

2 **ESHB 2521** - S COMM AMD
3 By Committee on Natural Resources

4

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

7 "NEW SECTION. **Sec. 1.** It is in the best interests of the citizens
8 of the state of Washington to insure the highest degree of
9 environmental protection while allowing the proper development and use
10 of its natural resources, including its mineral resources. Metals
11 mining can have significant positive and adverse impacts on the state
12 and on local communities. The purpose of this chapter is to assure
13 that metals mineral mining or milling operations are designed,
14 constructed, and operated in a manner that promotes both economic
15 opportunities and environmental and public health safeguards for the
16 citizens of the state. It is the intent of the legislature to create
17 a regulatory framework which yields, to the greatest extent possible,
18 a metals mining industry that is compatible with these policies.

19 NEW SECTION. **Sec. 2.** The definitions set forth in this section
20 apply throughout this chapter.

21 (1) "Metals mining and milling operation" means a mining operation
22 extracting from the earth precious or base metal ore and processing the
23 ore by treatment or concentration in a milling facility. It also
24 refers to an expansion of an existing operation or any new metals
25 mining operation if the expansion or new mining operation is likely to
26 result in a significant, adverse environmental impact pursuant to the
27 provisions of chapter 43.21C RCW. The extraction of dolomite, sand,
28 gravel, aggregate, limestone, magnesite, silica rock, and zeolite or
29 other nonmetallic minerals; and placer mining; and the smelting of
30 aluminum are not metals mining and milling operations regulated under
31 this chapter.

32 (2) "Milling" means the process of grinding or crushing ore and
33 extracting the base or precious metal by chemical solution, electro
34 winning, or flotation processes.

1 (3) "Heap leach extraction process" means the process of extracting
2 base or precious metal ore by percolating solutions through ore in an
3 open system and includes reprocessing of previously milled ore. The
4 heap leach extraction process does not include leaching in a vat or
5 tank.

6 (4) "In situ extraction" means the process of dissolving base or
7 precious metals from their natural place in the geological setting and
8 retrieving the solutions from which metals can be recovered.

9 (5) "Regulated substances" means any materials regulated under a
10 waste discharge permit pursuant to the requirements of chapter 90.48
11 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

12 (6) "To mitigate" means: (a) To avoid the adverse impact
13 altogether by not taking a certain action or parts of an action; (b) to
14 minimize adverse impacts by limiting the degree or magnitude of the
15 action and its implementation, by using appropriate technology or by
16 taking affirmative steps to avoid or reduce impacts; (c) to rectify
17 adverse impacts by repairing, rehabilitating, or restoring the affected
18 environment; (d) to reduce or eliminate adverse impacts over time by
19 preservation and maintenance operations during the life of the action;
20 (e) to compensate for the impact by replacing, enhancing, or providing
21 substitute resources or environments; or (f) to monitor the adverse
22 impact and take appropriate corrective measures.

23 NEW SECTION. **Sec. 3.** Metals mining and milling operations are
24 subject to the requirements of this chapter in addition to the
25 requirements established in other statutes and rules.

26 NEW SECTION. **Sec. 4.** The department of ecology shall require each
27 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
28 metals mining and milling operation to disclose the ownership and each
29 controlling interest in the proposed operation. The applicant shall
30 also disclose all other mining operations within the United States
31 which the applicant operates or in which the applicant has an ownership
32 or controlling interest. In addition, the applicant shall disclose and
33 may enumerate and describe the circumstances of: (1) Any past or
34 present bankruptcies involving the ownerships and their subsidiaries,
35 (2) any abandonment of sites regulated by the model toxics control act,
36 chapter 70.105D RCW, or other similar state remedial cleanup programs,
37 or the federal comprehensive environmental response, compensation, and

1 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any
2 penalties in excess of ten thousand dollars assessed for violations of
3 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et
4 seq., and (4) any previous forfeitures of financial assurance due to
5 noncompliance with reclamation or remediation requirements. This
6 information shall be available for public inspection and copying at the
7 department of ecology. Ownership or control of less than ten percent
8 of the stock of a corporation shall not by itself constitute ownership
9 or a controlling interest under this section.

10 NEW SECTION. **Sec. 5.** (1) An environmental impact statement must
11 be prepared for any proposed metals mining and milling operation. The
12 department of ecology shall be the lead agency in coordinating the
13 environmental review process under chapter 43.21C RCW and in preparing
14 the environmental impact statement, except for uranium and thorium
15 operations regulated under Title 70 RCW.

