

2SSB 6175 - S AMD 172

By Senators Hargrove, Doumit, Morton

ADOPTED 02/24/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 78.44.085 and 2001 1st sp.s. c 5 s 1 are each amended
4 to read as follows:

5 (1) An applicant for an expansion of the originally permitted area
6 or a new reclamation permit, or for combining a public or private
7 reclamation permit, shall pay a nonrefundable application fee to the
8 department before being granted (~~(a surface mining)~~) the requested
9 permit. The amount of the application fee shall be (~~(one)~~) two
10 thousand five hundred dollars.

11 (2) Permit holders submitting a revision to an application for an
12 existing reclamation plan that is not an expansion shall pay a
13 nonrefundable reclamation plan revision fee of one thousand dollars.

14 (3) After June 30, (~~(2001)~~) 2006, each public or private permit
15 holder shall pay an annual permit fee (~~(of one thousand dollars)~~). The
16 annual permit fee shall be payable to the department prior to the
17 reclamation permit being issued and on the (~~(first)~~) anniversary of the
18 permit date (~~(and)~~) each year thereafter. Annual fees paid by a county
19 for mines used exclusively for public works projects and having less
20 than seven acres of disturbed area per mine shall not exceed one
21 thousand dollars. Annual fees are waived for all mines used primarily
22 for public works projects if the mines are owned and primarily operated
23 by counties with 1993 populations of less than twenty thousand persons,
24 and if each mine has less than seven acres of disturbed area.

25 (~~(+3)~~) (4) Each public or private permit holder must pay an annual
26 fee based on the categories of aggregate or mineral mined or extracted
27 during the previous twelve months, as follows:

28 (a) Zero to fifty thousand tons: A fee of one thousand two hundred
29 fifty dollars;

1 (b) Fifty-one thousand tons to three hundred fifty thousand tons:
2 A fee of two thousand five hundred dollars;
3 (c) More than three hundred fifty-one thousand tons: A fee of
4 three thousand five hundred dollars.
5 (5) At the end of each fiscal biennium, any residual moneys from
6 the fees charged under this section for the administration and
7 enforcement of the regulation of surface mining under this chapter must
8 be used by the department for the surveying and mapping of sand and
9 gravel sites in the state.
10 (6) Any production records, mineral assessments, and trade secrets
11 submitted by a permit holder, mine operator, or landowner to the
12 department are confidential.
13 (7) Appeals from any determination of the department shall not stay
14 the requirement to pay any annual permit fee. Failure to pay the
15 annual fees may constitute grounds for an order to suspend surface
16 mining, fines, or cancellation of the reclamation permit as provided in
17 this chapter.
18 ~~((4))~~ (8) All fees collected by the department shall be deposited
19 into the surface mining reclamation account.
20 ~~((5))~~ (9) If the department delegates enforcement
21 responsibilities to a county, city, or town, the department may
22 allocate funds collected under this section to the county, city, or
23 town.
24 ~~((6))~~ (10) Within sixty days after receipt of a new or expanded
25 permit application, the department shall advise applicants of any
26 information necessary to successfully complete the application.
27 (11) In addition to other enforcement authority, the department may
28 refer matters to a collection agency when permit fees or fines are past
29 due. The collection agency may impose its own fees for collecting
30 delinquent permit fees or fines.
31 (12) Annual permit fees for surface mines that are regulated by the
32 department under chapter 78.56 RCW, the metals mining and milling
33 operations, are subject to chapter 78.56 RCW and the estimates of the
34 annual fee by the department. The department of ecology shall transfer
35 the appropriate annual fees collected under RCW 78.56.080 to the
36 department for deposit directly to the surface mining reclamation
37 account.

1 **Sec. 2.** RCW 78.44.087 and 1997 c 186 s 1 are each amended to read
2 as follows:

3 (1) The department should ensure that sufficient funds are
4 available to reclaim the surface mine. The department shall not issue
5 a reclamation permit until the applicant has deposited with the
6 department an acceptable performance security on forms prescribed (~~and~~
7 ~~furnished~~) by the department, and that is adequate to cover
8 reclamation costs. A public or governmental agency shall not be
9 required to post performance security. No person may create a
10 disturbed area that meets or exceeds the minimum threshold for a
11 reclamation permit without first submitting an adequate and acceptable
12 performance security to the department and complying with all
13 requirements of this chapter.

