

2 **ESHB 2521** - S COMM AMD
3 By Committee on Ways & Means

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. Chapter 82.32 RCW, insofar as
16 applicable, applies to the fees imposed under this section. All moneys
17 paid to the department of revenue from these fees shall be deposited
18 into the metals mining account.

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

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

32 In implementing the siting criteria, the department shall take into
33 account the objectives of the proponent's application relating to
34 mining and milling operations. These objectives shall consist of, but
35 not be limited to (a) operational feasibility, (b) compatibility with
36 optimum tailings placement methods, (c) adequate volume capacity, (d)
37 availability of construction materials, and (e) an optimized embankment
38 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. There is no duty of care on the part of
26 the state or its employees to any person who participates in the
27 citizen observation and verification of water sampling under chapter
28 . . . , Laws of 1994 (this act) and the state and its employees shall be
29 immune from any civil lawsuit based on any injuries to or claims made
30 by any person as a result of that person's participation in such
31 observation and verification of water sampling activities. The metals
32 mining and milling operator or applicant shall not be liable for any
33 injuries to or claims made by any person which result from that person
34 coming onto the property of the metals mining and milling operator or
35 applicant as an observer pursuant to chapter . . . , Laws of 1994 (this
36 act). The results from these and all other relevant water sampling
37 activities shall be kept on file with the relevant county and shall be
38 available for public inspection during normal working hours; and

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

4 (2) Only those tailings facilities constructed after the effective
5 date of this section must meet the requirement established in
6 subsection (1) (a) of this section. Only those waste rock holdings
7 constructed after the effective date of this section must meet the
8 requirement established in subsection (1) (b) of this section.

9 NEW SECTION. **Sec. 11.** (1) The department of ecology and the
10 department of natural resources shall not issue necessary permits to an
11 applicant for a metals mining and milling operation until the applicant
12 has deposited with the department of ecology a performance security
13 which is acceptable to both agencies based on the requirements of
14 subsection (2) of this section. This performance 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
- 20 (f) A corporate surety bond executed in favor of the department of
21 ecology by a corporation authorized to do business in the state of
22 Washington under Title 48 RCW and acceptable to both agencies.

23 The agencies may, for any reason, refuse any performance security
24 not deemed adequate.

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

28 (a) Compliance with the laws of the state of Washington pertaining
29 to metals mining and milling operations and with the related rules and
30 permit conditions established by state and local government with
31 respect to those operations as defined in RCW 78.44.031(17) and the
32 construction, operation, reclamation, and closure of a metals mining
33 and milling operation;

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

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

1 (3) The department of ecology and the department of natural
2 resources shall jointly adopt rules for determining the amount of the
3 performance security, requirements for the performance security,
4 requirements for the issuer of the performance security, and any other
5 requirements necessary for the implementation of this section.

6 (4) The department of ecology and the department of natural
7 resources, acting jointly, may increase or decrease the amount of the
8 performance security at any time to compensate for any alteration in
9 the operation that affects meeting the obligations in subsection (2) of
10 this section. At a minimum, the agencies shall jointly review the
11 adequacy of the performance security every two years.

12 (5) Liability under the performance security shall be maintained
13 until the obligations in subsection (2) of this section are met to the
14 satisfaction of the department of ecology and the department of natural
15 resources. Liability under the performance security may be released
16 only upon written notification by the department of ecology, with the
17 concurrence of the department of natural resources.

18 (6) Any interest or appreciation on the performance security shall
19 be held by the department of ecology until the obligations in
20 subsection (2) of this section have been met to the satisfaction of the
21 department of ecology and the department of natural resources. At such
22 time, the interest shall be remitted to the operator. However, if the
23 applicant or operator fails to comply with the obligations of
24 subsection (2) of this section, the interest or appreciation may be
25 used by either agency to comply with the obligations.

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

33 If the department intends to remediate or mitigate such impacts,
34 the department shall issue an order to submit performance security
35 requiring the permit holder or surety to submit to the department the
36 amount of moneys posted pursuant to chapter . . . , Laws of 1994 (this
37 act). If the amount specified in the order to submit performance
38 security is not paid within twenty days after issuance of the notice,

1 the attorney general upon request of the department shall bring an
2 action on behalf of the state in a superior court to recover the amount
3 specified and associated legal fees.