16 (2) As part of the environmental review of metals mining and
17 milling operations regulated under this chapter, the applicant shall
18 provide baseline data adequate to document the premining conditions at
19 the proposed site of the metals mining and milling operation. The
20 baseline data shall contain information on the elements of the natural
21 environment identified in rules adopted pursuant to chapter 43.21C RCW.

22 (3) The department of ecology, after consultation with the
23 department of fish and wildlife, shall incorporate measures to mitigate
24 significant probable adverse impacts to fish and wildlife as part of
25 the department of ecology's permit requirements for the proposed
26 operation.

27 (4) In conducting the environmental review and preparing the
28 environmental impact statement, the department of ecology shall
29 cooperate with all affected local governments to the fullest extent
30 practicable.

31 NEW SECTION. **Sec. 6.** The department of ecology will appoint a
32 metals mining coordinator. The coordinator will maintain current
33 information on the status of any metals mining and milling operation
34 regulated under this chapter from the preparation of the environmental
35 impact statement through the permitting, construction, operation, and
36 reclamation phases of the project or until the proposal is no longer
37 active. The coordinator shall also maintain current information on

1 postclosure activities. The coordinator will act as a contact person
2 for the applicant, the operator, and interested members of the public.
3 The coordinator may also assist agencies with coordination of their
4 inspection and monitoring responsibilities.

5 NEW SECTION. **Sec. 7.** (1) State agencies with the responsibility
6 for inspecting metals mining and milling operations regulated under
7 this chapter shall conduct such inspections at least quarterly:
8 PROVIDED, That the inspections are not prevented by inclement weather
9 conditions.

10 (2) The legislature encourages state agencies with inspection
11 responsibilities for metals mining and milling operations regulated
12 under this chapter to explore opportunities for cross-training of
13 inspectors among state agencies and programs. This cross-training
14 would be for the purpose of meeting the inspection responsibilities of
15 these agencies in a more efficient and cost-effective manner. If doing
16 so would be more efficient and cost-effective, state agency inspectors
17 are also encouraged to coordinate inspections with federal and local
18 government inspectors as well as with one another.

19 NEW SECTION. **Sec. 8.** (1) The metals mining account is created in
20 the state treasury. Expenditures from this account are subject to
21 appropriation. Expenditures from this account may only be used for:
22 (a) The additional inspections of metals mining and milling operations
23 required by section 7 of this act and (b) the metals mining coordinator
24 established in section 6 of this act.

25 (2) (a) As part of its normal budget development process and in
26 consultation with the metals mining industry, the department of ecology
27 shall estimate the costs required for the department to meet its
28 obligations for the additional inspections of metals mining and milling
29 operations required by chapter . . . , Laws of 1994 (this act). The
30 department shall also estimate the cost of employing the metals mining
31 coordinator established in section 6 of this act.

32 (b) As part of its normal budget development process and in
33 consultation with the metals mining industry, the department of natural
34 resources shall estimate the costs required for the department to meet
35 its obligations for the additional inspections of metals mining and
36 milling operations required by chapter . . . , Laws of 1994 (this act).

1 (3) Based on the cost estimates generated by the department of
2 ecology and the department of natural resources, the department of
3 revenue shall establish the amount of a fee to be paid by each active
4 metals mining and milling operation regulated under this chapter. The
5 fee shall be established at a level to fully recover the direct and
6 indirect costs of the agency responsibilities identified in subsection
7 (2) of this section. The amount of the fee for each operation shall be
8 proportional to the number of visits required per site. Each applicant
9 for a metals mining and milling operation shall also be assessed the
10 fee based on the same criterion. The department of revenue may adjust
11 the fees established in this subsection if unanticipated activity in
12 the industry increases or decreases the amount of funding necessary to
13 meet agencies' inspection responsibilities.

14 (4) The department of revenue shall collect the fees established in
15 subsection (3) of this section. All moneys paid to the department of
16 revenue from these fees shall be deposited into the metals mining
17 account.

18 (5) This section shall take effect July 1, 1995, unless the
19 legislature adopts an alternative approach based on the recommendations
20 of the metals mining advisory group established in section 26 of this
21 act.

