

# HOUSE BILL REPORT

## ESHB 2521

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As Amended by Senate

**Title:** An act relating to metals mining and milling operations right permits.

**Brief Description:** Regulating metals mining and milling operations.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson).

**Brief History:**

Reported by House Committee on:

Natural Resources & Parks, February 4, 1994, DPS;

Appropriations, February 5, 1994, DPS(NRP-A APP);

Passed House, February 14, 1994, 96-0;

Amended by Senate.

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### HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Stevens, Ranking Minority Member; McMorris, Assistant Ranking Minority Member; Linville; Schoesler; Sheldon; Valle and Wolfe.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Dunshee and B. Thomas.

**Staff:** Linda Byers (786-7129).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Natural Resources & Parks be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass. Signed by 21 members: Representatives Sommers, Chair; Appelwick; Ballasiotes; Basich; Cooke; Dorn; Dunshee; G. Fisher; Foreman; Jacobsen; Lemmon; Linville; H. Myers; Peery; Rust; Sehlin; Sheahan; Talcott; Wang; Wineberry and Wolfe.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Silver, Ranking Minority Member; and Stevens.

**Staff:** Nancy Stevenson (786-7137).

**Background:** Metals mining and milling operations are regulated under a number of different federal, state, and local government laws and rules. Last session, the Legislature created a Metals Mining Advisory Group to review the existing regulatory framework. Many of the topics addressed in this proposed legislation were topics of discussion by the advisory group.

## **Summary of Bill:**

### Application of New Chapter

Metals mining and milling operations are subject to the requirements established in the new chapter created by this act, in addition to requirements established in other statutes and rules. Expansions of an existing operation and new metals mining operations are subject to the requirements as well if the expansion or new operation is likely to result in a significant, adverse environmental impact. Separate metals milling operations are also subject to many of the provisions established in the new chapter.

### Disclosure

Applicants submitting a SEPA checklist for a metals mining and milling operation must disclose the ownership and each controlling interest in the proposed operation. They must also disclose all other mining operations within the United States which the applicants operate or in which the applicants have ownership or controlling interest. In addition, the applicants must disclose and may describe the circumstances of past or present bankruptcies, abandonment of superfund or similar sites, penalties in excess of \$10,000 assessed for violations of the Federal Clean Air or Clean Water acts, and any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements.

### State Environmental Policy Act (SEPA)

An environmental impact statement is required for any proposed metals mining and milling operation. The Department of Ecology is designated in statute to be the lead agency for the SEPA review. The SEPA review shall include the collection of baseline data adequate to document pre-mining conditions at the proposed site of the operation. The Department of Ecology shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife into the department's permit requirements for the proposed operation. In conducting the SEPA review, the department will also cooperate with affected local governments to the fullest extent practicable.

### Metals Mining Coordinator

The Department of Ecology is directed to appoint a metals mining coordinator. The coordinator will maintain current information on these operations and will act as a contact person for the industry and for the public. This section takes effect July 1, 1995.

### Inspections

State agencies with the responsibility for inspecting metals mining and milling operations shall conduct these inspections at least quarterly. The Legislature encourages these state agencies to explore opportunities for cross-training of inspectors and to look at efficient and cost-effective ways to coordinate inspections with each other and with federal and local government agencies. This section takes effect July 1, 1995.

### Metals Mining Account

The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation and may only be used for the additional inspections by state agencies described above and for the metals mining coordinator. The Department of Revenue is directed to assess a fee to be paid by each active and proposed metals mining and milling operation in order to generate revenue sufficient to cover these two categories of expenses. The section creating the new account and establishing fees takes effect July 1, 1995, unless the Legislature adopts an alternative approach based on the recommendations of the advisory group created in the bill.

### Siting of Tailings Facilities

The Department of Ecology is to consider site-specific criteria in determining a preferred location for the tailings facility associated with a metals mining and milling operation. A two-phase evaluation process is created to address the siting of tailings facilities, consisting of a primary screening phase and a secondary technical site investigation phase.

### Waste Discharge Permit Requirements

In order to receive a waste discharge permit from the Department of Ecology or in order to operate a tailings facility, a metals mining and milling operation must meet four additional requirements. First, there are specific requirements for the design and operation of the tailings facility. Second, the applicant must have an approved plan for management of the waste rock generated by the operation. Third, the operator or applicant must work with the Department of Ecology to make arrangements for citizen observation and verification of the taking of water samples, if an interested citizen or citizen group so requests. Fourth, the applicant or operator must complete a voluntary waste reduction plan.

### Performance Security

The Department of Ecology and the Department of Natural Resources may not issue the necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the Department of Ecology a performance security which is acceptable to both agencies. The performance security is conditioned on the applicant or operator meeting the following obligations: (1) satisfactory compliance with the laws of the state pertaining to these operations as well as related rules and permit conditions; (2) postclosure environmental monitoring; and (3) provision of sufficient funding for cleanup of potential problems revealed during or after closure.

