

2 SB 5434 - H AMD 581 ADOPTED 4-15-97

3 By Representative Buck

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature recognizes that the
8 extraction of minerals by surface mining is an essential activity
9 making an important contribution to the economic well-being of the
10 state and the nation. The citizens of the state are rapidly running
11 out of approved or designated sites at which to conduct these
12 activities. Therefore, the available sources of these minerals are
13 nearly exhausted.

14 The state has enacted several laws in recent years directing local
15 governments to make land use decisions for appropriate uses of land
16 through designation in advance of or during the comprehensive planning
17 process and then to limit the specific approval process to mitigating
18 specific impacts of the use or uses allowed by the designation. The
19 current planning and regulatory environment makes economically viable
20 permits unobtainable for the vast majority of the sites where the
21 minerals are located and needed.

22 While it is not possible to extract minerals without producing some
23 environmental impacts, the current structure of regulation of mining
24 operations is doing much more than preventing or mitigating conditions
25 that would be detrimental to the environment and property rights of the
26 citizens of the state. In the current regulatory environment,
27 economically viable permits simply cannot be obtained for the vast
28 majority of the sites where the minerals are located.

29 The cost of transportation of minerals for any significant distance
30 can have a substantial effect on the costs to the taxpayers of the
31 state. Surface mining must take place in diverse areas where the
32 geologic, topographic, climatic, biologic, and social conditions are
33 significantly different, and reclamation specifications must vary
34 accordingly. But surface, mining is a finite use of the land and
35 another beneficial use must follow through reclamation.

1 Therefore, the legislature finds that designation, production, and
2 conservation of adequate sources of minerals and a balance between
3 appropriate environmental protection and the appropriate regulation of
4 production operations and conservation of minerals is in the best
5 interests of the citizens of the state.

6 **Sec. 2.** RCW 78.44.011 and 1993 c 518 s 1 are each amended to read
7 as follows:

8 The legislature recognizes that the extraction of minerals through
9 surface mining has historically included regulatory involvement by both
10 state and local governments.

11 It is the intent of the legislature to clarify that surface mining
12 is an appropriate land use, subject to reclamation authority exercised
13 by the department of natural resources and land use designation and
14 ((operation)) regulatory authority by counties, cities, and towns. The
15 authority for any cities, counties, or towns to regulate operations is
16 derived from this chapter and exercised only as described in RCW
17 78.44.040. The question of regulatory overlap, the scope of impacts to
18 be regulated by local ordinances, development of model ordinances, the
19 role of each state agency, and reclamation of abandoned mines, shall be
20 the subjects of further study by the house of representatives and
21 senate natural resources committees. The results of these studies must
22 be reported to the legislature prior to the 1998 legislative session.
23 Nothing in this section shall alter or preempt any local government's
24 authority under chapter 43.21C RCW, the state environmental policy act.

25 **Sec. 3.** RCW 78.44.020 and 1993 c 518 s 3 are each amended to read
26 as follows:

27 The purposes of this chapter are to:

28 (1) Provide that the usefulness, productivity, and scenic values of
29 all lands and waters involved in surface mining within the state will
30 receive the greatest practical degree of protection and reclamation at
31 the earliest opportunity following completion of surface mining;

32 (2) Provide for the greatest practical degree of state-wide
33 consistency in the regulation of surface mines;

34 (3) Apportion regulatory authority between state and local
35 governments in order to minimize redundant regulation of mining;

36 (4) Ensure that reclamation is consistent with local land use
37 plans; and

1 (5) Ensure the power of (~~local government~~) cities, counties, and
2 towns to designate sites, and regulate land use and operations
3 (~~pursuant to section 16 of this act~~) as provided in this chapter.

4 **Sec. 4.** RCW 78.44.040 and 1993 c 518 s 6 are each amended to read
5 as follows:

6 (1) The department of natural resources is charged with the
7 administration of reclamation under this chapter. In order to
8 implement and enforce this chapter, the department, under the
9 administrative procedure act (chapter 34.05 RCW), may from time to time
10 adopt those rules necessary to carry out the purposes of this chapter.

11 (2)(a) Once designated under section 6 of this act, counties,
12 cities, and towns may regulate surface mining operations only by
13 ordinance and only in accordance with the requirements of this chapter.
14 Ordinances required to implement this chapter must be adopted by July
15 1, 1998.

