
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6175

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways Means (originally sponsored by Senator Jacobsen; by request of Department of Natural Resources)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to regulation of surface mining by ensuring
2 adequate performance security to cover reclamation costs for mines and
3 providing fees for the operation of the surface mining program;
4 amending RCW 78.44.085, 78.44.087, and 42.56.270; adding new sections
5 to chapter 78.44 RCW; creating a new section; and providing an
6 effective date.

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

8 **Sec. 1.** RCW 78.44.085 and 2001 1st sp.s. c 5 s 1 are each amended
9 to read as follows:

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

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

1 (3) After June 30, ((2001)) 2006, each public or private permit
2 holder shall pay an annual permit fee ((of one thousand dollars)). The
3 annual permit fee shall be payable to the department prior to the
4 reclamation permit being issued and on the ((first)) anniversary of the
5 permit date ((and)) each year thereafter. Annual fees paid by a county
6 for mines used exclusively for public works projects and having less
7 than seven acres of disturbed area per mine shall not exceed one
8 thousand dollars. Annual fees are waived for all mines used primarily
9 for public works projects if the mines are owned and primarily operated
10 by counties with 1993 populations of less than twenty thousand persons,
11 and if each mine has less than seven acres of disturbed area.

12 ((+3)) (4) Each public or private permit holder must pay an annual
13 fee based on the categories of aggregate or mineral mined or extracted
14 during the previous twelve months, as follows:

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

17 (b) Fifty-one thousand tons to three hundred fifty thousand tons:
18 A fee of two thousand five hundred dollars;

19 (c) More than three hundred fifty-one thousand tons: A fee of
20 three thousand five hundred dollars.

21 (5) At the end of each fiscal biennium, any residual moneys from
22 the fees charged under this section for the administration and
23 enforcement of the regulation of surface mining under this chapter must
24 be used by the department for the surveying and mapping of sand and
25 gravel sites in the state.

26 (6) Any production records, mineral assessments, and trade secrets
27 submitted by a permit holder, mine operator, or landowner to the
28 department are confidential.

29 (7) Appeals from any determination of the department shall not stay
30 the requirement to pay any annual permit fee. Failure to pay the
31 annual fees may constitute grounds for an order to suspend surface
32 mining, fines, or cancellation of the reclamation permit as provided in
33 this chapter.

34 ((+4)) (8) All fees collected by the department shall be deposited
35 into the surface mining reclamation account.

36 ((+5)) (9) If the department delegates enforcement
37 responsibilities to a county, city, or town, the department may

1 allocate funds collected under this section to the county, city, or
2 town.

3 ~~((+6))~~ (10) Within sixty days after receipt of a new or expanded
4 permit application, the department shall advise applicants of any
5 information necessary to successfully complete the application.

6 (11) In addition to other enforcement authority, the department may
7 refer matters to a collection agency when permit fees or fines are past
8 due. The collection agency may impose its own fees for collecting
9 delinquent permit fees or fines.

10 (12) Annual permit fees for surface mines that are regulated by the
11 department under chapter 78.56 RCW, the metals mining and milling
12 operations, are subject to chapter 78.56 RCW and the estimates of the
13 annual fee by the department. The department of ecology shall transfer
14 the appropriate annual fees collected under RCW 78.56.080 to the
15 department for deposit directly to the surface mining reclamation
16 account.

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

19 (1) The department should ensure that sufficient funds are
20 available to reclaim the surface mine. The department shall not issue
21 a reclamation permit until the applicant has deposited with the
22 department an acceptable performance security on forms prescribed (~~and~~
23 furnished)) by the department, and that is adequate to cover
24 reclamation costs. A public or governmental agency shall not be
25 required to post performance security. No person may create a
26 disturbed area that meets or exceeds the minimum threshold for a
27 reclamation permit without first submitting an adequate and acceptable
28 performance security to the department and complying with all
29 requirements of this chapter.

30 (2) (~~This performance security may be~~) The department may refuse
31 to accept any performance security that the department for any reason
32 deems to be inadequate to cover reclamation costs or not in an
33 acceptable form.

