substitute performance security)) when the surface mine is reclaimed  
19 as evidenced by the department in writing or after the department  
20 receives and approves a substitute performance security. The  
21 department will notify the permit holder, and surety if applicable,  
22 when reclamation is accepted by the department as complete or upon the  
23 department's acceptance of an alternate security. The liability of the  
24 surety shall not exceed the amount of security required by this section  
25 and the department's reasonable legal fees to recover the security.

26 ~~((+7))~~ (8) Any interest or appreciation on the performance  
27 security shall be held by the department until ((reclamation is  
28 completed to its satisfaction. At such time, the interest shall be  
29 remitted to the permit holder; except that such interest or  
30 appreciation may be used by the department to effect reclamation in the  
31 event that the permit holder fails to comply with the provisions of  
32 this chapter and the costs of reclamation exceed the face value of the  
33 performance security)) the surface mine is reclaimed. The department  
34 may collect and use appreciation or interest accrued on a performance  
35 security to the same extent as for the underlying performance security.  
36 If the permit holder meets its obligations under this chapter, rules  
37 adopted under this chapter, and its approved reclamation permit and

1 plan by completing reclamation, the department will return any unused  
2 performance security and accrued interest or appreciation.

3 ~~((+8))~~ (9) No other state agency or local government other than  
4 the department shall require performance security for the purposes of  
5 surface mine reclamation. The department may enter into written  
6 agreements with federal agencies in order to avoid redundant bonding of  
7 any surface ~~((mines straddling boundaries between federally controlled~~  
8 ~~and other lands within))~~ mine that is located on both federal and  
9 nonfederal lands in Washington state. Nothing in this section  
10 prohibits a state agency or local government from requiring a  
11 performance security when the state agency or local government is  
12 acting in its capacity as a landowner and contracting for  
13 extraction-related activities on state or local government property.

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

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

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

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

36 (a) The permit holder has had a valid reclamation permit for more

1 than ten years and can demonstrate exemplary mining and reclamation  
2 practices that have been accepted by the department;

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

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

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

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

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

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

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

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

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

32 (3) The lien becomes effective when filed.

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

1       **Sec. 5.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to  
2 read as follows:

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

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

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

14       (3) Financial and commercial information and records supplied by  
15 private persons pertaining to export services provided under chapters  
16 43.163 and 53.31 RCW, and by persons pertaining to export projects  
17 under RCW 43.23.035;

18       (4) Financial and commercial information and records supplied by  
19 businesses or individuals during application for loans or program  
20 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
21 or during application for economic development loans or program  
22 services provided by any local agency;

23       (5) Financial information, business plans, examination reports, and  
24 any information produced or obtained in evaluating or examining a  
25 business and industrial development corporation organized or seeking  
26 certification under chapter 31.24 RCW;

27       (6) Financial and commercial information supplied to the state  
28 investment board by any person when the information relates to the  
29 investment of public trust or retirement funds and when disclosure  
30 would result in loss to such funds or in private loss to the providers  
31 of this information;

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

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

37       (9) Financial and commercial information requested by the public



1 stadium authority from any person or organization that leases or uses  
2 the stadium and exhibition center as defined in RCW 36.102.010;

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

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

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

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

20 (ii) Financial or proprietary information collected from any person  
21 and provided to the department of community, trade, and economic  
22 development or the office of the governor in connection with the  
23 siting, recruitment, expansion, retention, or relocation of that  
24 person's business and until a siting decision is made, identifying  
25 information of any person supplying information under this subsection  
26 and the locations being considered for siting, relocation, or expansion  
27 of a business;

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

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

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

38 and

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

4       NEW SECTION.   **Sec. 6.**   Section 5 of this act takes effect July 1,  
5 2006.

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