

SENATE BILL REPORT

SB 6119

**AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES,
FEBRUARY 7, 1992**

Brief Description: Revising mining reclamation laws.

SPONSORS: Senators Amondson, Sutherland, L. Smith, Bauer, McCaslin, Metcalf, Saling and Barr

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 6119 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Barr, Owen, Sellar, and Snyder.

Minority Report: Do not pass.

Signed by Senator Sutherland.

Staff: Vic Moon (786-7469)

Hearing Dates: January 23, 1992; February 6, 1992; February 7, 1992

BACKGROUND:

There are about 1,750 surface mines in Washington. Of the 1,293 permits issued by the Department of Natural Resources, 893 mines are privately owned and about 400 mines are owned by the Department of Transportation or by local governments. The remainder of the mines not permitted are those that are exempt since they are smaller than three acres and are not required to have state surface mining reclamation permits.

Commodities produced at surface mines in Washington include round rock (624 mines), quarried rock (213 mines), clay (10 mines), dolomite (8 mines), silica (7 mines), diatomaceous earth (3 mines), coal (3 mines), base metals (2 mines), and other miscellaneous substances (23 mines). The federal Mining Act regulates the large Centralia and Black Diamond coal mines.

Sand and gravel surface mines, the most numerous in the state, are used for round rock aggregate in concrete, as drain rock, or as crushed rock. Crushed rock is used to produce roadbase or asphalt aggregate. Both types of aggregate function mainly to reduce the amount of cement and tar used in concrete and asphalt. Each Washington citizen uses an average of 10 cubic yards of sand and gravel and about one-half of a cubic yard of quarried rock per year. Revenues from Washington sand and gravel business are about \$150 million per year.

Western Washington is aggregate rich because of the sand and gravel materials deposited along the Cascade and Olympic foothills during the last ice age. The abundance of aggregate has resulted in low-cost public works projects and housing since cement is used extensively in both. However, these deposits are nearing depletion and other sources are either of poorer quality or further from the market. Eastern Washington relied primarily on reliance for sand river deposits and, where these do not exist, expensive quarried rock to meet its gravel needs.

Since the surface mining law was passed in 1971, 753 mines have been reclaimed to the standards set forth in the statute and by rule. Most of this reclamation would not meet present standards because the reclaimed slopes have rectilinear appearances and revegetation efforts have been inadequate. The Department of Natural Resources has improved techniques and has developed methods of mine restoration and operation impact control. The present program of the department will need several more years to be thorough and effective. The department's program presently costs a total of \$480,000 per year with annual fees set at \$250 per site.

During 1989 and 1990 the courts determined that direct regulation of mines by counties and municipalities is illegal (Fjetland v. Pierce County, Musa v. Clark County and Ron Baker v. Snohomish County). Local jurisdictions regulate mines through the State Environmental Policy Act (SEPA) by conditioning their SEPA declarations with site specific requirements. This is not a direct method to control operations, and with the court's interpretation of state law, present law needs to be changed to allow local government to regulate surface mine operations such as noise, smoke and traffic.

SUMMARY:

The Legislature recognizes that the extraction of minerals is an essential activity which may produce some environmental damage and that comprehensive regulation of mining through reclamation is necessary to prevent or mitigate environmental problems. The intent of the act is to balance environmental regulation with the production and conservation of minerals. The Legislature requires restoration at the earliest opportunity following excavation.

The purpose of the chapter is to: 1) require surface mined lands restoration; 2) allow for local regulation of mining operations; 3) provide for statewide consistency in the regulation of surface mines; 4) apportion regulatory authority between state and local governments; 5) ensure the right of local government to regulate land use and operation; and 6) ensure that reclamation plans are consistent with local land uses.

The Department of Natural Resources is charged with the administration and enforcement of reclamation, and local government may regulate surface mining operations and mine

siting. The department will have the exclusive authority to regulate surface mining reclamation.

The 1992 act which is cumulative and nonexclusive will not alter or preempt any state fisheries, water pollution or wildlife laws or the laws relating to noise, air quality, shoreline management, SEPA, growth management or other relevant state laws. A reclamation account is established in the state treasury for the deposit of annual fees, funds received by the department from federal and state agencies, and other mine-related funds and fines. The department will administer the surface mining reclamation account which may be used for administration, undertaking research, covering the costs arising from administrative appeals, and providing for the development of incentive and award programs. The account is subject to the Budget and Accounting Act, but no appropriation is required for expenditures.