22 NEW SECTION. **Sec. 9.** (1) In the processing of an application for
23 an initial waste discharge permit for a tailings facility pursuant to
24 the requirements of chapter 90.48 RCW, the department of ecology shall
25 consider site-specific criteria in determining a preferred location of
26 tailings facilities of metals mining and milling operations and
27 incorporate the requirements of all known available and reasonable
28 methods in order to maintain the highest possible standards to insure
29 the purity of all waters of the state in accordance with the public
30 policy identified by RCW 90.48.010.

31 In implementing the siting criteria, the department shall take into
32 account the objectives of the proponent's application relating to
33 mining and milling operations. These objectives shall consist of, but
34 not be limited to (a) operational feasibility, (b) compatibility with
35 optimum tailings placement methods, (c) adequate volume capacity, (d)
36 availability of construction materials, and (e) an optimized embankment
37 volume.

1 (2) To meet the mandate of subsection (1) of this section, siting
2 of tailings facilities shall be accomplished through a two-stage
3 process that consists of a primary alternatives screening phase, and a
4 secondary technical site investigation phase.

5 (3) The primary screening phase will consist of, but not be limited
6 to, siting criteria based on considerations as to location as follows:

7 (a) Proximity to the one hundred year flood plain, as indicated in
8 the most recent federal emergency management agency maps;

9 (b) Proximity to surface and ground water;

10 (c) Topographic setting;

11 (d) Identifiable adverse geologic conditions, such as landslides
12 and active faults; and

13 (e) Visibility impacts of the public generally and residents more
14 particularly.

15 (4) The department of ecology, through the primary screening
16 process, shall reduce the available tailings facility sites to one or
17 more feasible locations whereupon a technical site investigation phase
18 shall be conducted by the department for the purpose of verifying the
19 adequacy of the remaining potential sites. The technical site
20 investigations phase shall consist of, but not be limited to, the
21 following:

22 (a) Soil characteristics;

23 (b) Hydrologic characteristics;

24 (c) A local and structural geology evaluation, including seismic
25 conditions and related geotechnical investigations;

26 (d) A surface water control analysis; and

27 (e) A slope stability analysis.

28 (5) Upon completion of the two phase evaluation process set forth
29 in this section, the department of ecology shall issue a site selection
30 report on the preferred location. This report shall address the above
31 criteria as well as analyze the feasibility of reclamation and
32 stabilization of the tailings facility. The siting report may
33 recommend mitigation or engineering factors to address siting concerns.
34 The report shall be developed in conjunction with the preparation of
35 and contained in an environmental impact statement prepared pursuant to
36 chapter 43.21C RCW. The report may be utilized by the department of
37 ecology for the purpose of providing information related to the
38 suitability of the site and for ruling on an application for a waste
39 discharge permit.

1 (6) The department of ecology may, at its discretion, require the
2 applicant to provide the information required in either phase one or
3 phase two as described in subsections (3) and (4) of this section.

4 NEW SECTION. **Sec. 10.** (1) In order to receive a waste discharge
5 permit from the department of ecology pursuant to the requirements of
6 chapter 90.48 RCW or in order to operate a metals mining and milling
7 tailing facility, an applicant proposing a metals mining and milling
8 operation regulated under this chapter must meet the following
9 additional requirements:

10 (a) Any tailings facility shall be designed and operated to prevent
11 the release of pollution and must meet the following standards:

12 (i) Operators shall apply all known available and reasonable
13 technology to limit the concentration of potentially toxic materials in
14 the tailings facility to assure the protection of wildlife and human
15 health;

16 (ii) The tailings facility shall have a containment system that
17 includes an engineered liner system, leak detection and leak collection
18 elements, and a seepage collection impoundment to assure that a leak of
19 any regulated substance under chapter 90.48 RCW will be detected before
20 escaping from the containment system. The design and management of the
21 facility must ensure that any leaks from the tailings facility are
22 detected in a manner which allows for remediation pursuant to chapter
23 90.48 RCW. The applicant shall prepare a detailed engineering report
24 setting forth the facility design and construction. The applicant
25 shall submit the report to the department of ecology for its review and
26 approval of a design as determined by the department. Natural
27 conditions, such as depth to ground water or net rainfall, shall be
28 taken into account in the facility design, but not in lieu of the
29 protection required by the engineered liner system;

