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SENATE BILL 6175

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State of Washington

59th Legislature

2006 Regular Session

By Senator Jacobsen; by request of Department of Natural Resources

Read first time 01/09/2006. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to regulation of surface mining; amending RCW  
2 78.44.085 and 78.44.087; adding new sections to chapter 78.44 RCW;  
3 creating a new section; and making an appropriation.

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

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

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

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

16 (3) After June 30, (~~(2001)~~) 2006, each public or private permit  
17 holder shall pay an annual permit fee of one thousand five hundred  
18 dollars. The annual permit fee shall be payable to the department on  
19 the first anniversary of the permit date and each year thereafter.

1 Annual fees paid by a county for mines used exclusively for public  
2 works projects and having less than seven acres of disturbed area per  
3 mine shall not exceed one thousand dollars. Annual fees are waived for  
4 all mines used primarily for public works projects if the mines are  
5 owned and primarily operated by counties with (~~1993~~) populations of  
6 less than twenty thousand persons based on the latest population  
7 estimates as determined by the Washington state databook prepared by  
8 the office of financial management, and if each mine has less than  
9 seven acres of disturbed area.

10 (~~(3)~~) (4) Appeals from any determination of the department shall  
11 not stay the requirement to pay any annual permit fee. Failure to pay  
12 the annual fees may constitute grounds for an order to suspend surface  
13 mining, fines, or cancellation of the reclamation permit as provided in  
14 this chapter.

15 (~~(4)~~) (5) All fees collected by the department shall be deposited  
16 into the surface mining reclamation account.

17 (~~(5)~~) (6) If the department delegates enforcement  
18 responsibilities to a county, city, or town, the department may  
19 allocate funds collected under this section to the county, city, or  
20 town.

21 (~~(6)~~) (7) Within sixty days after receipt of a new or expanded  
22 permit application, the department shall advise applicants of any  
23 information necessary to successfully complete the application.

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

28 (9) Annual permit fees for surface mines that are regulated by the  
29 department under chapter 78.56 RCW, the metals mining and milling  
30 operations, are subject to chapter 78.56 RCW and the estimates of the  
31 annual fee by the department. The department of ecology shall transfer  
32 the appropriate annual fees collected under RCW 78.56.080 to the  
33 department for deposit directly to the surface mining reclamation  
34 account.

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

37 (1) The department should ensure that sufficient funds are

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

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

15 (3) Acceptable forms of performance security are:

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

19 (b) A cash deposit;

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

22 (d) An assignment of a savings account;

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

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

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

31 (~~(3)~~) (4) The performance security shall be conditioned upon the  
32 faithful performance of the requirements set forth in this chapter  
33 (~~and of~~), the rules adopted under it, and the reclamation permit.

34 (~~(4)~~) (5)(a) The department (~~shall have the authority to~~  
35 ~~determine the amount of the performance security using a standardized~~  
36 ~~performance security formula developed by the department. The amount~~  
37 ~~of the security shall be determined by the department and based on the~~  
38 ~~estimated costs of completing reclamation according to the approved~~

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

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

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

20 ~~((+5)) (6) The department may ((increase or decrease the amount of~~  
21 ~~the performance security at any time to compensate for a change in the~~  
22 ~~disturbed area, the depth of excavation, a modification of the~~  
23 ~~reclamation plan, or any other alteration in the conditions of the mine~~  
24 ~~that affects the cost of reclamation. The department may, for any~~  
25 ~~reason, refuse any performance security not deemed adequate))~~  
26 ~~recalculate a surface mine's performance security based on subsection~~  
27 ~~(5) of this section. When the department recalculates a performance~~  
28 ~~security, the new calculation will not be prejudiced by the existence~~  
29 ~~of any previous calculation. A new performance security must be~~  
30 ~~submitted to the department within thirty days of the department's~~  
31 ~~written request.~~

32 ~~((+6)) (7) Liability under the performance security and the permit~~  
33 ~~holder's obligation to maintain the calculated performance security~~  
34 ~~amount shall be maintained until ((reclamation is completed according~~  
35 ~~to the approved reclamation plan to the satisfaction of the~~  
36 ~~department)) the surface mine is reclaimed, unless released as~~  
37 ~~hereinafter provided. Partial drawings will proportionately reduce the~~  
38 ~~value of a performance security but will not extinguish the remaining~~

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

12 ~~((+7))~~ (8) Any interest or appreciation on the performance  
13 security shall be held by the department until ~~((reclamation is~~  
14 ~~completed to its satisfaction. At such time, the interest shall be~~  
15 ~~remitted to the permit holder; except that such interest or~~  
16 ~~appreciation may be used by the department to effect reclamation in the~~  
17 ~~event that the permit holder fails to comply with the provisions of~~  
18 ~~this chapter and the costs of reclamation exceed the face value of the~~  
19 ~~performance security))~~ the surface mine is reclaimed. The department  
20 may collect and use appreciation or interest accrued on a performance  
21 security to the same extent as for the underlying performance security.  
22 If the permit holder meets its obligations under this chapter, rules  
23 adopted under this chapter, and its approved reclamation permit and  
24 plan by completing reclamation, the department will return any unused  
25 performance security and accrued interest or appreciation.

26 ~~((+8))~~ (9) No other state agency or local government other than  
27 the department shall require performance security for the purposes of  
28 surface mine reclamation. The department may enter into written  
29 agreements with federal agencies in order to avoid redundant bonding of  
30 any surface ~~((mines straddling boundaries between federally controlled~~  
31 ~~and other lands within))~~ mine that is located on both federal and  
32 nonfederal lands in Washington state. Nothing in this section  
33 prohibits a state agency or local government from requiring a  
34 performance security when the state agency or local government is  
35 acting in its capacity as a landowner and contracting for  
36 extraction-related activities on state or local government property.

37 ~~((+9))~~ When acting in its capacity as a regulator, no other state  
38 agency or local government may require a surface mining operation

1 ~~regulated under this chapter to post performance security unless that~~  
2 ~~state agency or local government has express statutory authority to do~~  
3 ~~so. A state agency's or local government's general authority to~~  
4 ~~protect the public health, safety, and welfare does not constitute~~  
5 ~~express statutory authority to require a performance security.~~  
6 ~~However, nothing in this section prohibits a state agency or local~~  
7 ~~government from requiring a performance security when the state agency~~  
8 ~~or local government is acting in its capacity as a landowner and~~  
9 ~~contracting for extraction related activities on state or local~~  
10 ~~government property.))~~

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 78.44 RCW  
12 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) The lien becomes effective when filed.

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

21 NEW SECTION. **Sec. 5.** The department of natural resources shall  
22 establish a surface mining advisory committee that will recommend  
23 long-term stable funding mechanisms, effective methods of accomplishing  
24 reclamation, and address other issues deemed appropriate by the  
25 committee for the effective administration of chapter 78.44 RCW. The  
26 committee is comprised of but not limited to representatives of mining  
27 interests, state and local government, environmental groups, and  
28 private landowners. The state geologist will select the members of the  
29 committee. The department of natural resources must submit a report to  
30 the legislature containing the committee's findings by September 1,  
31 2006.

32 NEW SECTION. **Sec. 6.** The sum of five hundred thousand dollars, or  
33 as much thereof as may be necessary, is appropriated for the biennium  
34 ending June 30, 2007, from the surface mining reclamation account to the

1 department of natural resources for the purposes of surface mine  
2 reclamation.

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