Reclamation plans will include a description of the proposed mining and reclamation scheme, a statement concerning proposed subsequent use of the land after reclamation that is consistent with local land use designation. A reclamation permit is granted for the period required to deplete essentially all of the minerals identified in the permit is valid until the reclamation is complete unless the permit is cancelled by the department. Reclamation plans shall be updated at least once every ten years. The reclamation plan will include a schedule for progressive reclamation of each segment and will require a hydrogeologic evaluation where mining is on a flood plain or in a river or stream channel.

In a critical aquifer recharged area special protection may be required. Reclamation setbacks, screening, conservation of top soil, interim reclamation planning, revegetation and post-mining erosion control, drainage control and provisions for slope stability and disposal of mine wastes will be part of the plan. An estimate of groundwater depth and a description of boundaries and the wetlands adjacent to the surface mining activity are required. The proposed surface mine must be approved under local zoning and land use regulation.

Reclamation permits will not be issued until SEPA review of the entire mining proposal is finished.

The annual reclamation permit fee for both public and private mines is based on the disturbed area and is established by rule.

The Department of Natural Resources shall not issue a reclamation permit until the applicant has deposited an acceptable performance security. The security will be maintained until reclamation is completed according to the reclamation plan. The department may use such funds to affect reclamation in the event that the permit holder fails to comply with the reclamation plan.

Cities and counties may regulate mining operations. Local zoning and land use ordinances will provide that surface

mining operations are permitted uses within mineral resource lands as designated by the Growth Management Act of 1990 and 1991. A county may adopt performance-based regulations by general ordinance. The ordinances must provide that permitted mining operations comply with all applicable state and federal standards such as fisheries, wildlife, water pollution, noise, and air quality and stormwater statutes. Operations must also comply with the federal stormwater and national pollutant discharge elimination system regulations of the Department of Ecology and with federal mine safety and health rules.

All county ordinances must be performance based and applicable to other land use activities having similar impacts in similar situations. Extractions and other standards authorized by state law and local ordinance shall be proportional to the direct operational impact sought to be mitigated and shall be based upon written findings of fact. County ordinances should consider control of blast-flyrock, fencing, traffic control, noise, air quality, light emission, and other public safety restrictions.

A surface mining model ordinance advisory committee will develop model ordinances for counties and cities. The committee is temporary and will also consider various mechanisms to fund the closure of mines.

Reclamation permits may be transferred to a subsequent permit holder as long as the subsequent permit holder complies with all of the rules and regulations established by the act. Reclamation plans may be modified jointly by the department and the permit holder; modified plans will be reviewed by the department under SEPA. A report to the department concerning mining and reclamation activities is required on an annual basis, and the department may order a permit area inspected at any time. The department may also issue emergency notice or orders to rectify deficiencies, to recognize deficiencies, or to cease mining.

All fines, interest and penalties are deposited in the surface reclamation account. Fines levied by counties, cities and towns will go to that local government entity. The department may refuse to issue reclamation permits if it determines during the SEPA process that the impact of a proposed mine cannot be mitigated.

Appeals from the actions of the department under this act shall be provided through the provisions of the Administrative Procedure Act (APA) and shall be considered an adjudicative proceeding.

A reclamation awards program is established, and the department will designate a percent of the state annual fees as funding for the awards. A reclamation service is established to provide no-cost consulting within the Division of Geology and Earth Resources to assist miners, permit holders, local government and the public on technical matters relating to mine regulation, operation and reclamation. The

department will not be liable for any negligent advice. The act will take effect July 1, 1992.

EFFECT OF PROPOSED SUBSTITUTE:

In addition to technical changes, authority is given to local government to require existing surface mines to meet road plan and screening requirements in residential areas. Underground mines and surface mines extracting precious and industrial minerals are exempt from the act.

Appropriation: none

Revenue: yes

Fiscal Note: available

Effective Date: July 1, 1992

TESTIMONY FOR:

The bill is needed to give DNR authority to regulate surface mine reclamation more carefully and to allow local government to control operations.

TESTIMONY AGAINST:

The bill covers issues which are already covered by state and federal law.

TESTIFIED: PRO: Stan Biles, Dept. of Natural Resources; Steve Hasson, Spokane County; Mark Triplett, Fred Hobbs, WA Concrete Assn.; Dennis Ingham, Dept. of Transportation; Ronald Summers, Long Star Concrete; Dave Sturdevant, Clark County; Bruce Chatin, WA Concrete Assn.; Bob Gustavson, WA Forest Protection Assn.; Ginny Stern, WA Dept. of Health; CON: Pam Barrett, NW Mining Assn.