30 (iii) The toxicity of mine or mill tailings and the potential for
31 long-term release of regulated substances from mine or mill tailings
32 shall be reduced to the greatest extent practicable through
33 stabilization, removal, or reuse of the substances; and

34 (iv) The closure of the tailings facility shall provide for
35 isolation or containment of potentially toxic materials and shall be
36 designed to prevent future release of regulated substances contained in
37 the impoundment;

1 (b) The applicant must develop a waste rock management plan
2 approved by the department of ecology and the department of natural
3 resources which emphasizes pollution prevention. At a minimum, the
4 plan must contain the following elements:

5 (i) An accurate identification of the acid generating properties of
6 the waste rock;

7 (ii) A strategy for encapsulating potentially toxic material from
8 the environment, when appropriate, in order to prevent the release of
9 heavy metals and acidic drainage; and

10 (iii) A plan for reclaiming and closing waste rock sites which
11 minimizes infiltration of precipitation and runoff into the waste rock
12 and which is designed to prevent future releases of regulated
13 substances contained within the waste rock;

14 (c) If an interested citizen or citizen group so requests of the
15 department of ecology, the metals mining and milling operator or
16 applicant shall work with the department of ecology and the interested
17 party to make arrangements for citizen observation and verification in
18 the taking of required water samples. While it is the intent of this
19 subsection to provide for citizen observation and verification of water
20 sampling activities, it is not the intent of this subsection to require
21 additional water sampling and analysis on the part of the mining and
22 milling operation or the department. The citizen observation and
23 verification program shall be incorporated into the applicant's,
24 operator's, or department's normal sampling regimen and shall occur at
25 least once every six months. The results from these and all other
26 relevant water sampling activities shall be kept on file with the
27 relevant county and shall be available for public inspection during
28 normal working hours; and

29 (d) An operator or applicant for a metals mining and milling
30 operation must complete a voluntary reduction plan in accordance with
31 RCW 70.95C.200.

32 (2) Only those tailings facilities constructed after the effective
33 date of this section must meet the requirement established in
34 subsection (1) (a) of this section. Only those waste rock holdings
35 constructed after the effective date of this section must meet the
36 requirement established in subsection (1) (b) of this section.

37 NEW SECTION. **Sec. 11.** (1) The department of ecology and the
38 department of natural resources shall not issue necessary permits to an

1 applicant for a metals mining and milling operation until the applicant
2 has deposited with the department of ecology a performance security
3 which is acceptable to both agencies based on the requirements of
4 subsection (2) of this section. This performance security may be:

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

6 (b) A cash deposit;

7 (c) Negotiable securities acceptable to both agencies;

8 (d) An assignment of a savings account;

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

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

13 The agencies may, for any reason, refuse any performance security
14 not deemed adequate.

15 (2) The performance security shall be conditioned on the faithful
16 performance of the applicant or operator in meeting the following
17 obligations:

18 (a) Compliance with the laws of the state of Washington pertaining
19 to metals mining and milling operations and with the related rules and
20 permit conditions established by state and local government with
21 respect to those operations as defined in RCW 78.44.031(17) and the
22 construction, operation, reclamation, and closure of a metals mining
23 and milling operation;

24 (b) Postclosure environmental monitoring as determined by the
25 department of ecology and the department of natural resources; and

26 (c) Provision of sufficient funding for cleanup of potential
27 problems revealed during or after closure.

28 (3) The department of ecology and the department of natural
29 resources shall jointly adopt rules for determining the amount of the
30 performance security, requirements for the performance security,
31 requirements for the issuer of the performance security, and any other
32 requirements necessary for the implementation of this section.

33 (4) The department of ecology and the department of natural
34 resources, acting jointly, may increase or decrease the amount of the
35 performance security at any time to compensate for any alteration in
36 the operation that affects meeting the obligations in subsection (2) of
37 this section. At a minimum, the agencies shall jointly review the
38 adequacy of the performance security every two 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 natural
4 resources. Liability under the performance security may be released
5 only upon written notification by the department of ecology, with the
6 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 such
11 time, the interest shall be remitted to the operator. However, if the
12 applicant or operator fails to comply with the obligations of
13 subsection (2) of this section, the interest or appreciation may be
14 used by either agency to comply with the obligations.