14 (2) (~~This performance security may be~~) The department may refuse
15 to accept any performance security that the department for any reason
16 deems to be inadequate to cover reclamation costs or not in an
17 acceptable form.

18 (3) Acceptable forms of performance security are:

19 (a) Bank letters of credit acceptable to the department or
20 irrevocable bank letters of credit from a bank or financial institution
21 or organization authorized to transact business in the United States;

22 (b) A cash deposit;

23 (c) (~~Negotiable~~) Other forms of performance securities acceptable
24 to the department as determined by rule;

25 (d) An assignment of a savings account;

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

28 (f) (~~Assignments of interests in real property within the state of~~
29 ~~Washington~~) Approved participants in a state security pool if one is
30 established; or

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

34 (~~(3)~~) (4) The performance security shall be conditioned upon the
35 faithful performance of the requirements set forth in this chapter
36 (~~and of~~), the rules adopted under it, and the reclamation permit.

37 (~~(4)~~) (5)(a) The department (~~shall have the authority to~~
38 ~~determine the amount of the performance security using a standardized~~

1 ~~performance security formula developed by the department. The amount~~
2 ~~of the security shall be determined by the department and based on the~~
3 ~~estimated costs of completing reclamation according to the approved~~
4 ~~reclamation plan or minimum standards and related administrative~~
5 ~~overhead for the area to be surface mined during (a) the next~~
6 ~~twelve month period, (b) the following twenty four months, and (c) any~~
7 ~~previously disturbed areas on which the reclamation has not been~~
8 ~~satisfactorily completed and approved)) must determine the amount of~~
9 ~~the performance security as prescribed by this subsection.~~

10 (b) The department may determine the amount of the performance
11 security based on the estimated cost of: (i) Completing reclamation
12 according to the requirements of this chapter; or (ii) the reclamation
13 permit for the area to be surface mined during the upcoming thirty-six
14 months and any previously disturbed areas that have not been reclaimed.

15 (c) The department may determine the amount of the performance
16 security based on an engineering cost estimate for reclamation that is
17 provided by the permit holder. The engineering cost estimate must be
18 prepared using engineering principles and methods that are acceptable
19 to the department. If the department does not approve the engineering
20 cost estimate, the department shall determine the amount of the
21 performance security using a standardized performance security formula
22 developed by the department by rule.

23 ~~((+5)) (6) The department may ((increase or decrease the amount of~~
24 ~~the performance security at any time to compensate for a change in the~~
25 ~~disturbed area, the depth of excavation, a modification of the~~
26 ~~reclamation plan, or any other alteration in the conditions of the mine~~
27 ~~that affects the cost of reclamation. The department may, for any~~
28 ~~reason, refuse any performance security not deemed adequate))~~
29 ~~recalculate a surface mine's performance security based on subsection~~
30 ~~(5) of this section. When the department recalculates a performance~~
31 ~~security, the new calculation will not be prejudiced by the existence~~
32 ~~of any previous calculation. A new performance security must be~~
33 ~~submitted to the department within thirty days of the department's~~
34 ~~written request.~~

35 ~~((+6)) (7) Liability under the performance security and the permit~~
36 ~~holder's obligation to maintain the calculated performance security~~
37 ~~amount shall be maintained until ((reclamation is completed according~~
38 ~~to the approved reclamation plan to the satisfaction of the~~

1 department)) the surface mine is reclaimed, unless released as
2 hereinafter provided. Partial drawings will proportionately reduce the
3 value of a performance security but will not extinguish the remaining
4 value. Liability under the performance security may be released only
5 (~~upon written notification by the department. Notification shall be~~
6 ~~given upon completion of compliance or acceptance by the department of~~
7 ~~a substitute performance security)) when the surface mine is reclaimed
8 as evidenced by the department in writing or after the department
9 receives and approves a substitute performance security. The
10 department will notify the permit holder, and surety if applicable,
11 when reclamation is accepted by the department as complete or upon the
12 department's acceptance of an alternate security. The liability of the
13 surety shall not exceed the amount of security required by this section
14 and the department's reasonable legal fees to recover the security.~~