34 (3) Acceptable forms of performance security are:

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

1 (b) A cash deposit;

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

4 (d) An assignment of a savings account;

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

7 (~~Assignments of interests in real property within the state of~~
8 ~~Washington~~) Approved participants in a state security pool if one is
9 established; or

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

13 (~~(3)~~) (4) The performance security shall be conditioned upon the
14 faithful performance of the requirements set forth in this chapter
15 (~~and of~~), the rules adopted under it, and the reclamation permit.

16 (~~(4)~~) (5)(a) The department (~~shall have the authority to~~
17 ~~determine the amount of the performance security using a standardized~~
18 ~~performance security formula developed by the department. The amount~~
19 ~~of the security shall be determined by the department and based on the~~
20 ~~estimated costs of completing reclamation according to the approved~~
21 ~~reclamation plan or minimum standards and related administrative~~
22 ~~overhead for the area to be surface mined during (a) the next~~
23 ~~twelve month period, (b) the following twenty four months, and (c) any~~
24 ~~previously disturbed areas on which the reclamation has not been~~
25 ~~satisfactorily completed and approved~~) must determine the amount of
26 the performance security as prescribed by this subsection.

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

32 (c) The department may determine the amount of the performance
33 security based on an engineering cost estimate for reclamation that is
34 provided by the permit holder. The engineering cost estimate must be
35 prepared using engineering principles and methods that are acceptable
36 to the department. If the department does not approve the engineering
37 cost estimate, the department shall determine the amount of the

1 performance security using a standardized performance security formula
2 developed by the department by rule.

3 ~~((+5))~~ (6) ~~The department may ((increase or decrease the amount of~~
4 ~~the performance security at any time to compensate for a change in the~~
5 ~~disturbed area, the depth of excavation, a modification of the~~
6 ~~reclamation plan, or any other alteration in the conditions of the mine~~
7 ~~that affects the cost of reclamation. The department may, for any~~
8 ~~reason, refuse any performance security not deemed adequate))~~
9 recalculate a surface mine's performance security based on subsection
10 (5) of this section. When the department recalculates a performance
11 security, the new calculation will not be prejudiced by the existence
12 of any previous calculation. A new performance security must be
13 submitted to the department within thirty days of the department's
14 written request.

15 ~~((+6))~~ (7) Liability under the performance security and the permit
16 holder's obligation to maintain the calculated performance security
17 amount shall be maintained until ((reclamation is completed according
18 to the approved reclamation plan to the satisfaction of the
19 department)) the surface mine is reclaimed, unless released as
20 hereinafter provided. Partial drawings will proportionately reduce the
21 value of a performance security but will not extinguish the remaining
22 value. Liability under the performance security may be released only
23 ~~((upon written notification by the department. Notification shall be~~
24 ~~given upon completion of compliance or acceptance by the department of~~
25 ~~a substitute performance security))~~ when the surface mine is reclaimed
26 as evidenced by the department in writing or after the department
27 receives and approves a substitute performance security. The
28 department will notify the permit holder, and surety if applicable,
29 when reclamation is accepted by the department as complete or upon the
30 department's acceptance of an alternate security. The liability of the
31 surety shall not exceed the amount of security required by this section
32 and the department's reasonable legal fees to recover the security.

33 ~~((+7))~~ (8) Any interest or appreciation on the performance
34 security shall be held by the department until ((reclamation is
35 completed to its satisfaction. At such time, the interest shall be
36 remitted to the permit holder; except that such interest or
37 appreciation may be used by the department to effect reclamation in the
38 event that the permit holder fails to comply with the provisions of

1 ~~this chapter and the costs of reclamation exceed the face value of the~~
2 ~~performance security)) the surface mine is reclaimed. The department~~
3 ~~may collect and use appreciation or interest accrued on a performance~~
4 ~~security to the same extent as for the underlying performance security.~~
5 ~~If the permit holder meets its obligations under this chapter, rules~~
6 ~~adopted under this chapter, and its approved reclamation permit and~~
7 ~~plan by completing reclamation, the department will return any unused~~
8 ~~performance security and accrued interest or appreciation.~~

9 ~~((+8))~~ (9) No other state agency or local government other than
10 the department shall require performance security for the purposes of
11 surface mine reclamation. The department may enter into written
12 agreements with federal agencies in order to avoid redundant bonding of
13 any surface ((mines straddling boundaries between federally controlled
14 and other lands within)) mine that is located on both federal and
15 nonfederal lands in Washington state. Nothing in this section
16 prohibits a state agency or local government from requiring a
17 performance security when the state agency or local government is
18 acting in its capacity as a landowner and contracting for
19 extraction-related activities on state or local government property.