15 NEW SECTION. **Sec. 12.** The department of ecology may, with staff,
16 equipment, and material under its control, or by contract with others,
17 remediate or mitigate any impact of a metals mining and milling
18 operation when it finds that the operator or permit holder has failed
19 to comply with relevant statutes, rules, or permits, and the operator
20 or permit holder has failed to take adequate or timely action to
21 rectify these impacts.

22 If the department intends to remediate or mitigate such impacts,
23 the department shall issue an order to submit performance security
24 requiring the permit holder or surety to submit to the department the
25 amount of moneys posted pursuant to chapter . . ., Laws of 1994 (this
26 act). If the amount specified in the order to submit performance
27 security is not paid within twenty days after issuance of the notice,
28 the attorney general upon request of the department shall bring an
29 action on behalf of the state in a superior court to recover the amount
30 specified and associated legal fees.

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

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

36 (1) Remediation or mitigation;

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

1 (3) Administrative and legal expenses related to remediation or
2 mitigation.

3 The department shall refund to the surety or permit holder all
4 amounts received in excess of the amount of expenses incurred. If the
5 amount received is less than the expenses incurred, the attorney
6 general, upon request of the department of ecology, may bring an action
7 against the permit holder on behalf of the state in the superior court
8 to recover the remaining costs listed in this section.

9 If the department of natural resources finds that reclamation has
10 not occurred according to the standards required under chapter 78.44
11 RCW in a metals mining and milling operation, then the department of
12 natural resources may cause reclamation to occur pursuant to RCW
13 78.44.240. Upon approval of the department of ecology, the department
14 of natural resources may reclaim part or all of the metals mining and
15 milling operation using that portion of the surety posted pursuant to
16 chapter . . . , Laws of 1994 (this act) that has been identified for
17 reclamation.

18 NEW SECTION. **Sec. 13.** (1) The legislature finds that the
19 construction and operation of large-scale metals mining and milling
20 facilities may create new job opportunities and enhance local tax
21 revenues. However, the legislature also finds that such operations may
22 also result in new demands on public facilities owned and operated by
23 local government entities, such as public streets and roads; publicly
24 owned parks, open space, and recreation facilities; school facilities;
25 and fire protection facilities in jurisdictions that are not part of a
26 fire district. It is important for these economic impacts to be
27 identified as part of any proposal for a large-scale metals mining and
28 milling operation. It is then appropriate for the county legislative
29 authority to balance expected revenues, including revenues derived from
30 taxes paid by the owner of such an operation, and costs associated with
31 the operation to determine to what degree any new costs require
32 mitigation by the metals mining applicant.

33 (2) An applicant for a large-scale metals mining and milling
34 operation regulated under this chapter must submit to the relevant
35 county legislative authority an impact analysis describing the economic
36 impact of the proposed mining operation on local governmental units.
37 For the purposes of this section, a metals mining operation is large-
38 scale if, in the construction or operation of the mine and the

1 associated milling facility, the applicant and contractors at the site
2 employ more than thirty-five persons during any consecutive six-month
3 period. The relevant county is the county in which the mine and mill
4 are to be sited, unless the economic impacts to local governmental
5 units are projected to substantially affect more than one county. In
6 that case, the impact plan must be submitted to the legislative
7 authority of all affected counties. Local governmental units include
8 counties, cities, towns, school districts, and special purpose
9 districts.

10 (3) The economic impact analysis shall include at least the
11 following information:

12 (a) A timetable for development of the mining operation, including
13 the opening date of the operation and the estimated closing date;

14 (b) The estimated number of persons coming into the impacted area
15 as a result of the development of the mining operation;

16 (c) An estimate of the increased capital and operating costs to
17 local governmental units for providing services necessary as a result
18 of the development of the mining operation; and

19 (d) An estimate of the increased tax or other revenues accruing to
20 local governmental units as a result of development of the mining and
21 milling operation.

22 (4) The county legislative authority of a county planning under
23 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to
24 address economic impacts associated with development of the mining
25 operation. The county legislative authority shall hold at least one
26 public hearing on the economic impact analysis and any proposed
27 mitigation measures.

28 (5) The county legislative authority of a county which is not
29 planning under chapter 36.70A RCW may negotiate with the applicant on
30 a strategy to address economic impacts associated with development of
31 the mining operation. The county legislative authority shall hold at
32 least one public hearing on the economic impact analysis and any
33 proposed mitigation measures.

