
HOUSE BILL 1469

State of Washington 55th Legislature 1997 Regular Session

By Representatives Buck, Chandler, Grant, Sump, Sheldon, Hatfield,
Delvin and Pennington

Read first time 01/28/97. Referred to Committee on Natural Resources.

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

21 The purposes of this chapter are to:

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

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

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

30 (4) Ensure that reclamation is consistent with local land use
31 plans; and

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

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

1 (1) The department of natural resources is charged with the
2 administration of reclamation and operations not regulated by local
3 governments under this chapter. In order to implement and enforce this
4 chapter, the department, under the administrative procedure act
5 (chapter 34.05 RCW), may from time to time adopt those rules necessary
6 to carry out the purposes of this chapter.

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

10 (b) Local surface mining operating standards shall:

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

13 (A) Traffic;

14 (B) Light emission;

15 (C) Visual screening;

16 (D) Noise emission; and

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

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

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

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

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

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

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

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

35 (A) Require submittal of sufficient, complete, and accurate
36 information, as specified by the local ordinance, to allow the decision
37 maker to review the plan for compliance with local 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.

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

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

14 (b) Exempts such preexisting operations from any operating plan
15 review and approval process;

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

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

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

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

30 The department shall have the exclusive authority to regulate
31 surface mine reclamation (~~except that, by contractual agreement, the~~
32 ~~department may delegate some or all of its enforcement authority to a~~
33 ~~county, city, or town)). All counties, cities, or towns shall have the
34 authority to zone surface mines and adopt ordinances regulating those
35 operations (~~pursuant to section 16 of this act~~) authorized in RCW
36 78.44.040, except that county, city, or town operations ordinances may
37 be preempted by the department during the emergencies outlined in RCW
38 78.44.200 and related rules.~~

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

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

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

33 (2) Each county and city shall adopt development regulations that
34 protect critical areas that are required to be designated under RCW
35 36.70A.170. For counties and cities that are required or choose to
36 plan under RCW 36.70A.040, such development regulations shall be
37 adopted on or before September 1, 1991. For the remainder of the

1 counties and cities, such development regulations shall be adopted on
2 or before March 1, 1992.

3 (3) Such counties and cities shall review these designations and
4 development regulations when adopting their comprehensive plans under
5 RCW 36.70A.040 and implementing development regulations under RCW
6 36.70A.120 and may alter such designations and development regulations
7 to insure consistency.

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

11 (5) Forest land and agricultural land located within urban growth
12 areas shall not be designated by a county or city as forest land or
13 agricultural land of long-term commercial significance under RCW
14 36.70A.170 unless the city or county has enacted a program authorizing
15 transfer or purchase of development rights.

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