

SENATE BILL REPORT

E2SSB 5502

AS PASSED SENATE, APRIL 14, 1993

Brief Description: Revising mining reclamation laws.

SPONSORS: Senate Committee on Ways & Means (originally sponsored by Senators Sutherland and Prentice)

SENATE COMMITTEE ON NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5502 be substituted therefor, and the substitute bill do pass.

Signed by Senators Owen, Chairman; Hargrove, Vice Chairman; Amondson, Erwin, Oke, Sellar, L. Smith, and Snyder.

Minority Report: Do not pass substitute.

Signed by Senators Franklin, Haugen, and Spanel.

Staff: Vic Moon (786-7469)

Hearing Dates: February 8, 1993; March 2, 1993

SENATE WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5502 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chairman; Anderson, Bauer, Gaspard, Hargrove, Jesernig, Moyer, Owen, Pelz, Roach, Sutherland, Talmadge, and West.

Staff: Michael Groesch (786-7434)

Hearing Dates: March 18, 1993; March 22, 1993

BACKGROUND:

There are about 1,750 surface mines in Washington. Of the 1,293 state surface mining reclamation 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.

Sand and gravel surface mines, the most numerous type of mine in the state, are used as 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. 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 relies primarily on 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 established 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. DNR's present program will need several more years to be thorough and effective. This 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. This case has since been addressed by the state Court of Appeals in Baker v. Snohomish County in 1992. In this higher court case, the counties were given full authority and the erroneous Attorney General's Opinion written in 1970 was specifically rejected by the court.) 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 purpose of the chapter is to: 1) require surface mined lands restoration; 2) provide for statewide consistency in the regulation of surface mines; 3) apportion regulatory authority between state and local governments; 4) ensure that reclamation plans are consistent with local land uses; and 5) give local governments specific regulatory powers.

The Department of Natural Resources (DNR) is charged with the administration and enforcement of reclamation, and local government may regulate surface mining operations and mine siting pursuant to the provisions in this act. DNR will have exclusive authority to regulate surface mining reclamation, but may delegate enforcement to local government through contracts.

The 1993 act is cumulative and nonexclusive and 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, drinking water or other relevant state laws.

After July 1, 1993, reclamation permits issued by DNR are required for all surface mines. Separate permits are required for noncontiguous sites. Operating permits granted between January 1, 1971, and June 30, 1993, will be considered reclamation permits if, within five years, they meet the protection, mitigation, and reclamation goals of this act. A reclamation permit is granted for the period required to deplete essentially all of the minerals identified in the permit. It is valid until the reclamation is complete unless it is cancelled by the department.

Before reclamation permits are granted, applicants must provide reclamation plans to DNR and to the local governments where the mines will be. DNR will solicit comments from affected local governments before approving reclamation plans, but DNR has sole authority to approve plan. Reclamation plans must include a description of the proposed mining and reclamation scheme and a statement addressing proposed subsequent use of the land after reclamation that is consistent with local land use designation. 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. Requirements for reclamation are established and procedures are created for reclamation plan modification.

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.

Reclamation plans may be modified jointly by DNR and the permit holder; modified plans will be reviewed by the department under SEPA.

DNR may refuse to issue reclamation permits if it determines during the SEPA process that the impact of a proposed mine cannot be mitigated.

DNR 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 effect reclamation in the event that the permit holder fails to comply with the reclamation plan.

Reclamation permits may be transferred as long as the subsequent permit holder complies with all of the rules and regulations established by the act.

An annual report to the department concerning mining and reclamation activities is required, 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.

A surface mining 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. DNR administers this account which may be used for administration, research, administrative appeals, and incentive and award programs.

All reclamation permit applicants must pay \$650. After June 30, 1993, permit holders must pay an annual renewal fee of \$650. Annual fees paid by a county for small mines used only for public works projects are capped at \$2,000 a year and are required only on the sites from which the county intends to mine in the next calendar year. All fees go into the surface mining account.

After July 1, 1995, DNR may modify annual fees by rule if the total amount of fees is reasonably related to the administration costs of this chapter. After July 1, 1995, DNR may lower annual fees for small surface mines used primarily for public service. In any case, the annual fee is capped at \$5,000.

A person appealing any DNR decision must still pay the annual fee.

If DNR delegates enforcement responsibilities to local governments, DNR may allocate money from these fees to those local governments.

Counties are granted the authority to regulate operations of a surface mine. If a county has classified mineral lands and mineral resource lands of long-term commercial significance exist, a county, city or town will designate in their comprehensive plans enough of these mineral resource lands to meet a 30-year, county-wide need. "Long-term commercial significance" is defined. After this designation, surface mining operations will be an allowed use in local development regulations, subject to permitting processes in this section. Counties, cities, and towns will designate their mineral deposits close to where the minerals are likely to be used. Through their comprehensive plans and development regulations, counties, cities and towns will discourage the siting of incompatible uses next to mineral resource industries, deposits, and holdings. Proposed surface mines must be approved under local zoning and land use regulation.

Counties, cities, and towns may regulate surface mining operations only by ordinance and only within the terms of this subsection. Local ordinances regarding a mine's operations can only address traffic, light and noise emissions, visual screening, and other significant or substantial mining impacts not subject to regulation under other state or federal laws

including under water allocation, use, or control laws and fisheries and wildlife laws. Local ordinances must also be performance-based, objective, related to limiting surface mining impacts, and reasonably capable of being achieved given existing and available technology. Finally, local governments must limit application and monitoring fees to only amounts necessary to carry out the regulation of surface mines under this act.