34 (6) The county legislative authority must approve or disapprove the
35 impact analysis and any associated proposals from the applicant to
36 address economic impacts to local governmental units resulting from
37 development of the mining operation. If the applicant does not submit
38 an adequate impact analysis to the relevant county legislative
39 authority or if the county legislative authority does not find the

1 applicant's proposals to be acceptable because of their failure to
2 adequately mitigate adverse economic impacts, the county legislative
3 authority shall refuse to issue any permits under its jurisdiction
4 necessary for the construction or operation of the mine and associated
5 mill.

6 (7) The requirements established in this section apply to metals
7 mining operations under construction or constructed after the effective
8 date of this section.

9 (8) The provisions of chapter 82.02 RCW shall apply to new mining
10 and milling operations.

11 NEW SECTION. **Sec. 14.** (1) Except as provided in subsections (2)
12 and (5) of this section, any aggrieved person may commence a civil
13 action on his or her own behalf:

14 (a) Against any person, including any state agency or local
15 government agency, who is alleged to be in violation of a law, rule,
16 order, or permit pertaining to metals mining and milling operations
17 regulated under chapter . . . , Laws of 1994 (this act);

18 (b) Against a state agency if there is alleged a failure of the
19 agency to perform any nondiscretionary act or duty under state laws
20 pertaining to metals mining and milling operations; or

21 (c) Against any person who constructs a metals mining and milling
22 operation without the permits and authorizations required by state law.

23 The superior courts shall have jurisdiction to enforce metals
24 mining laws, rules, orders, and permit conditions, or to order the
25 state to perform such act or duty, as the case may be. In addition to
26 injunctive relief, a superior court may award a civil penalty when
27 deemed appropriate in an amount not to exceed ten thousand dollars per
28 violation per day, payable to the state of Washington.

29 (2) No action may be commenced:

30 (a) Under subsection (1)(a) of this section:

31 (i) Prior to sixty days after the plaintiff has given notice of the
32 alleged violation to the state, and to any alleged violator of a metals
33 mining and milling law, rule, order, or permit condition; or

34 (ii) If the state has commenced and is diligently prosecuting a
35 civil action in a court of the state or of the United States or is
36 diligently pursuing authorized administrative enforcement action to
37 require compliance with the law, rule, order, or permit. To preclude
38 a civil action, the enforcement action must contain specific,

1 aggressive, and enforceable timelines for compliance and must provide
2 for public notice of and reasonable opportunity for public comment on
3 the enforcement action. In any such court action, any aggrieved person
4 may intervene as a matter of right; or

5 (b) Under subsection (1)(b) of this section prior to sixty days
6 after the plaintiff has given notice of such action to the state.

7 (3)(a) Any action respecting a violation of a law, rule, order, or
8 permit condition pertaining to metals mining and milling operations may
9 be brought in the judicial district in which such operation is located
10 or proposed.

11 (b) In such action under this section, the state, if not a party,
12 may intervene as a matter of right.

13 (4) The court, in issuing any final order in any action brought
14 pursuant to subsection (1) of this section, may award costs of
15 litigation, including reasonable attorney and expert witness fees, to
16 any prevailing party, wherever the court determines such award is
17 appropriate. The court may, if a temporary restraining order or
18 preliminary injunction is sought, require the filing of a bond or
19 equivalent security in accordance with the rules of civil procedure.

20 (5) A civil action to enforce compliance with a law, rule, order,
21 or permit may not be brought under this section if any other statute,
22 or the common law, provides authority for the plaintiff to bring a
23 civil action and, in such action, obtain the same relief, as authorized
24 under this section, for enforcement of such law, rule, order, or
25 permit. Nothing in this section restricts any right which any person,
26 or class of persons, may have under any statute or common law to seek
27 any relief, including relief against the state or a state agency.

28 NEW SECTION. **Sec. 15.** A milling facility which is not adjacent to
29 or in the vicinity of the metals mining operation producing the ore to
30 be milled and which processes precious or base metal ore by treatment
31 or concentration is subject to the provisions of sections 1 through 9,
32 10(1) (a), (c) and (d), 11 through 14, 18, and 19 of this act and
33 chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable
34 laws. The smelting of aluminum does not constitute a metals milling
35 operation under this section.