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

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

9 (1) Remediation or mitigation;

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

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

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

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

29 NEW SECTION. **Sec. 13.** (1) The legislature finds that the
30 construction and operation of large-scale metals mining and milling
31 facilities may create new job opportunities and enhance local tax
32 revenues. However, the legislature also finds that such operations may
33 also result in new demands on public facilities owned and operated by
34 local government entities, such as public streets and roads; publicly
35 owned parks, open space, and recreation facilities; school facilities;
36 and fire protection facilities in jurisdictions that are not part of a
37 fire district. It is important for these economic impacts to be
38 identified as part of any proposal for a large-scale metals mining and

1 milling operation. It is then appropriate for the county legislative
2 authority to balance expected revenues, including revenues derived from
3 taxes paid by the owner of such an operation, and costs associated with
4 the operation to determine to what degree any new costs require
5 mitigation by the metals mining applicant.

6 (2) An applicant for a large-scale metals mining and milling
7 operation regulated under this chapter must submit to the relevant
8 county legislative authority an impact analysis describing the economic
9 impact of the proposed mining operation on local governmental units.
10 For the purposes of this section, a metals mining operation is large-
11 scale if, in the construction or operation of the mine and the
12 associated milling facility, the applicant and contractors at the site
13 employ more than thirty-five persons during any consecutive six-month
14 period. In determining the number of persons employed, only the
15 following shall be included: Operators and nonadministration
16 personnel; temporary personnel, personnel used for compliance with
17 federal and state laws, and personnel required to meet regulatory
18 requirements will not be included. The relevant county is the county
19 in which the mine and mill are to be sited, unless the economic impacts
20 to local governmental units are projected to substantially affect more
21 than one county. In that case, the impact plan must be submitted to
22 the legislative authority of all affected counties. Local governmental
23 units include counties, cities, towns, school districts, and special
24 purpose districts.

25 (3) The economic impact analysis shall include at least the
26 following information:

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

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

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

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

37 (4) The county legislative authority of a county planning under
38 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to
39 address economic impacts associated with development of the mining

1 operation. The county legislative authority shall hold at least one
2 public hearing on the economic impact analysis and any proposed
3 mitigation measures.

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

10 (6) The county legislative authority must approve or disapprove the
11 impact analysis and any associated proposals from the applicant to
12 address economic impacts to local governmental units resulting from
13 development of the mining operation. If the applicant does not submit
14 an adequate impact analysis to the relevant county legislative
15 authority or if the county legislative authority does not find the
16 applicant's proposals to be acceptable because of their failure to
17 adequately mitigate adverse economic impacts, the county legislative
18 authority shall refuse to issue any permits under its jurisdiction
19 necessary for the construction or operation of the mine and associated
20 mill.

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

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

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

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

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

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

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

7 (2) No action may be commenced:

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

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

12 (ii) If the state has commenced and is diligently prosecuting a
13 civil action in a court of the state or of the United States or is
14 diligently pursuing authorized administrative enforcement action to
15 require compliance with the law, rule, order, or permit. To preclude
16 a civil action, the enforcement action must contain specific,
17 aggressive, and enforceable timelines for compliance and must provide
18 for public notice of and reasonable opportunity for public comment on
19 the enforcement action. In any such court action, any aggrieved person
20 may intervene as a matter of right; or

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

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

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

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

36 (5) A civil action to enforce compliance with a law, rule, order,
37 or permit may not be brought under this section if any other statute,
38 or the common law, provides authority for the plaintiff to bring a
39 civil action and, in such action, obtain the same relief, as authorized

1 under this section, for enforcement of such law, rule, order, or
2 permit. Nothing in this section restricts any right which any person,
3 or class of persons, may have under any statute or common law to seek
4 any relief, including relief against the state or a state agency.

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

13 NEW SECTION. **Sec. 16.** (1) Until June 30, 1996, there shall be a
14 moratorium on metals mining and milling operations using the heap leach
15 extraction process. The department of natural resources and the
16 department of ecology shall jointly review the existing laws and
17 regulations pertaining to the heap leach extraction process for their
18 adequacy in safeguarding the environment and shall report their
19 findings to the legislature by December 30, 1994.

