

SENATE BILL REPORT

SB 5502

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 22, 1993

Brief Description: Revising mining reclamation laws.

SPONSORS: 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 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 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. 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 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. This case has since been addressed by the appellate court 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 authority of local government to regulate surface mining operations is affirmed.

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 1993 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 administers 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 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 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.

Requirements for reclamation are established and procedures are created for reclamation plan modification.

A surface mining model ordinance advisory committee is established and directed to develop model ordinances for counties and cities. The committee is temporary and is also to 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. 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 are provided through the provisions of the Administrative Procedure Act (APA) and are considered an adjudicative proceeding. A \$500 fee is required to file an appeal, which will be refunded if the appeal is successful.

A reclamation awards program is established, and the department designates 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, 1993.

EFFECT OF PROPOSED SUBSTITUTE:

In addition to making numerous technical changes, two areas of the original bill are changed. First, mining operations will be an "allowed" use under local government development regulations rather than a "permitted" use. Second, the authority of counties, cities and towns to regulate surface mining operations is limited to the control over traffic, light emissions, visual screening, noise emission and other significant or substantial mining impacts that are not covered by regulation embodied in any other state or federal law.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

The surfacing mining account is changed from a nonappropriated account to an appropriated account.

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.; Lisa Strackenberg, 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)