36 NEW SECTION. **Sec. 16.** (1) Until June 30, 1996, there shall be a
37 moratorium on metals mining and milling operations using the heap leach

1 extraction process. The department of natural resources and the
2 department of ecology shall jointly review the existing laws and
3 regulations pertaining to the heap leach extraction process for their
4 adequacy in safeguarding the environment and shall report their
5 findings to the legislature by December 30, 1994.

6 (2) Metals mining using the process of in situ extraction is
7 permanently prohibited in the state of Washington.

8 NEW SECTION. **Sec. 17.** The department of ecology will work with
9 the metals mining industry and relevant federal, state, and local
10 governmental agencies to identify areas of regulatory overlap among
11 regulators of mining and milling operations. The department will also
12 identify possible solutions for eliminating or reducing regulatory
13 overlap. The department will report back to the legislature on its
14 findings and possible solutions by January 1, 1995.

15 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.94 RCW
16 to read as follows:

17 If a metals mining and milling operation is issued a permit
18 pursuant to this chapter, then it will be subject to special inspection
19 requirements. The department of ecology shall inspect these mining
20 operations at least quarterly in order to ensure that the operation is
21 in compliance with the conditions of any permit issued to it pursuant
22 to this chapter. The department shall conduct additional inspections
23 during the construction phase of the mining and milling operation in
24 order to ensure compliance with this chapter.

25 NEW SECTION. **Sec. 19.** A new section is added to chapter 70.105
26 RCW to read as follows:

27 If a metals mining and milling operation is issued a permit
28 pursuant to this chapter, then it will be subject to special inspection
29 requirements. The department of ecology shall inspect these mining
30 operations at least quarterly in order to ensure that the operation is
31 in compliance with the conditions of any permit issued to it pursuant
32 to this chapter. The department shall conduct additional inspections
33 during the construction phase of the mining operation in order to
34 ensure compliance with this chapter.

1 **Sec. 20.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to
2 read as follows:

3 Any person, corporation or association intending to construct or
4 modify any dam or controlling works for the storage of ten acre feet or
5 more of water, shall before beginning said construction or
6 modification, submit plans and specifications of the same to the
7 department for examination and approval as to its safety. Such plans
8 and specifications shall be submitted in duplicate, one copy of which
9 shall be retained as a public record, by the department, and the other
10 returned with its approval or rejection endorsed thereon. No such dam
11 or controlling works shall be constructed or modified until the same or
12 any modification thereof shall have been approved as to its safety by
13 the department. Any such dam or controlling works constructed or
14 modified in any manner other than in accordance with plans and
15 specifications approved by the department or which shall not be
16 maintained in accordance with the order of the department shall be
17 presumed to be a public nuisance and may be abated in the manner
18 provided by law, and it shall be the duty of the attorney general or
19 prosecuting attorney of the county wherein such dam or controlling
20 works, or the major portion thereof, is situated to institute abatement
21 proceedings against the owner or owners of such dam or controlling
22 works, whenever he or she is requested to do so by the department.

23 A metals mining and milling operation regulated under chapter
24 . . . , Laws of 1994 (this act) is subject to additional dam safety
25 inspection requirements due to the special hazards associated with
26 failure of a tailings pond impoundment. The department shall inspect
27 these impoundments at least quarterly during the project's operation
28 and at least annually thereafter for the postclosure monitoring period
29 in order to ensure the safety of the dam or controlling works. The
30 department shall conduct additional inspections as needed during the
31 construction phase of the mining operation in order to ensure the safe
32 construction of the tailings impoundment.

33 **Sec. 21.** RCW 90.48.090 and 1987 c 109 s 127 are each amended to
34 read as follows:

35 The department or its duly appointed agent shall have the right to
36 enter at all reasonable times in or upon any property, public or
37 private, for the purpose of inspecting and investigating conditions

1 relating to the pollution of or the possible pollution of any of the
2 waters of this state.

3 The department shall have special inspection requirements for
4 metals mining and milling operations regulated under chapter . . . ,
5 Laws of 1994 (this act). The department shall inspect these mining and
6 milling operations at least quarterly in order to ensure compliance
7 with the intent and any permit issued pursuant to this chapter. The
8 department shall conduct additional inspections as needed during the
9 construction phase of these mining operations in order to ensure
10 compliance with this chapter.

11 **Sec. 22.** RCW 78.44.161 and 1993 c 518 s 25 are each amended to
12 read as follows:

13 The department may order at any time an inspection of the disturbed
14 area to determine if the miner or permit holder has complied with the
15 reclamation permit, rules, and this chapter.

