

HOUSE BILL REPORT

HB 1469

As Reported By House Committee On:
Natural Resources

Title: An act relating to surface mining.

Brief Description: Clarifying the authority to regulate surface mining.

Sponsors: Representatives Buck, Chandler, Grant, Sump, Sheldon, Hatfield, Delvin and Pennington.

Brief History:

Committee Activity:

Natural Resources: 2/18/97, 2/28/97 [DPS].

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Buck, Chairman; Sump, Vice Chairman; Alexander; Anderson; Chandler; Hatfield; Pennington and Sheldon.

Minority Report: Do not pass. Signed by 2 members: Representatives Regala, Ranking Minority Member; and Butler, Assistant Ranking Minority Member.

Staff: Kimberly Klaiber (786-7156).

Background:

Surface Mining. Counties, cities, and towns regulate local surface mining operations through zoning decisions and other local ordinances. "Mining operations" are all mine-related activities (other than reclamation), including activities that affect:

- noise generation;
- air quality;
- surface and ground water quality, quantity and flow;
- glare;
- pollution;
- traffic safety;
- ground vibrations;

- and significant or substantial impacts commonly regulated under land use permits or other local government permits, local ordinances, or other state laws.

The state's surface mining reclamation program is administered by the Department of Natural Resources (DNR), except where the DNR delegates some or all of its enforcement authority to a county, city or town. "Reclamation" means rehabilitation for future use of areas that have been disturbed by surface mining. The basic objective of reclamation is to reestablish the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

Growth Management Act. The Growth Management Act requires counties, cities, and towns that plan under the act, where appropriate, to designate mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals.

After designating the mineral resource lands, the county, city, or town must adopt development regulations that conserve the designated mineral resource lands. "Minerals" include gravel, sand, and valuable metallic substances.

Summary of Substitute Bill: New statutory language defines the role that counties, cities, and towns may play in regulating surface mining operations. The Legislature finds that surface mining is economically vital and that obtaining necessary permits for mining is often cost prohibitive. The chapter is not intended to apply to metals mining or milling operations.

Local Government Regulation of Surface Mining Operations. Local governments may regulate specific elements of surface mining operations only by ordinance and in accordance with certain requirements and limitations. Local governments may only regulate surface mining operations that address mitigation of the following effects:

- traffic;
- light emission;
- visual screening;
- noise emission; and
- other significant or substantial mining impacts not regulated by other state or federal laws or regulations.

Local governments must use objective, performance-based mining operating standards. A local ordinance is implemented through an operating plan review and approval process. Local governments must limit application and monitoring fees to the amount necessary to pay for administering, processing, monitoring, and enforcing surface mining regulation. Approvals issued must remain valid for 50 years, or until the mineral resource is exhausted, whichever occurs earlier. An expedited review

process for operation plans submitted under this chapter is provided. The DNR does not take over the operations that are not regulated by local governments.

Existing Mining Operations. Ordinances and amendments adopted according to these provisions only apply to existing mining operations if (1) a traffic ordinance relates only to the designation of approved haul routes; (2) a reasonable time period is provided for compliance with new or amended local operating standards; and (3) a variance procedure is included to allow continuation of existing mining operations where strict adherence to a standard would be economically or operationally impractical. The local ordinance must also exempt preexisting operations from any operating plan review and approval process. Local government may not require approval of a separate reclamation plan or application.

Reclamation. The DNR has exclusive authority to regulate surface mine reclamation, and all counties, cities, or towns have the authority to zone surface mines and adopt ordinances regulating those operations. The DNR may delegate some or all enforcement authority to a county, city, or town.

Growth Management Act. The Growth Management Act is amended to provide that any development regulations relating to surface mining operations cannot be inconsistent with rules adopted by the DNR.

Substitute Bill Compared to Original Bill: Clarifies authority of local government and the DNR with respect to mining operations, regulation, and reclamation plans. Removes the provision that prevented the DNR from delegating its enforcement authority. Removes the provision that allowed the DNR to administer operations not regulated by local government. Mining operations approvals will be issued for 50 years or until the mineral resource is exhausted, whichever occurs earlier. Adds provision for an expedited review for mining operation plans.

Appropriation: None.

Fiscal Note: Requested on February 12, 1997.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Regulation by local government should be to a finite degree. Preexisting operations should be allowed. Conditions of operations should be updated, but maybe the hours of operation should not be included. Courts are split on local government authority to regulate operations. The bill is a good compromise between jobs and environmental protection.

Testimony Against: Inconsistent and unnecessary provisions in the bill could cause problems. Some other laws may be trumped by the wording in this bill. It is unwise to draw too bright a line to prevent counties from undertaking certain actions in emergencies. Counties would be locked out except to exercise their police powers.

Testified: Mark Triplett, Washington Aggregate & Concrete Association; Alan Darr, International Union of Operating Engineers; Robert Dilger, Construction and Trades Council (all in favor); Paul Parker, Washington State Association of Counties; Don Leak, Thurston County; Art Stearns, Department of Natural Resources; Chuck Williams, Clark County; Mike Alberg, Klickitat County Planning Commission; Dan Maughan, Saddle Mountain Minerals (all opposed); and Scott Merriman, Washington Environmental Council (concerns).