Local governments will implement their ordinances through an operating plan review and approval process, which must include submission of sufficient information to allow the decision maker to review the plan for compliance with local standards; provide for administrative approval subject to appeal or for initial consideration via public hearing; and produce written findings of fact.

Local ordinances may be applied to existing mines only if the local ordinance: (1) applies the section regarding traffic regulation only to haul routes; (2) exempts existing mines from any operating plan review and approval process; (3) provides reasonable time for compliance; and (4) includes a procedure to obtain a variance to allow for continued nonconforming operations if strict adherence to a local ordinance would be economically or operationally impractical.

Counties, cities, and towns are not precluded from exercising authority delegated to them by state agencies, nor are counties, cities, and towns precluded from complying with state law when required as a regulated entity.

A temporary surface mining model ordinance advisory committee is established and directed to develop model ordinances for counties, cities, and towns.

The DNR can regulate water control only as necessary to effect reclamation and to protect ground and surface waters after reclamation is complete. DNR's regulations must be consistent with existing water control laws. DNR will solicit comments from other agencies with expertise in water control laws.

For surface mining projects, other water controls will be according to existing state laws as follows: control of surface mine water will be pursuant to state water pollution laws. Water availability, hydraulic continuity, allocation, and use will be controlled under the state water code, state public ground water law, and the Water Resource Act of 1971. Regulation of drinking water will be pursuant to existing laws under Titles 43 and 70. Protection of fisheries and wildlife will be under Titles 75 and 77, respectively, as well as under state water code, public ground water law, state water pollution control law, the Water Resource Act of 1971, federal storm water regulations, and/or national pollutant discharge elimination system regulations. Counties, cities, or towns may ask the Department of Ecology to consult with affected individuals and incorporate additional site-specific requirements into individual surface mine national pollutant discharge elimination systems permits.

Counties, cities, and towns may pass ordinances to regulate the impacts of water if these impacts are significant or substantial and are not subject to regulation under other state or federal laws. Counties, cities, and towns may also regulate the impacts of water if regulatory or enforcement authority has been expressly delegated by a state agency.

DNR may declare a mine to be abandoned if there has been no mining activity for 180 days. There are some exceptions to the 180 day limit, such as in case of labor disputes or reduced demand for minerals.

Appeals from the actions of the department under this act will follow the provisions of the Administrative Procedure Act (APA) and are considered adjudicative proceedings. Only a person aggrieved under the meaning of the APA will have standing to appeal.

A reclamation awards program is established, and the department designates a percent of the state annual fees to fund these awards. A reclamation service to provide no-cost consulting is established 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.

Appropriation: none

Revenue: yes

Fiscal Note: available

Effective Date: July 1, 1993

TESTIMONY FOR (Natural Resources):

The state needs better surface mining regulation for reclamation of surface mined lands and local government needs authority to control operations to limit the impacts of surface mining on surrounding land owners.

TESTIMONY AGAINST (Natural Resources):

The proposal is too restrictive in some areas and in other areas does not give local government enough controls.

TESTIFIED (Natural Resources): PRO: Richard Woodridge, Friends of the East Fork; Ruth Shields, Lois Cheek, Nelda Prouty, Thurston County Citizens Planning Assn.; Don Lee, Thurston County; Dan Miller, Friends of the East Fork; Tom Hougan; Pat McElroy, Dept. of Natural Resources, Chris Parsons, WA Coalition for Responsible Mining; Lois Miller, Clark County; John McEvin, Clark County Aggregate Alliance; Darlene Madenwald, WA Environmental Council; Paul Parker, WA Assn. of Cities; Rich Lowry, Clark County Prosecutors Office; CON: Mark Triplett, WA Aggregate Concrete Assn.; Reece Hastings, NW Mining Assn.; Leesa Starckenberg, WA Concrete Aggregate Assn.

TESTIMONY FOR (Ways & Means):

The additional funding provided by the bill is necessary to meet surface mining reclamation needs of the state. Local government flexibility and funding is ensured since there is no limit on local government to set fees for their services.

TESTIMONY AGAINST (Ways & Means):

Costs will increase to local governments because the bill will expand mandates of the Growth Management Act; SEPA reviews, surveys and sampling will be required in advance of designation of mineral resource lands. Costs will increase to the state because the bill restricts state delegation of regulatory authority regarding drinking water and water pollution to local governments.

TESTIFIED (Ways & Means): Pat McElroy, Department of Natural Resources (pro); Chris Parsons, Washington Coalition for Responsible Mining (con); David Monthie, Department of Health; Jim Krull, Department of Ecology (con); Jeff Parsons, National Audubon Society (con); Mark Triplett, Washington Concrete and Aggregate Association (pro); Ron Main, King County (con); Randy Sandin, King County (con); Sheldon Summers, Cowlitz County (con)

HOUSE AMENDMENT(S):

The exemption for surface mining of minerals on federal lands is deleted. County permit fees for small mines for public works are reduced from \$2,000 to \$1,000. The 30 year growth management county planning requirement is changed to 20 years. County mining approvals shall be limited to 50 years.