
SENATE BILL 5836

State of Washington

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By Senators Haugen and Swecker

Read first time 02/04/09. Referred to Committee on Transportation.

1 AN ACT Relating to facilitating the transport of materials used in
2 infrastructure projects, including transportation infrastructure
3 projects, through marine transportation facilities; amending RCW
4 90.58.040 and 78.44.031; adding new sections to chapter 78.44 RCW; and
5 adding a new section to chapter 36.70A RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 78.44 RCW
8 to read as follows:

9 (1) The department has the exclusive authority to regulate the
10 design, construction, and operation of a marine transportation facility
11 for sand and gravel associated with mining projects located primarily
12 on lands designated as forest or mineral resource lands under RCW
13 36.70A.170 in counties with a population of fewer than thirty-five
14 thousand persons having a boundary on Puget Sound. For the purposes of
15 this subsection, Puget Sound is considered as extending north to, and
16 inclusive of, Admiralty Inlet.

17 (2) No state agency, county, city, or town may require review or
18 approval of a separate plan or permit for a marine transportation
19 facility. However, this section and sections 2 through 4 of this act

1 do not alter or preempt any provisions of the state water allocation
2 and use laws, chapters 90.03 and 90.44 RCW, the state water pollution
3 control laws, chapter 90.48 RCW, the state fish and wildlife laws,
4 Title 77 RCW, the state noise laws or air quality laws, Title 70 RCW,
5 the state environmental policy act, chapter 43.21C RCW, or state
6 drinking water laws, chapters 43.20 and 70.119A RCW.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 78.44 RCW
8 to read as follows:

9 (1) After the effective date of this section, no marine
10 transportation facility for sand and gravel associated with mining
11 projects located in the areas described in section 1 of this act may be
12 constructed without having first obtained a marine transportation
13 facility permit from the department. A permit under this section is
14 not required for a marine transportation facility for sand and gravel
15 that received a permit and started construction prior to the effective
16 date of this section. The permit holder shall comply with the
17 provisions of the marine transportation facility permit unless waived
18 and explained in writing by the department.

19 (2) Prior to receiving a marine transportation facility permit, an
20 applicant must submit an application on forms provided by the
21 department that contains the following information:

22 (a) The name and address of the legal landowner, or purchaser of
23 the land under a real estate contract on which the facility is proposed
24 to be located;

25 (b) The name of the applicant and, if the applicants are
26 corporations or other business entities, the names and addresses of
27 their principal officers and resident agent for service of process;

28 (c) A description of the source of the sand and gravel to be used
29 by the proposed marine transportation facility;

30 (d) A description of the proposed marine transportation facility,
31 including all conveyance systems, docks, piers, and loading facilities;

32 (e) Estimated days and hours of operation for the marine
33 transportation facility;

34 (f) Any applicable documents required under chapter 43.21C RCW; and

35 (g) Other pertinent data as required by the department.

36 (3) An applicant for a marine transportation facility permit shall

1 pay a nonrefundable application fee to the department of two thousand
2 five hundred dollars.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 78.44 RCW
4 to read as follows:

5 (1) Within thirty days after receipt of a complete application for
6 a marine transportation facility permit required under section 2 of
7 this act, the department must issue notice of the application to and
8 request written comments from:

9 (a) The department of ecology;

10 (b) The county or city in which the proposed facility will be
11 located;

12 (c) Any county in the state that reasonably can be expected to
13 receive sand and gravel shipments from the proposed facility;

14 (d) Any county in the state through which shipments from the
15 proposed facility can reasonably be expected to pass;

16 (e) All property owners within five hundred feet of the proposed
17 facility;

18 (f) Any federal agency with jurisdiction; and

19 (g) Any Indian tribe or other organization that has requested that
20 the department notify them of applications for a marine transportation
21 facility permit.

22 (2) The notice required by subsection (1) of this section must
23 require that any comments on the proposed application be submitted to
24 the department within forty-five days after the notice is issued.

25 (3) The department is the lead agency for purposes of compliance
26 with chapter 43.21C RCW, pursuant to the state environmental policy act
27 rules adopted by the department.

28 (4) After completion of the state environmental policy act process
29 under chapter 43.21C RCW and review of the application by the
30 department, the department must issue a written decision on the
31 application, which must include conditions and restrictions on the
32 construction and operation of the marine transportation facility that
33 the department determines are necessary to ensure that the facility is
34 operated in a manner consistent with the public health, safety, and
35 welfare, and that any significant adverse environmental impacts have
36 been mitigated in accordance with the provisions of chapter 43.21C RCW.