20 ~~((9) When acting in its capacity as a regulator, no other state~~
21 ~~agency or local government may require a surface mining operation~~
22 ~~regulated under this chapter to post performance security unless that~~
23 ~~state agency or local government has express statutory authority to do~~
24 ~~so. A state agency's or local government's general authority to~~
25 ~~protect the public health, safety, and welfare does not constitute~~
26 ~~express statutory authority to require a performance security.~~
27 ~~However, nothing in this section prohibits a state agency or local~~
28 ~~government from requiring a performance security when the state agency~~
29 ~~or local government is acting in its capacity as a landowner and~~
30 ~~contracting for extraction related activities on state or local~~
31 ~~government property.))~~

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

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

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

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

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

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

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

17 (4) The department must consider the compliance history and the
18 state of the existing surface mines of the permit holder before
19 approving any blanket performance security.

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

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

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

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

32 (2) The lien attaches upon the filing of a notice of claim of lien
33 with the county clerk of the county in which the property is located.
34 The notice of lien claim must contain a true statement of the demand,
35 the insufficiency of the performance security to compensate the
36 department, and the failure of the permit holder to perform the
37 reclamation required.

1 (3) The lien becomes effective when filed.

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

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

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

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

13 (2) Financial information supplied by or on behalf of a person,
14 firm, or corporation for the purpose of qualifying to submit a bid or
15 proposal for (a) a ferry system construction or repair contract as
16 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
17 or improvement as required by RCW 47.28.070;

18 (3) Financial and commercial information and records supplied by
19 private persons pertaining to export services provided under chapters
20 43.163 and 53.31 RCW, and by persons pertaining to export projects
21 under RCW 43.23.035;

22 (4) Financial and commercial information and records supplied by
23 businesses or individuals during application for loans or program
24 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
25 or during application for economic development loans or program
26 services provided by any local agency;

27 (5) Financial information, business plans, examination reports, and
28 any information produced or obtained in evaluating or examining a
29 business and industrial development corporation organized or seeking
30 certification under chapter 31.24 RCW;

31 (6) Financial and commercial information supplied to the state
32 investment board by any person when the information relates to the
33 investment of public trust or retirement funds and when disclosure
34 would result in loss to such funds or in private loss to the providers
35 of this information;

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

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

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

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

13 (11) Proprietary data, trade secrets, or other information that
14 relates to: (a) A vendor's unique methods of conducting business; (b)
15 data unique to the product or services of the vendor; or (c)
16 determining prices or rates to be charged for services, submitted by
17 any vendor to the department of social and health services for purposes
18 of the development, acquisition, or implementation of state purchased
19 health care as defined in RCW 41.05.011; (~~and~~)

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

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

25 (ii) Financial or proprietary information collected from any person
26 and provided to the department of community, trade, and economic
27 development or the office of the governor in connection with the
28 siting, recruitment, expansion, retention, or relocation of that
29 person's business and until a siting decision is made, identifying
30 information of any person supplying information under this subsection
31 and the locations being considered for siting, relocation, or expansion
32 of a business;

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

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

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

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

10 NEW SECTION. Sec. 6. Section 5 of this act takes effect July 1,
11 2006.

12 NEW SECTION. Sec. 7. The department of natural resources shall
13 establish a surface mining advisory committee that will recommend
14 effective methods of accomplishing reclamation and address other issues
15 deemed appropriate by the committee for the effective administration of
16 chapter 78.44 RCW. The committee is comprised of but not limited to
17 representatives of mining interests, state and local government,
18 environmental groups, and private landowners. The state geologist will
19 select the members of the committee. The department of natural
20 resources must submit a report to the legislature containing the
21 committee's findings by September 1, 2006.

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