16 (b) Local surface mining operating standards shall:

17 (i) Be limited to those standards that address mitigation of
18 impacts of operations;

19 (ii) Be performance-based, objective standards that:

20 (A) Are directly and proportionately related to limiting surface
21 mining impacts;

22 (B) Are reasonable and generally capable of being achieved;

23 (C) Take into account existing and available technologies; and

24 (D) May be met by any lawful means selected by the applicant or
25 operator that, in the judgment of the county, city, or town, achieve
26 compliance with the standard. However, if compliance with the
27 standards described in this section cannot be met by the applicant,
28 after that applicant has had reasonable opportunity to propose
29 mitigation measures that would meet the standards by all other means,
30 the county, city, or town may impose limitations on the hours of
31 operation of that portion of the operation creating the impact that
32 cannot be mitigated any other way;

33 (iii) Limit application and monitoring fees to the amount necessary
34 to pay the costs of administering, processing, monitoring, and
35 enforcing the regulation of surface mining in accordance with this
36 section;

1 (iv) Except as otherwise provided in this section, implement the
2 ordinance through an operating plan review and approval process. Such
3 approval process shall:

4 (A) Require submittal of sufficient, complete, and accurate
5 information, as specified by the local ordinance, to allow the decision
6 maker to review the plan for compliance with state, federal, and local
7 standards;

8 (B) At the option of the county, city, or town, provide for
9 administrative approval subject to appeal or for initial consideration
10 through a public hearing process; and

11 (C) Require that project-specific conditions or restrictions be
12 based upon written findings of facts demonstrating their need to
13 achieve compliance with local standards;

14 (v) Subject to subsection (3) of this section, provide that
15 approvals issued will be valid for fifty years or until the resource is
16 exhausted, whichever is less.

17 (3) Operating regulations and amendments thereto adopted pursuant
18 to this section may be applied to lawfully preexisting mining
19 operations only if the local ordinance:

20 (a) Limits application of this section relating to traffic to the
21 designation of approved haul routes;

22 (b) Provides for an expedited review process for operation plans
23 submitted pursuant to this chapter;

24 (c) Provides reasonable time periods for compliance with new or
25 amended local operating standards that in no event may be less than one
26 year; and

27 (d) Includes a variance procedure to allow continuation of existing
28 operations for a nonconforming surface mining operation where strict
29 adherence to a local operating standard would be economically or
30 operationally impractical due to conditions relating to site
31 configuration, topography, or the nature of historic operations.

32 (4) Nothing in this section precludes a county, city, or town from
33 exercising the express authority delegated to it by a state agency
34 under state law, or from complying with state law when required as a
35 regulated entity.

36 (5) Nothing in this section shall alter or preempt any local
37 government's authority under chapter 43.21C RCW, the state
38 environmental policy act.

1 **Sec. 5.** RCW 78.44.050 and 1993 c 518 s 7 are each amended to read
2 as follows:

3 The department shall have the exclusive authority to regulate
4 surface mine reclamation (~~((except that, by contractual agreement, the~~
5 ~~department may delegate some or all of its enforcement authority to a~~
6 ~~county, city, or town))~~). No county, city, or town may require for its
7 review or approval a separate reclamation plan or application. The
8 department may, however, delegate some or all of its enforcement
9 authority by contractual agreement to a county, city, or town that
10 employs personnel who are, in the opinion of the department, qualified
11 to enforce plans approved by the department. All counties, cities, or
12 towns shall have the authority to zone surface mines and adopt
13 ordinances regulating operations ((pursuant to section 16 of this act))
14 as provided in this chapter, except that county, city, or town
15 operations ordinances may be preempted by the department during the
16 emergencies outlined in RCW 78.44.200 and related rules.

17 This chapter shall not alter or preempt any provisions of the state
18 fisheries laws (Title 75 RCW), the state water allocation and use laws
19 (chapters 90.03 and 90.44 RCW), the state water pollution control laws
20 (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state
21 noise laws or air quality laws (Title 70 RCW), shoreline management
22 (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C
23 RCW), state growth management (chapter 36.70A RCW), state drinking
24 water laws (chapters 43.20 and 70.119A RCW), or any other state
25 statutes.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A RCW
27 to read as follows:

28 (1)(a) Where the county has classified mineral lands pursuant to
29 RCW 36.70A.050 and mineral resource lands of long-term commercial
30 significance exist, a county shall designate sufficient mineral
31 resource lands in the comprehensive plans to meet the projected twenty-
32 year, county-wide need. Once designated, mineral resource uses,
33 including operations as defined in RCW 78.44.031, shall be established
34 as an allowed use in local development regulations.