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

22 NEW SECTION. **Sec. 17.** The department of ecology will work with
23 the metals mining industry and relevant federal, state, and local
24 governmental agencies to identify areas of regulatory overlap among
25 regulators of mining and milling operations. The department will also
26 identify possible solutions for eliminating or reducing regulatory
27 overlap. The department will report back to the legislature on its
28 findings and possible solutions by January 1, 1995.

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

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

1 to this chapter. The department shall conduct additional inspections
2 during the construction phase of the mining and milling operation in
3 order to ensure compliance with this chapter.

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

6 If a metals mining and milling operation is issued a permit
7 pursuant to this chapter, then it will be subject to special inspection
8 requirements. The department of ecology shall inspect these mining
9 operations at least quarterly in order to ensure that the operation is
10 in compliance with the conditions of any permit issued to it pursuant
11 to this chapter. The department shall conduct additional inspections
12 during the construction phase of the mining operation in order to
13 ensure compliance with this chapter.

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

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

36 A metals mining and milling operation regulated under chapter
37 . . . , Laws of 1994 (this act) is subject to additional dam safety

1 inspection requirements due to the special hazards associated with
2 failure of a tailings pond impoundment. The department shall inspect
3 these impoundments at least quarterly during the project's operation
4 and at least annually thereafter for the postclosure monitoring period
5 in order to ensure the safety of the dam or controlling works. The
6 department shall conduct additional inspections as needed during the
7 construction phase of the mining operation in order to ensure the safe
8 construction of the tailings impoundment.

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

11 The department or its duly appointed agent shall have the right to
12 enter at all reasonable times in or upon any property, public or
13 private, for the purpose of inspecting and investigating conditions
14 relating to the pollution of or the possible pollution of any of the
15 waters of this state.

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 and
19 milling operations at least quarterly in order to ensure compliance
20 with the intent and any permit issued pursuant to this chapter. The
21 department shall conduct additional inspections as needed during the
22 construction phase of these mining operations in order to ensure
23 compliance with this chapter.

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

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

29 The department shall have special inspection requirements for
30 metals mining and milling operations regulated under chapter . . . ,
31 Laws of 1994 (this act). The department shall inspect these mining
32 operations at least quarterly, unless prevented by inclement weather
33 conditions, in order to ensure that the permit holder is in compliance
34 with the reclamation permit, rules, and this chapter. The department
35 shall conduct additional inspections as needed during the construction
36 phase of these mining operations in order to ensure compliance with the
37 reclamation permit, rules, and this chapter.

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

3 The department shall not issue a reclamation permit until the
4 applicant has deposited with the department an acceptable performance
5 security on forms prescribed and furnished by the department. A public
6 or governmental agency shall not be required to post performance
7 security nor shall a permit holder be required to post surface mining
8 performance security with more than one state(~~(, local, or federal)~~) or
9 local agency.

10 This performance security may be:

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

12 (2) A cash deposit;

13 (3) Negotiable securities acceptable to the department;

14 (4) An assignment of a savings account;

15 (5) A savings certificate in a Washington bank on an assignment
16 form prescribed by the department;

17 (6) Assignments of interests in real property within the state of
18 Washington; or

19 (7) A corporate surety bond executed in favor of the department by
20 a corporation authorized to do business in the state of Washington
21 under Title 48 RCW and authorized by the department.

22 The performance security shall be conditioned upon the faithful
23 performance of the requirements set forth in this chapter and of the
24 rules adopted under it.

25 The department shall have the authority to determine the amount of
26 the performance security using a standardized performance security
27 formula developed by the department. The amount of the security shall
28 be determined by the department and based on the estimated costs of
29 completing reclamation according to the approved reclamation plan or
30 minimum standards and related administrative overhead for the area to
31 be surface mined during (a) the next twelve-month period, (b) the
32 following twenty-four months, and (c) any previously disturbed areas on
33 which the reclamation has not been satisfactorily completed and
34 approved.

35 The department may increase or decrease the amount of the
36 performance security at any time to compensate for a change in the
37 disturbed area, the depth of excavation, a modification of the
38 reclamation plan, or any other alteration in the conditions of the mine

1 that affects the cost of reclamation. The department may, for any
2 reason, refuse any performance security not deemed adequate.