1 A copy of the decision must be mailed to the applicant and to any
2 person or party identified in subsection (1) of this section who has
3 requested a copy of the decision.

4 (5) Any party aggrieved by the department's decision may file an
5 appeal to the pollution control hearings board in accordance with the
6 provisions of chapter 34.05 RCW.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
8 to read as follows:

9 (1) The department of natural resources has exclusive authority to
10 regulate the design, construction, and operation of a marine
11 transportation facility for sand and gravel associated with mining
12 projects located primarily on lands designated as forest or mineral
13 resource lands under RCW 36.70A.170 in counties with a population of
14 fewer than thirty-five thousand persons having a boundary on Puget
15 Sound. For the purposes of this subsection, Puget Sound is considered
16 as extending north to, and inclusive of, Admiralty Inlet. Marine
17 transportation facilities under this section are not subject to
18 development regulations adopted under this chapter.

19 (2) For the purposes of this section, "marine transportation
20 facility" has the same meaning as defined in RCW 78.44.031.

21 **Sec. 5.** RCW 90.58.040 and 1971 ex.s. c 286 s 4 are each amended to
22 read as follows:

23 The shoreline management program of this chapter shall apply to the
24 shorelines of the state as defined in this chapter, but shall not apply
25 to marine transportation facilities described under section 1 of this
26 act.

27 **Sec. 6.** RCW 78.44.031 and 2000 c 11 s 22 are each amended to read
28 as follows:

29 (~~Unless the context clearly indicates otherwise,~~) The definitions
30 in this section apply throughout this chapter unless the context
31 clearly requires otherwise.

32 (1) "Approved subsequent use" means the post surface-mining land
33 use contained in an approved reclamation plan and approved by the local
34 land use authority.

1 (2) "Completion of surface mining" means the cessation of mining
2 and directly related activities in any segment of a surface mine that
3 occurs when essentially all minerals that can be taken under the terms
4 of the reclamation permit have been depleted except minerals required
5 to accomplish reclamation according to the approved reclamation plan.

6 (3) "Department" means the department of natural resources.

7 (4) "Determination" means any action by the department including
8 permit issuance, reporting, reclamation plan approval or modification,
9 permit transfers, orders, fines, or refusal to issue permits.

10 (5) "Disturbed area" means any place where activities clearly in
11 preparation for, or during, surface mining have physically disrupted,
12 covered, compacted, moved, or otherwise altered the characteristics of
13 soil, bedrock, vegetation, or topography that existed prior to such
14 activity. Disturbed areas may include but are not limited to: Working
15 faces, water bodies created by mine-related excavation, pit floors, the
16 land beneath processing plant and stock pile sites, spoil pile sites,
17 and equipment staging areas. Disturbed areas shall also include
18 aboveground waste rock sites and tailing facilities, and other surface
19 manifestations of underground mines.

20 Disturbed areas do not include:

21 (a) Surface mine access roads unless these have characteristics of
22 topography, drainage, slope stability, or ownership that, in the
23 opinion of the department, make reclamation necessary;

24 (b) Lands that have been reclaimed to all standards outlined in
25 this chapter, rules of the department, any applicable SEPA document,
26 and the approved reclamation plan; and

27 (c) Subsurface aspects of underground mines, such as portals,
28 tunnels, shafts, pillars, and stopes.

29 (6) "Marine transportation facility" includes: (a) Docks, piers,
30 and related facilities for the marine transportation of sand and
31 gravel; and (b) land-based conveyance systems for delivery of sand and
32 gravel from surface mines regulated under this chapter to docks, piers,
33 and related facilities.

34 (7) "Miner" means any person or persons, any partnership, limited
35 partnership, or corporation, or any association of persons, including
36 every public or governmental agency engaged in surface mining.

37 ((+7)) (8) "Minerals" means clay, coal, gravel, industrial
38 minerals, metallic substances, peat, sand, stone, topsoil, and any

1 other similar solid material or substance to be excavated from natural
2 deposits on or in the earth for commercial, industrial, or construction
3 use.

4 ~~((+8))~~ (9) "Operations" means all mine-related activities,
5 exclusive of reclamation, that include, but are not limited to
6 activities that affect noise generation, air quality, surface and
7 ground water quality, quantity, and flow, glare, pollution, traffic
8 safety, ground vibrations, and/or significant or substantial impacts
9 commonly regulated under provisions of land use or other permits of
10 local government and local ordinances, or other state laws.