16 The department shall have special inspection requirements for
17 metals mining and milling operations regulated under chapter . . . ,
18 Laws of 1994 (this act). The department shall inspect these mining
19 operations at least quarterly, unless prevented by inclement weather
20 conditions, in order to ensure that the permit holder is in compliance
21 with the reclamation permit, rules, and this chapter. The department
22 shall conduct additional inspections as needed during the construction
23 phase of these mining operations in order to ensure compliance with the
24 reclamation permit, rules, and this chapter.

25 **Sec. 23.** RCW 78.44.087 and 1993 c 518 s 15 are each amended to
26 read as follows:

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

34 This performance security may be:

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

12 ~~((Notwithstanding any other provision of this section, nothing~~
13 ~~shall 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.)) The department and the
17 department of ecology shall jointly require performance security for
18 metals mining and milling operations regulated under chapter . . . ,
19 Laws of 1994 (this act).~~

20 **Sec. 24.** RCW 78.44.131 and 1993 c 518 s 20 are each amended to
21 read as follows:

22 The need for, and the practicability of, reclamation shall control
23 the type and degree of reclamation in any specific instance. However,
24 the basic objective of reclamation is to reestablish on a continuing
25 basis the vegetative cover, slope stability, water conditions, and
26 safety conditions suitable to the proposed subsequent use consistent
27 with local land use plans for the surface mine site.

28 Each permit holder shall comply with the minimum reclamation
29 standards in effect on the date the permit was issued and any
30 additional reclamation standards set forth in the approved reclamation
31 plan. The department may modify, on a site specific basis, the minimum
32 reclamation standards for metals mining and milling operations
33 regulated under chapter . . . , Laws of 1994 (this act) in order to
34 achieve the reclamation and closure objectives of that chapter. The
35 basic objective of reclamation for these operations is the
36 reestablishment on a continuing basis of vegetative cover, slope
37 stability, water conditions, and safety conditions.

1 Reclamation activities, particularly those relating to control of
2 erosion and mitigation of impacts of mining to adjacent areas, shall,
3 to the extent feasible, be conducted simultaneously with surface
4 mining, and in any case shall be initiated at the earliest possible
5 time after completion of surface mining on any segment of the permit
6 area.

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

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

14 NEW SECTION. **Sec. 25.** Sections 1 through 16 of this act shall
15 constitute a new chapter in Title 78 RCW.

16 NEW SECTION. **Sec. 26.** (1) The department of ecology shall
17 establish a metals mining advisory group, to be comprised of members
18 representing the metals mining industry, the environmental community,
19 the department of ecology, the department of fish and wildlife, and the
20 department of natural resources.

21 (2) The metals mining advisory group will focus on the following
22 tasks:

23 (a) A review of the adequacy of the cost-accounting methods of the
24 departments of ecology and natural resources in accurately identifying
25 the costs associated with the requirements established in this act;

26 (b) Establishing a set of success measures to be used to evaluate
27 the implementation of the new coordinator role established in this act;

28 (c) Examination of possible new inspection requirements for the
29 department of fish and wildlife and a means to fund any new
30 requirements; and

31 (d) Identification and evaluation of the alternative bases for
32 allocating the costs that may be necessitated by this act.

33 (3) The advisory group shall report its findings and its preferred
34 alternative among the options identified in subsection (2)(d) of this
35 section to the legislature by January 1, 1995.

1 NEW SECTION. **Sec. 27.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 28.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and, with the
8 exception of sections 6 through 8 and 18 through 22 of this act, shall
9 take effect immediately.

10 NEW SECTION. **Sec. 29.** Sections 6 through 8 and 18 through 22 of
11 this act shall take effect July 1, 1995."

12 **ESHB 2521** - S COMM AMD
13 By Committee on Natural Resources

14
15 On page 1, line 1 of the title, after "operations;" strike the
16 remainder of the title and insert "amending RCW 90.03.350, 90.48.090,
17 78.44.161, 78.44.087, and 78.44.131; adding a new section to chapter
18 70.94 RCW; adding a new section to chapter 70.105 RCW; adding a new
19 chapter to Title 78 RCW; creating new sections; prescribing penalties;
20 providing an effective date; and declaring an emergency."

--- END ---