
SUBSTITUTE HOUSE BILL 1467

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Sump, Sheldon, Chandler, Grant, Alexander, Hatfield, Delvin and Pennington)

Read first time 03/05/97.

1 AN ACT Relating to surface mining; and amending RCW 78.44.087.

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

3 **Sec. 1.** RCW 78.44.087 and 1995 c 223 s 3 are each amended to read
4 as follows:

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

11 (2) This performance security may be:

12 (a) Bank letters of credit acceptable to the department;

13 (b) A cash deposit;

14 (c) Negotiable securities acceptable to the department;

15 (d) An assignment of a savings account;

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

18 (f) Assignments of interests in real property within the state of
19 Washington; or

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

4 (3) The performance security shall be conditioned upon the faithful
5 performance of the requirements set forth in this chapter and of the
6 rules adopted under it.

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

17 (5) The department may increase or decrease the amount of the
18 performance security at any time to compensate for a change in the
19 disturbed area, the depth of excavation, a modification of the
20 reclamation plan, or any other alteration in the conditions of the mine
21 that affects the cost of reclamation. The department may, for any
22 reason, refuse any performance security not deemed adequate.

23 (6) Liability under the performance security shall be maintained
24 until reclamation is completed according to the approved reclamation
25 plan to the satisfaction of the department unless released as
26 hereinafter provided. Liability under the performance security may be
27 released only upon written notification by the department.
28 Notification shall be given upon completion of compliance or acceptance
29 by the department of a substitute performance security. The liability
30 of the surety shall not exceed the amount of security required by this
31 section and the department's reasonable legal fees to recover the
32 security.

33 (7) Any interest or appreciation on the performance security shall
34 be held by the department until reclamation is completed to its
35 satisfaction. At such time, the interest shall be remitted to the
36 permit holder; except that such interest or appreciation may be used by
37 the department to effect reclamation in the event that the permit
38 holder fails to comply with the provisions of this chapter and the
39 costs of reclamation exceed the face value of the performance security.

1 (8) (~~Except as provided in this section,~~) No other state agency
2 or local government other than the department shall require performance
3 security for the purposes of surface mine reclamation ((and only one
4 agency of government shall require and hold the performance security)).
5 The department may enter into written agreements with federal agencies
6 in order to avoid redundant bonding of surface mines straddling
7 boundaries between federally controlled and other lands within
8 Washington state.

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

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