

SENATE BILL REPORT

ESHB 2521

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 28, 1994

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

**SPONSORS:** House Committee on Natural Resources & Parks (originally sponsored by Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson)

HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** Do pass as amended.

Signed by Senators Owen, Chairman; Franklin, Haugen, Oke, Sellar, Snyder and Spanel.

**Staff:** Vic Moon (786-7469)

**Hearing Dates:** February 21, 1994; February 23, 1994

SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Gaspard, Moyer, Niemi, Owen, Pelz, Snyder, Spanel, Sutherland, Talmadge, Williams and Wojahn.

**Staff:** Cindi Yates (786-7715)

**Hearing Dates:** February 28, 1994

**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:**

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.

**SUMMARY OF PROPOSED NATURAL RESOURCES STRIKING AMENDMENT:**

The striking amendment is the same as the House bill but makes technical changes and redefines "milling" and "metals mining and milling operation" to clarify their meaning in the act.

**SUMMARY OF PROPOSED NATURAL RESOURCES AMENDMENTS TO STRIKING AMENDMENT:**

The liability of the state and mine operator or applicant for possible injuries to persons who accompany a department or mine employee to observe the taking of water samples is reduced.

Regulatory enforcement personnel will not count in employment numbers which are used to require local impact analysis.

County commissioners of counties affected are added to the advisory committee which is given tasks and will report to the 1995 Legislature.

**SUMMARY OF PROPOSED WAYS & MEANS STRIKING AMENDMENT:**

The act is made contingent on funding being provided in the Omnibus Appropriations Act.

A technical correction is made clarifying the Department of Revenue's authority to collect the fees.

The separate amendments passed by the Committee on Natural Resources are incorporated into the Ways & Means striking amendment.

**Appropriation:** none

**Revenue:** yes

**Fiscal Note:** available

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

**TESTIMONY FOR:**

This is a totally agreed upon bill and is supported by the industry and the environmental community.

**TESTIMONY AGAINST:**

There are concerns with the House bill (changed by the striking amendment).

**TESTIFIED:** Representative Dunshee, sponsor; Lesley Brines/Gordon Zilles, Department of Wildlife; Laurie Smith/Kathy Currie, WA Coalition for Responsible Mining; Ron Clayton, Heela Mining Co. (pro); Brant Hinze, Battle Mountain Gold (pro); Chris Parsons, WA Environmental Council; Dan Swecker, NW Mining Assn. (con); K.O. Rosenberg, Northeast Tri-Counties (pro); William Lingley, Department of Natural Resources (pro); Chris Stearns, Department of Natural Resources (pro); D.J. Patin, Department of Ecology (pro); Joe LaTourrette, WA Wildlife Federation (pro); Jeff Parsons, National Audubon Society (pro)