

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6175

59th Legislature
2006 Regular Session

Passed by the Senate March 7, 2006
YEAS 47 NAYS 0

President of the Senate

Passed by the House March 4, 2006
YEAS 72 NAYS 24

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6175** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6175

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

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, 78.44.045, 78.44.087, and 42.56.270; adding new
5 sections 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 ((a)) an expansion of a permitted surface
11 mine, a new reclamation permit under RCW 78.44.081, or for combining
12 existing public or private reclamation permits, shall pay a
13 nonrefundable application fee to the department before being granted
14 ((a surface mining)) the requested permit or permit expansion. The
15 amount of the application fee shall be ((one)) two thousand five
16 hundred dollars.

17 (2) Permit holders submitting a revision to an application for an
18 existing reclamation plan that is not an expansion shall pay a
19 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)~~) in an
3 amount pursuant to this section. The annual permit fee shall be
4 payable to the department prior to the reclamation permit being issued
5 and on the (~~(first)~~) anniversary of the permit date (~~(and)~~) each year
6 thereafter.

7 (4)(a) Except as otherwise provided in this subsection, each public
8 or private permit holder must pay an annual fee under this section
9 based on the categories of aggregate or mineral mined or extracted
10 during the previous twelve months, as follows:

11 (i) Zero to fifty thousand tons: A fee of one thousand two hundred
12 fifty dollars;

13 (ii) More than fifty thousand tons to three hundred fifty thousand
14 tons: A fee of two thousand five hundred dollars;

15 (iii) More than three hundred fifty thousand tons: A fee of three
16 thousand five hundred dollars.

17 (b) Annual fees paid by a county for mines used exclusively for
18 public works projects and having less than seven acres of disturbed
19 area per mine shall not exceed one thousand dollars.

20 (c) Annual fees are waived for all mines used primarily for public
21 works projects if the mines are owned and primarily operated by
22 counties with 1993 populations of less than twenty thousand persons,
23 and if each mine has less than seven acres of disturbed area.

24 ~~((+3))~~ (5) Any production records, mineral assessments, and trade
25 secrets submitted by a permit holder, mine operator, or landowner to
26 the department are to be held as confidential and not released as part
27 of a public records request under chapter 42.56 RCW.

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

33 ~~((+4))~~ (7) All fees collected by the department shall be deposited
34 into the surface mining reclamation account created in RCW 78.44.045.

35 ~~((+5))~~ (8) If the department delegates enforcement
36 responsibilities to a county, city, or town, the department may
37 allocate funds collected under this section to the county, city, or
38 town.

1 ~~((6))~~ (9) Within sixty days after receipt of ~~((a—permit~~
2 ~~application))~~ an application for a new or expanded permit, the
3 department shall advise applicants of any information necessary to
4 successfully complete the application.

5 (10) In addition to other enforcement authority, the department may
6 refer matters to a collection agency licensed under chapter 19.16 RCW
7 when permit fees or fines are past due. The collection agency may
8 impose its own fees for collecting delinquent permit fees or fines.

9 **Sec. 2.** RCW 78.44.045 and 1993 c 518 s 10 are each amended to read
10 as follows:

11 (1) The surface mining reclamation account is created in the state
12 treasury. Annual mining fees, funds received by the department from
13 state, local, or federal agencies for research purposes, as well as
14 other mine-related funds and fines received by the department shall be
15 deposited into this account. Except as otherwise provided in this
16 section, the surface mine reclamation account may be used by the
17 department only to:

18 ~~((1))~~ (a) Administer its regulatory program pursuant to this
19 chapter;

20 ~~((2))~~ (b) Undertake research relating to surface mine regulation,
21 reclamation of surface mine lands, and related issues; and

22 ~~((3))~~ (c) Cover costs arising from appeals from determinations
23 made under this chapter.

24 (2) At the end of each fiscal biennium, any money collected from
25 fees charged under RCW 78.44.085 that was not used for the
26 administration and enforcement of surface mining regulation under this
27 chapter must be used by the department for surveying and mapping sand
28 and gravel sites in the state.

29 (3) Fines, interest, and other penalties collected by the
30 department under the provisions of this chapter shall be used to
31 reclaim surface mines abandoned prior to 1971.

32 **Sec. 3.** RCW 78.44.087 and 1997 c 186 s 1 are each amended to read
33 as follows:

34 (1) The department should ensure that a sufficient performance
35 security is available to reclaim each surface mine permitted under this
36 chapter. To ensure sufficient funds are available:

1 (a) The department shall not issue a reclamation permit, except to
2 public or governmental agencies, until the applicant has either
3 deposited with the department an acceptable performance security on
4 forms prescribed ((and furnished)) by the department that is deemed
5 adequate by the department to cover reclamation costs or has complied
6 with the blanket performance security option in section 4 of this act.
7 A public or governmental agency shall not be required to post
8 performance security.

9 (b) No person may create a disturbed area that meets or exceeds the
10 minimum threshold for a reclamation permit without first submitting an
11 adequate and acceptable performance security to the department and
12 complying with all requirements of this chapter.

13 ((This performance security may be)) The department may refuse
14 to accept any performance security that the department, for any reason,
15 deems to be inadequate to cover reclamation costs or is not in a form
16 that is acceptable to the department.

17 (3) Acceptable forms of performance security are:

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

21 (b) A cash deposit;

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

24 (d) An assignment of a savings account;

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

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

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

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

36 ((+4)) (5)(a) The department ((shall have the authority to
37 determine the amount of the performance security using a standardized
38 performance security formula developed by the department. The amount

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

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

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

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

34 ((+6)) (7) Liability under the performance security and the permit
35 holder's obligation to maintain the calculated performance security
36 amount shall be maintained until ((reclamation is completed according
37 to the approved reclamation plan to the satisfaction of the
38 department)) the surface mine is reclaimed, unless released as

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

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

28 ~~((+8))~~ (9) No other state agency or local government other than
29 the department shall require performance security for the purposes of
30 surface mine reclamation. However, nothing in this section prohibits
31 a state agency or local government from requiring a performance
32 security when the state agency or local government is acting in its
33 capacity as a landowner and contracting for extraction-related
34 activities on state or local government property.

35 (10) The department may enter into written agreements with federal
36 agencies in order to avoid redundant bonding of any surface ~~((mines~~
37 ~~straddling boundaries between federally controlled and other lands~~

1 within)) mine that is located on both federal and nonfederal lands in
2 Washington state.

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. 4. 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 prescribed in RCW 78.44.087, to an
22 amount not to exceed the sum of reclamation security calculated by the
23 department for the two surface mines with the largest performance
24 security obligations, for nonmetal and nonfuel surface mines that meet
25 the following conditions:

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

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

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

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

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

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

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

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

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

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

22 (3) The lien becomes effective when filed.

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

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

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

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

34 (2) Financial information supplied by or on behalf of a person,
35 firm, or corporation for the purpose of qualifying to submit a bid or

1 proposal for (a) a ferry system construction or repair contract as
2 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
3 or improvement as required by RCW 47.28.070;

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

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

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

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

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

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

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

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

35 (11) Proprietary data, trade secrets, or other information that
36 relates to: (a) A vendor's unique methods of conducting business; (b)
37 data unique to the product or services of the vendor; or (c)
38 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. 7. Section 6 of this act takes effect July 1,
32 2006.

33 NEW SECTION. Sec. 8. 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 appropriate committees of the
6 legislature containing the committee's findings by September 1, 2006.

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