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**SUBSTITUTE HOUSE BILL 1469**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Natural Resources (originally sponsored by Representatives Buck, Chandler, Grant, Sump, Sheldon, Hatfield, Delvin and Pennington)

Read first time 03/04/97.

1 AN ACT Relating to surface mining; amending RCW 78.44.011,  
2 78.44.020, 78.44.040, 78.44.050, and 36.70A.060; and creating a new  
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

11 While it is not possible to extract minerals without producing some  
12 environmental impacts, the current structure of regulation of mining  
13 operations is doing much more than preventing or mitigating conditions  
14 that would be detrimental to the environment and property rights of the  
15 citizens of the state. In the current regulatory environment  
16 economically viable permits simply cannot be obtained for the vast  
17 majority of the sites where the minerals are located.

18 Surface mining must take place in diverse areas where the geologic,  
19 topographic, climatic, biologic, and social conditions are

1 significantly different, and reclamation specifications must vary  
2 accordingly. But surface mining is a finite use of the land and  
3 another beneficial use must follow through reclamation.

4 Therefore, the legislature finds that a balance between appropriate  
5 environmental protection and the appropriate regulation of production  
6 operations and conservation of minerals is in the best interests of the  
7 citizens of the state.

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

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

13 It is the intent of the legislature to clarify that surface mining  
14 is an appropriate land use, subject to reclamation authority exercised  
15 by the department of natural resources and land use ~~((and operation))~~  
16 regulatory authority by counties, cities, and towns. The authority for  
17 any state agency or local government to regulate operations is derived  
18 from this chapter and exercised only as described in this chapter.  
19 This chapter is not intended to apply to metals mining or milling  
20 operations governed by chapter 78.56 RCW.

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

23 The purposes of this chapter are to:

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

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

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

32 (4) Ensure that reclamation is consistent with local land use  
33 plans; and

34 (5) Ensure the power of local government to regulate land use and  
35 specific elements of operations ~~((pursuant to section 16 of this act))~~.

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

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

8       (2)(a) Counties, cities, and towns may regulate surface mining  
9 operations only by ordinance and only in accordance with the  
10 requirements and limitations of this subsection.

11       (b) Local surface mining operating standards shall:

12       (i) Be limited to those standards that address mitigation of the  
13 following impacts of operations:

14       (A) Traffic;

15       (B) Light emission;

16       (C) Visual screening;

17       (D) Noise emission; and

18       (E) Other significant or substantial mining impacts that are not  
19 covered by a subject area of regulation embodied in any other state or  
20 federal law;

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

22       (A) Are directly and proportionately related to limiting surface  
23 mining impacts;

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

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

26       (D) May be met by any lawful means selected by the applicant or  
27 operator that, in the judgment of the county, city, or town, achieve  
28 compliance with the standard;

29       (iii) Limit application and monitoring fees to the amount necessary  
30 to pay the costs of administering, processing, monitoring, and  
31 enforcing the regulation of surface mining in accordance with this  
32 section;

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

36       (A) Require submittal of sufficient, complete, and accurate  
37 information, as specified by the local ordinance, to allow the decision  
38 maker to review the plan for compliance with state, federal, and local  
39 standards;

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

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

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

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

13 (a) Limits application of subsection (2)(b)(i)(A) of this section  
14 relating to traffic to the designation of approved haul routes;

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

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

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

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

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

31 The department shall have the exclusive authority to regulate  
32 surface mine reclamation ((except that, by contractual agreement, the  
33 department may delegate some or all of its enforcement authority to a  
34 county, city, or town)). No county, city, or town may require for its  
35 review or approval a separate reclamation plan or application. The  
36 department may, however, delegate some or all of its enforcement  
37 authority by contractual agreement to a county, city, or town that  
38 employs personnel who are, in the opinion of the department, qualified

1 to enforce plans approved by the department. All counties, cities, or  
2 towns shall have the authority to zone surface mines and adopt  
3 ordinances regulating operations (~~((pursuant to section 16 of this act))~~)  
4 as provided in this chapter, except that county, city, or town  
5 operations ordinances may be preempted by the department during the  
6 emergencies outlined in RCW 78.44.200 and related rules.

7 This chapter shall not alter or preempt any provisions of the state  
8 fisheries laws (Title 75 RCW), the state water allocation and use laws  
9 (chapters 90.03 and 90.44 RCW), the state water pollution control laws  
10 (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state  
11 noise laws or air quality laws (Title 70 RCW), shoreline management  
12 (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C  
13 RCW), state growth management (chapter 36.70A RCW), state drinking  
14 water laws (chapters 43.20 and 70.119A RCW), or any other state  
15 statutes.

16 **Sec. 6.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended  
17 to read as follows:

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

1 (2) Each county and city shall adopt development regulations that  
2 protect critical areas that are required to be designated under RCW  
3 36.70A.170. For counties and cities that are required or choose to  
4 plan under RCW 36.70A.040, such development regulations shall be  
5 adopted on or before September 1, 1991. For the remainder of the  
6 counties and cities, such development regulations shall be adopted on  
7 or before March 1, 1992.

8 (3) Such counties and cities shall review these designations and  
9 development regulations when adopting their comprehensive plans under  
10 RCW 36.70A.040 and implementing development regulations under RCW  
11 36.70A.120 and may alter such designations and development regulations  
12 to insure consistency.

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

16 (5) Forest land and agricultural land located within urban growth  
17 areas shall not be designated by a county or city as forest land or  
18 agricultural land of long-term commercial significance under RCW  
19 36.70A.170 unless the city or county has enacted a program authorizing  
20 transfer or purchase of development rights.

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