35 (b) The county shall designate mineral resource deposits, both
36 active and inactive, in economically viable proximity to locations
37 where the deposits are likely to be used.

1 (c) This section has no applicability to metals mining and milling
2 operations as defined in RCW 78.56.020.

3 (2) Nothing in this section precludes any unit of government from
4 accepting the lowest responsible bid for purchase of mineral materials,
5 regardless of source.

6 (3) Through its comprehensive plan and development regulations, as
7 defined in RCW 36.70A.030, a county, city, or town shall discourage the
8 siting of new applications of incompatible uses adjacent to mineral
9 resource industries, deposits, and holdings.

10 (4) Any additions or amendments to comprehensive plans or
11 development regulations required by this section may be adopted during
12 the normal course of adopting or amending the comprehensive plan or
13 development regulations.

14 Reasonable notice of additions or amendments to comprehensive plans
15 or development regulations shall be given to property owners and other
16 affected and interested individuals. The county shall use either an
17 existing reasonable notice provision already employed by the county or
18 a new reasonable notice provision, including any of the following:

19 (a) Notifying owners of real property, as shown by the records of
20 the county assessor, located within three hundred feet of the
21 boundaries of the proposed designation;

22 (b) Publishing notice in a newspaper of general circulation in the
23 county, city, or general area where the mineral resource deposits are
24 located;

25 (c) Notifying public or private groups with known interest in the
26 proposed mineral resource designation; or

27 (d) Placing notices in appropriate regional, neighborhood, or trade
28 journals.

29 (5) For the purposes of this section:

30 (a) "Long-term commercial significance" includes the mineral
31 composition of the land for long-term economically viable commercial
32 production, in consideration with the mineral resource land's proximity
33 to population areas, product markets, and the possibility of more
34 intense uses of the land.

35 (b) "Allowed use" means the use or uses specified by local
36 development regulations as appropriate within those areas designated
37 through the advance or comprehensive planning process. Once
38 designated, a proposed allowed use shall be reviewed for project
39 specific impacts and may be conditioned to mitigate significant adverse

1 impacts within the context of site plan approval, but such review shall
2 not revisit the question of land use.

3 **Sec. 7.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
4 to read as follows:

5 (1) Each county that is required or chooses to plan under RCW
6 36.70A.040, and each city within such county, shall adopt development
7 regulations on or before September 1, 1991, to assure the conservation
8 of agricultural, forest, and mineral resource lands designated under
9 RCW 36.70A.170. Regulations adopted under this subsection may not
10 prohibit uses legally existing on any parcel prior to their adoption
11 and shall remain in effect until the county or city adopts development
12 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
13 that the use of lands adjacent to agricultural, forest, or mineral
14 resource lands shall not interfere with the continued use, in the
15 accustomed manner and in accordance with best management practices, of
16 these designated lands for the production of food, agricultural
17 products, or timber, or for the extraction of minerals. Counties and
18 cities shall require that all plats, short plats, development permits,
19 and building permits issued for development activities on, or within
20 three hundred feet of, lands designated as agricultural lands, forest
21 lands, or mineral resource lands, contain a notice that the subject
22 property is within or near designated agricultural lands, forest lands,
23 or mineral resource lands on which a variety of commercial activities
24 may occur that are not compatible with residential development for
25 certain periods of limited duration.

26 (2) Each county and city shall adopt development regulations that
27 protect critical areas that are required to be designated under RCW
28 36.70A.170. For counties and cities that are required or choose to
29 plan under RCW 36.70A.040, such development regulations shall be
30 adopted on or before September 1, 1991. For the remainder of the
31 counties and cities, such development regulations shall be adopted on
32 or before March 1, 1992.

33 (3) Such counties and cities shall review these designations and
34 development regulations when adopting their comprehensive plans under
35 RCW 36.70A.040 and implementing development regulations under RCW
36 36.70A.120 and may alter such designations and development regulations
37 to insure consistency.

1 (4) The development regulations adopted by such counties and cities
2 regarding surface mining operations under RCW 78.44.040 shall not be
3 inconsistent with rules adopted by the department of natural resources.

4 (5) Forest land and agricultural land located within urban growth
5 areas shall not be designated by a county or city as forest land or
6 agricultural land of long-term commercial significance under RCW
7 36.70A.170 unless the city or county has enacted a program authorizing
8 transfer or purchase of development rights."

9 Correct the title.

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