11 Operations specifically include:

12 (a) The mining or extraction of rock, stone, gravel, sand, earth,
13 and other minerals;

14 (b) Blasting, equipment maintenance, sorting, crushing, and
15 loading;

16 (c) On-site mineral processing including asphalt or concrete
17 batching, concrete recycling, and other aggregate recycling;

18 (d) Transporting minerals to and from the mine, on site road
19 maintenance, road maintenance for roads used extensively for surface
20 mining activities, traffic safety, and traffic control.

21 ~~((+9))~~ (10) "Overburden" means the earth, rock, soil, and topsoil
22 that lie above mineral deposits.

23 ~~((+10))~~ (11) "Permit holder" means any person or persons, any
24 partnership, limited partnership, or corporation, or any association of
25 persons, either natural or artificial, including every public or
26 governmental agency engaged in surface mining and/or the operation of
27 surface mines, whether individually, jointly, or through subsidiaries,
28 agents, employees, operators, or contractors who holds a state
29 reclamation permit.

30 ~~((+11))~~ (12) "Reclamation" means rehabilitation for the
31 appropriate future use of disturbed areas resulting from surface mining
32 including areas under associated mineral processing equipment, areas
33 under stockpiled materials, and aboveground waste rock and tailing
34 facilities, and all other surface disturbances associated with
35 underground mines. Although both the need for and the practicability
36 of reclamation will control the type and degree of reclamation in any
37 specific surface mine, the basic objective shall be to reestablish on

1 a perpetual basis the vegetative cover, soil stability, and water
2 conditions appropriate to the approved subsequent use of the surface
3 mine and to prevent or mitigate future environmental degradation.

4 ~~((+12))~~ (13) "Reclamation setbacks" include those lands along the
5 margins of surface mines wherein minerals and overburden shall be
6 preserved in sufficient volumes to accomplish reclamation according to
7 the approved plan and the minimum reclamation standards. Maintenance
8 of reclamation setbacks may not preclude other mine-related activities
9 within the reclamation setback.

10 ~~((+13))~~ (14) "Recycling" means the reuse of minerals or rock
11 products.

12 ~~((+14))~~ (15) "Screening" consists of vegetation, berms or other
13 topography, fencing, and/or other screens that may be required to
14 mitigate impacts of surface mining on adjacent properties and/or the
15 environment.

16 ~~((+15))~~ (16) "Segment" means any portion of the surface mine that,
17 in the opinion of the department:

18 (a) Has characteristics of topography, drainage, slope stability,
19 ownership, mining development, or mineral distribution, that make
20 reclamation necessary;

21 (b) Is not in use as part of surface mining and/or related
22 activities; and

23 (c) Is larger than seven acres and has more than five hundred
24 linear feet of working face except as provided in a segmental
25 reclamation agreement approved by the department.

26 ~~((+16))~~ (17) "SEPA" means the state environmental policy act,
27 chapter 43.21C RCW and rules adopted thereunder.

28 ~~((+17))~~ (18)(a) "Surface mine" means any area or areas in close
29 proximity to each other, as determined by the department, where
30 extraction of minerals results in:

31 (i) More than three acres of disturbed area;

32 (ii) Surface mined slopes greater than thirty feet high and steeper
33 than 1.0 foot horizontal to 1.0 foot vertical; or

34 (iii) More than one acre of disturbed area within an eight acre
35 area, when the disturbed area results from mineral prospecting or
36 exploration activities.

37 (b) Surface mines include areas where mineral extraction from the

1 surface or subsurface occurs by the auger method or by reworking mine
2 refuse or tailings, when the disturbed area exceeds the size or height
3 thresholds listed in (a) of this subsection.

4 (c) Surface mining occurs when operations have created or are
5 intended to create a surface mine as defined by this subsection.

6 (d) Surface mining shall exclude excavations or grading used:

7 (i) Primarily for on-site construction, on-site road maintenance,
8 or on-site landfill construction;

9 (ii) For the purpose of public safety or restoring the land
10 following a natural disaster;

11 (iii) For the purpose of removing stockpiles;

12 (iv) For forest or farm road construction or maintenance on site or
13 on contiguous lands;

14 (v) Primarily for public works projects if the mines are owned or
15 primarily operated by counties with 1993 populations of less than
16 twenty thousand persons, and if each mine has less than seven acres of
17 disturbed area; and

18 (vi) For sand authorized by RCW 79A.05.630.

19 ((+18+)) (19) "Topsoil" means the naturally occurring upper part of
20 a soil profile, including the soil horizon that is rich in humus and
21 capable of supporting vegetation together with other sediments within
22 four vertical feet of the ground surface.

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