15 ~~((+7))~~ (8) Any interest or appreciation on the performance
16 security shall be held by the department until (~~reclamation is~~
17 ~~completed to its satisfaction. At such time, the interest shall be~~
18 ~~remitted to the permit holder; except that such interest or~~
19 ~~appreciation may be used by the department to effect reclamation in the~~
20 ~~event that the permit holder fails to comply with the provisions of~~
21 ~~this chapter and the costs of reclamation exceed the face value of the~~
22 ~~performance security)) the surface mine is reclaimed. The department
23 may collect and use appreciation or interest accrued on a performance
24 security to the same extent as for the underlying performance security.
25 If the permit holder meets its obligations under this chapter, rules
26 adopted under this chapter, and its approved reclamation permit and
27 plan by completing reclamation, the department will return any unused
28 performance security and accrued interest or appreciation.~~

29 ~~((+8))~~ (9) No other state agency or local government other than
30 the department shall require performance security for the purposes of
31 surface mine reclamation. The department may enter into written
32 agreements with federal agencies in order to avoid redundant bonding of
33 any surface (~~(mines straddling boundaries between federally controlled~~
34 ~~and other lands within)) mine that is located on both federal and
35 nonfederal lands in Washington state. Nothing in this section
36 prohibits a state agency or local government from requiring a
37 performance security when the state agency or local government is~~

1 acting in its capacity as a landowner and contracting for
2 extraction-related activities on state or local government property.

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

15 NEW SECTION. Sec. 3. A new section is added to chapter 78.44 RCW
16 to read as follows:

17 (1) A permit holder, in lieu of an individual performance security
18 for each mining site, may file a blanket performance security with the
19 department for their group of permits.

20 (2) The department may reduce the required performance security
21 calculated from its standard method, to an amount not to exceed the sum
22 of reclamation security calculated by the department for the two
23 surface mines with the largest performance security obligations, for
24 nonmetal and nonfuel surface mines that meet the following conditions:

25 (a) The permit holder has had a valid reclamation permit for more
26 than ten years and can demonstrate exemplary mining and reclamation
27 practices that have been accepted by the department;

28 (b) The land owner agrees to allow the permit holder to hold a
29 blanket security. The department must include, on forms to be signed
30 by the landowner, notice of the risk of a lien on the landowner's
31 lands; and

32 (c) The permit holder can demonstrate substantial financial ability
33 to perform the reclamation in the approved reclamation plan and permit.

34 (3) Permit holders are not eligible for blanket securities if they
35 are in violation of a final order of the department.

36 (4) The department must consider the compliance history and the

1 state of the existing surface mines of the permit holder before
2 approving any blanket performance security.

3 (5) Lands covered by a blanket performance security are subject to
4 a lien placed by the department in the event of abandonment.

5 (6) In lieu of the performance security required of the permit
6 holder, the department may accept a similar security from the
7 landowner, equal to the estimated cost of reclamation as determined by
8 the department.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 78.44 RCW
10 to read as follows:

11 (1) To the extent a performance security is insufficient to cover
12 the cost of reclamation performed by the department, a lien shall be
13 established in favor of the department upon all of the permit holder's
14 real and personal property.

15 (2) The lien attaches upon the filing of a notice of claim of lien
16 with the county clerk of the county in which the property is located.
17 The notice of lien claim must contain a true statement of the demand,
18 the insufficiency of the performance security to compensate the
19 department, and the failure of the permit holder to perform the
20 reclamation required.

21 (3) The lien becomes effective when filed.

22 (4) The lien created by this section may be foreclosed by a suit in
23 the superior court in the manner provided by law for the foreclosure of
24 other liens on real or personal property.

