

SENATE BILL REPORT

SB 5972

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 28, 2007

Title: An act relating to the surface mining reclamation act.

Brief Description: Providing the department of natural resources with more consistent enforcement authority for protection against mining without a permit.

Sponsors: Senators Morton, Jacobsen, Swecker, Rockefeller, Poulsen, Rasmussen, Hargrove and Shin.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/14/07, 2/28/07 [DPS].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 5972 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Poulsen, Spanel, Stevens and Swecker.

Staff: Curt Gavigan (786-7437)

Background: Surface mining activities in Washington consist primarily of rock, sand, and gravel mining. The Legislature has designated the Department of Natural Resources (DNR) to regulate surface mine reclamation in Washington. Persons engaging in surface mining activities must have an approved reclamation plan and a reclamation permit issued by DNR. Along with these regulatory duties, DNR has the authority to take enforcement actions when the law, a reclamation plan, or a reclamation permit is violated.

Order to rectify deficiencies: DNR may issue an order to rectify deficiencies when a miner or permit holder conducts surface mining in any manner not authorized by statute, rule, a reclamation plan, or a reclamation permit. The order must specify the deficiencies and set a required time for compliance.

Order to suspend surface mining: When a miner or permit holder fails to comply with an order to rectify deficiencies, DNR may order that surface mining, on all or part of the operation, be suspended. The suspension lasts until the violations have been mitigated to the satisfaction of DNR. When a miner or permit holder conducts unauthorized mining activities that create an imminent danger to health or public safety, DNR may issue an emergency order to rectify deficiencies and suspend mining.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Civil penalties: DNR may impose a fine should the miner or permit holder fail to obey a DNR order. The amount of the civil penalty may not exceed \$10,000 for each violation, based on a penalty schedule set by rule. Each day an order is disobeyed constitutes a separate violation. DNR's penalty decisions are subject to appeal to the Pollution Control Hearings Board.

Summary of Bill: DNR is provided several new authorities with regards to enforcement, and several existing authorities are amended.

Notice of correction: DNR may issue a notice of correction to a permit holder or other person violating statute, rules, a reclamation plan, or a reclamation permit. Issuance of a notice of correction does not limit DNR's use of other enforcement authorities. The notice must describe the corrections needed and provide reasonable time for the corrections. A notice is not an enforcement action and is not subject to appeal.

Order to rectify deficiencies: DNR may issue an order to rectify deficiencies to a permit holder or other person violating statute, rules, a reclamation plan, or a reclamation permit. The order must describe the deficiencies and set a required time for compliance. The order becomes final and effective after completion of administrative and judicial review.

Order to stop surface mining: DNR may issue an order to stop all surface mining to a permit holder or other person who engages in surface mining activities without a permit. DNR may issue an order to stop surface mining occurring outside of a permit area to a permit holder that does not have the legal right to occupy the area. When a permit holder operates outside of its permit boundary, but within land it has the right to occupy, DNR may issue an order to stop surface mining outside of the authorized area after the permit holder fails to comply with a notice of correction.

Permit suspension: DNR may suspend a reclamation permit when a surface mine is out of compliance with a final order of DNR. A suspension is final and effective after completion of all administrative review proceedings. No surface mining or reclamation may occur while a permit is suspended.

Civil penalties: DNR may issue a civil penalty to a permit holder or other person violating an order of DNR. The penalty must be determined based on the circumstances of the violation and DNR's rules. Each day that a violation occurs, including undertaking surface mining activities without a permit, is treated as a separate violation. A penalty order becomes final and effective after completion of all administrative and judicial review proceedings.

Permit cancellation: A permit holder may seek to cancel a reclamation permit in favor of a local development or construction permit when: (1) the permit holder has received a development or construction permit; (2) the local jurisdiction and landowner agree to the cancellation; and (3) the local jurisdiction assures that construction or development is being implemented.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Natural Resources, Ocean & Recreation): The section amending DNR's current authority to issue civil penalties is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is meant to ensure that DNR has the tools it needs to ensure that surface mining violations are dealt with in a strong, timely, but also in a fair fashion.

OTHER: Current law makes it difficult for DNR to timely take corrective action and assess penalties against surface mining violators. Although the bill is a positive step, DNR should be able to issue civil penalties at the same time as it issues orders to rectify deficiencies.

Persons Testifying: PRO: Steve Buckner, Washington Aggregate and Concrete Association.

OTHER: Ron Teissere, DNR; Heath Packard, Audubon.