3 Liability under the performance security shall be maintained until
4 reclamation is completed according to the approved reclamation plan to
5 the satisfaction of the department unless released as hereinafter
6 provided. Liability under the performance security may be released
7 only upon written notification by the department. Notification shall
8 be given upon completion of compliance or acceptance by the department
9 of a substitute performance security. The liability of the surety
10 shall not exceed the amount of security required by this section and
11 the department's reasonable legal fees to recover the security.

12 Any interest or appreciation on the performance security shall be
13 held by the department until reclamation is completed to its
14 satisfaction. At such time, the interest shall be remitted to the
15 permit holder; except that such interest or appreciation may be used by
16 the department to effect reclamation in the event that the permit
17 holder fails to comply with the provisions of this chapter and the
18 costs of reclamation exceed the face value of the performance security.

19 Except as provided in this section, no other state agency or local
20 government shall require performance security for the purposes of
21 surface mine reclamation and only one agency of government shall
22 require and hold the performance security. The department may enter
23 into written agreements with federal agencies in order to avoid
24 redundant bonding of surface mines straddling boundaries between
25 federally controlled and other lands within Washington state.

26 ~~((Notwithstanding any other provision of this section, nothing~~
27 ~~shall preclude the department of ecology from requiring a separate~~
28 ~~performance security for metallic minerals or uranium surface mines~~
29 ~~under any authority if any that may be presently vested in the~~
30 ~~department of ecology relating to such mines.)) The department and the
31 department of ecology shall jointly require performance security for
32 metals mining and milling operations regulated under chapter,
33 Laws of 1994 (this act).~~

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

36 The need for, and the practicability of, reclamation shall control
37 the type and degree of reclamation in any specific instance. However,
38 the basic objective of reclamation is to reestablish on a continuing

1 basis the vegetative cover, slope stability, water conditions, and
2 safety conditions suitable to the proposed subsequent use consistent
3 with local land use plans for the surface mine site.

4 Each permit holder shall comply with the minimum reclamation
5 standards in effect on the date the permit was issued and any
6 additional reclamation standards set forth in the approved reclamation
7 plan. The department may modify, on a site specific basis, the minimum
8 reclamation standards for metals mining and milling operations
9 regulated under chapter . . . , Laws of 1994 (this act) in order to
10 achieve the reclamation and closure objectives of that chapter. The
11 basic objective of reclamation for these operations is the
12 reestablishment on a continuing basis of vegetative cover, slope
13 stability, water conditions, and safety conditions.

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

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

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

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

29 NEW SECTION. Sec. 26. (1) The department of ecology shall
30 establish a metals mining advisory group, to be comprised of members
31 representing the metals mining industry, county commissioners of
32 affected counties, the environmental community, the department of
33 ecology, the department of fish and wildlife, and the department of
34 natural resources.

35 (2) The metals mining advisory group will focus on the following
36 tasks:

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

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

6 (c) Examination of possible new inspection requirements for the
7 department of fish and wildlife and a means to fund any new
8 requirements; and

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

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

14 NEW SECTION. **Sec. 27.** If specific funding for the purposes of
15 this act, referencing this act by bill number, is not provided by June
16 30, 1994, in the omnibus appropriations act, this act shall be null and
17 void.

18 NEW SECTION. **Sec. 28.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 29.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and, with the
25 exception of sections 6 through 8 and 18 through 22 of this act, shall
26 take effect immediately.

27 NEW SECTION. **Sec. 30.** Sections 6 through 8 and 18 through 22 of
28 this act shall take effect July 1, 1995."

29 **ESHB 2521** - S COMM AMD
30 By Committee on Ways & Means

31
32 On page 1, line 1 of the title, after "operations;" strike the
33 remainder of the title and insert "amending RCW 90.03.350, 90.48.090,

1 78.44.161, 78.44.087, and 78.44.131; adding a new section to chapter
2 70.94 RCW; adding a new section to chapter 70.105 RCW; adding a new
3 chapter to Title 78 RCW; creating new sections; prescribing penalties;
4 providing an effective date; and declaring an emergency."

--- **END** ---