### Economic Impact Analysis

An applicant for a large-scale metals mining and milling operation must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local government units. An operation is "large-scale" if it employs more than 35 persons during any consecutive six-month period. Counties may assess impact fees pursuant to chapter 82.02 RCW. If the applicant does not submit an adequate impact analysis or if the county does not find an applicant's proposals for mitigating any adverse economic impacts to be acceptable, the county will refuse to issue permits under its jurisdiction necessary for the construction or operation of the mine and mill.

### Citizen Suits

A citizen suit provision is added to the new chapter regulating metals mining and milling operations. An aggrieved person may commence a civil action against (1) any person who is alleged to be in violation of a law, rule, order or permit pertaining to metals mining and milling operations; (2) a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty pertaining to these operations; or (3) any person who constructs one of these operations without the permits and authorizations required by state law.

### Heap Leach/In Situ Mining

Until June 30, 1996, there is a moratorium on metals mining and milling operations using the heap leach extraction process. By December, 1994, the Department of Natural Resources and the Department of Ecology shall jointly review existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the

environment and shall report their findings to the Legislature. In situ extraction is permanently prohibited in Washington.

#### Regulatory Overlap

The Department of Ecology is directed to work with the mining industry and with relevant federal, state and local government agencies to identify areas of regulatory overlap among regulators of metals mining and milling operations. The department is also to identify possible solutions to overlap problems and to report to the Legislature on its findings by January 1, 1995.

#### Metals Mining Advisory Group

The Department of Ecology is also to establish a metals mining advisory group, to focus on the following four tasks: (1) a review of the adequacy of the cost-accounting methods of the state agencies in accurately identifying the costs associated with the additional inspection requirements of metals mining and milling operations; (2) development of measures to evaluate the performance of the metals mining coordinator; (3) examination of possible new inspection requirements for the Department of Fish and Wildlife; and (4) identification and evaluation of the alternatives for distributing new costs associated with this act among existing and proposed metals mining and milling operations. This group is also to report to the Legislature by January 1, 1995.

**EFFECT OF SENATE AMENDMENT(S):** The Senate striking amendment makes minor language changes and technical corrections to the bill. The amendment adds a definition of "milling," clarifies the liability provisions regarding the citizen water sampling observation and verification program, adds an interest to be represented on the metals mining advisory group, and adds a null and void clause to the bill.

**Fiscal Note:** Requested for the substitute bill February 3, 1994.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. Sections 6 through 8 take effect July 1, 1995.

**Testimony For:** (Natural Resources & Parks) (original bill) It is important to have good bonding provisions to protect the environment and not leave taxpayers stuck with paying for a cleanup operation. The bill represents an opportunity to be proactive, before there are major problems. It is important to have frequent inspections. Citizen suits have

been an effective tool in many states to empower citizens. The bill strikes a good balance between competing interests.

(Appropriations) We prefer the bill include siting criteria and civil penalties. We support the coordination position at Ecology, quarterly inspections, a fee schedule, and creating the account. The bill helps focus regulation. Industry is asking the fee section be stricken. Look at an advisory group recommending fees as an alternative.

**Testimony Against:** (Natural Resources & Parks) (original bill) The bill needs definitions and further clarification. The citizen suit section is too open-ended. There will be a fiscal impact on the agencies involved, and there is no provision for funding the additional workload. The quarterly inspections would be a significant increase in activity. Exploration should not be included in the bonding provisions. There are liability questions about bringing a citizen onto the site for water sampling. The bill needs more pollution prevention measures to keep problems from happening. Siting criteria need to be added; dangerous waste standard would be appropriate. The bill does not address waste rock and the possibility of long-term contamination associated with waste rock. The bill should include disclosure requirements for applicants; it is a good business practice to check the backgrounds of those you deal with. The bill should include the awarding of civil penalties in the citizen suit provisions. There needs to be more stakeholder participation in the bill. The Department of Ecology should determine the duration of the postclosure monitoring requirement, based on site specific conditions. Dolomite mining may be covered by the bill as it stands; dolomite operation produces no tailings and has no chemical processing. The bill does not address expansions of mining operations.

(Appropriations) None.

**Witnesses:** (Natural Resources & Parks) Walt Hunt, Echo Bay Minerals; Robert Taylor, Northwest Alloys; Karl Mote, Northwest Mining; Brant E. Hinze, Battle Mountain Gold; John Ennis, City of Republic; K.O. Rosenberg, Ferry, Pend Oreille and Stevens Counties; D. J. Patin, Department of Ecology; Jennifer Belcher and Bill Lingley, Department of Natural Resources; Lesley Brines and David Mudd, Department of Wildlife; Ed Forslof, Washington Wildlife Federation; Geraldine Payton, Columbia River Bioregional Education Project; Chris Parsons and Paul Robinson, Washington Environmental Council; Richard Smith, Washington Coalition for Responsible Mining; Cathie Currie, Washington Wildlife Coalition; Laurie Smith, North Cascade Conservation Council; and Harris Dunkelberger.

(Appropriations) Chris Parsons, Washington Environmental Council (neutral), and Denny Eliason, Echo Bay Minerals (pro with concerns).

**VOTE ON FINAL PASSAGE:**

Yeas 96; Excused 2

Excused: Representatives Cothorn, Riley