25 **Sec. 5.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to
26 read as follows:

27 The following financial, commercial, and proprietary information is
28 exempt from disclosure under this chapter:

29 (1) Valuable formulae, designs, drawings, computer source code or
30 object code, and research data obtained by any agency within five years
31 of the request for disclosure when disclosure would produce private
32 gain and public loss;

33 (2) Financial information supplied by or on behalf of a person,
34 firm, or corporation for the purpose of qualifying to submit a bid or
35 proposal for (a) a ferry system construction or repair contract as

1 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
2 or improvement as required by RCW 47.28.070;

3 (3) Financial and commercial information and records supplied by
4 private persons pertaining to export services provided under chapters
5 43.163 and 53.31 RCW, and by persons pertaining to export projects
6 under RCW 43.23.035;

7 (4) Financial and commercial information and records supplied by
8 businesses or individuals during application for loans or program
9 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
10 or during application for economic development loans or program
11 services provided by any local agency;

12 (5) Financial information, business plans, examination reports, and
13 any information produced or obtained in evaluating or examining a
14 business and industrial development corporation organized or seeking
15 certification under chapter 31.24 RCW;

16 (6) Financial and commercial information supplied to the state
17 investment board by any person when the information relates to the
18 investment of public trust or retirement funds and when disclosure
19 would result in loss to such funds or in private loss to the providers
20 of this information;

21 (7) Financial and valuable trade information under RCW 51.36.120;

22 (8) Financial, commercial, operations, and technical and research
23 information and data submitted to or obtained by the clean Washington
24 center in applications for, or delivery of, program services under
25 chapter 70.95H RCW;

26 (9) Financial and commercial information requested by the public
27 stadium authority from any person or organization that leases or uses
28 the stadium and exhibition center as defined in RCW 36.102.010;

29 (10) Financial information, including but not limited to account
30 numbers and values, and other identification numbers supplied by or on
31 behalf of a person, firm, corporation, limited liability company,
32 partnership, or other entity related to an application for a liquor
33 license, gambling license, or lottery retail license;

34 (11) Proprietary data, trade secrets, or other information that
35 relates to: (a) A vendor's unique methods of conducting business; (b)
36 data unique to the product or services of the vendor; or (c)
37 determining prices or rates to be charged for services, submitted by

1 any vendor to the department of social and health services for purposes
2 of the development, acquisition, or implementation of state purchased
3 health care as defined in RCW 41.05.011; (~~and~~)

4 (12)(a) When supplied to and in the records of the department of
5 community, trade, and economic development:

6 (i) Financial and proprietary information collected from any person
7 and provided to the department of community, trade, and economic
8 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

9 (ii) Financial or proprietary information collected from any person
10 and provided to the department of community, trade, and economic
11 development or the office of the governor in connection with the
12 siting, recruitment, expansion, retention, or relocation of that
13 person's business and until a siting decision is made, identifying
14 information of any person supplying information under this subsection
15 and the locations being considered for siting, relocation, or expansion
16 of a business;

17 (b) When developed by the department of community, trade, and
18 economic development based on information as described in (a)(i) of
19 this subsection, any work product is not exempt from disclosure;

20 (c) For the purposes of this subsection, "siting decision" means
21 the decision to acquire or not to acquire a site;

22 (d) If there is no written contact for a period of sixty days to
23 the department of community, trade, and economic development from a
24 person connected with siting, recruitment, expansion, retention, or
25 relocation of that person's business, information described in (a)(ii)
26 of this subsection will be available to the public under this chapter;
27 and

28 (13) Any production records, mineral assessments, and trade secrets
29 submitted by a permit holder, mine operator, or landowner to the
30 department of natural resources under RCW 78.44.085.

31 NEW SECTION. Sec. 6. Section 5 of this act takes effect July 1,
32 2006.

33 NEW SECTION. Sec. 7. The department of natural resources shall
34 establish a surface mining advisory committee that will recommend
35 effective methods of accomplishing reclamation and address other issues
36 deemed appropriate by the committee for the effective administration of

1 chapter 78.44 RCW. The committee is comprised of but not limited to
2 representatives of mining interests, state and local government,
3 environmental groups, and private landowners. The state geologist will
4 select the members of the committee. The department of natural
5 resources must submit a report to the legislature containing the
6 committee's findings by September 1, 2006."

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7 On page 1, line 3 of the title, after "program;" strike the
8 remainder of the title and insert "amending RCW 78.44.085, 78.44.087,
9 and 42.56.270; adding new sections to chapter 78.44 RCW; creating a new
10 section; and providing an effective date."

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