
HOUSE BILL 2283

State of Washington 55th Legislature 1997 Regular Session

By Representatives Robertson, Grant, Schoesler and L. Thomas

Read first time 04/16/97.

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 cities, counties, or towns to regulate operations is derived from
18 this chapter and exercised only as described in RCW 78.44.040. The
19 question of regulatory overlap, the scope of impacts to be regulated by
20 local ordinances, development of model ordinances, the role of each
21 state agency, and reclamation of abandoned mines, shall be the subjects
22 of further study by the house of representatives and senate natural
23 resources committees. The results of these studies must be reported to
24 the legislature prior to the 1998 legislative session. Nothing in this
25 section shall alter or preempt any local government's authority under
26 chapter 43.21C RCW, the state environmental policy act.

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

29 The purposes of this chapter are to:

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

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

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

1 (4) Ensure that reclamation is consistent with local land use
2 plans; and

3 (5) Ensure the power of (~~local government~~) cities, counties, and
4 towns to regulate land use and operations (~~pursuant to section 16 of~~
5 ~~this act~~) as provided in this chapter.

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

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

13 (2)(a) Counties, cities, and towns may regulate surface mining
14 operations only by ordinance and only in accordance with the
15 requirements of this chapter. Ordinances required to implement this
16 chapter must be adopted by July 1, 1998.

17 (b) Local surface mining operating standards shall:

18 (i) Be limited to those standards that address mitigation of
19 impacts of operations;

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. However, if compliance with the
28 standards described in this section cannot be met by the applicant,
29 after that applicant has had reasonable opportunity to propose
30 mitigation measures that would meet the standards by all other means,
31 the county, city, or town may impose limitations on the hours of
32 operation of that portion of the operation creating the impact that
33 cannot be mitigated any other way;

34 (iii) Limit application and monitoring fees to the amount necessary
35 to pay the costs of administering, processing, monitoring, and
36 enforcing the regulation of surface mining in accordance with this
37 section;

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

4 (A) Require submittal of sufficient, complete, and accurate
5 information, as specified by the local ordinance, to allow the decision
6 maker to review the plan for compliance with state, federal, and local
7 standards;

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

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

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

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

20 (a) Limits application of this section relating to traffic to the
21 designation of approved haul routes;

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

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

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

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

36 (5) Nothing in this section shall alter or preempt any local
37 government's authority under chapter 43.21C RCW, the state
38 environmental policy act.

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

3 The department shall have the exclusive authority to regulate
4 surface mine reclamation (~~((except that, by contractual agreement, the~~
5 ~~department may delegate some or all of its enforcement authority to a~~
6 ~~county, city, or town))~~). No county, city, or town may require for its
7 review or approval a separate reclamation plan or application. The
8 department may, however, delegate some or all of its enforcement
9 authority by contractual agreement to a county, city, or town that
10 employs personnel who are, in the opinion of the department, qualified
11 to enforce plans approved by the department. All counties, cities, or
12 towns shall have the authority to zone surface mines and adopt
13 ordinances regulating operations ((pursuant to section 16 of this act))
14 as provided in this chapter, except that county, city, or town
15 operations ordinances may be preempted by the department during the
16 emergencies outlined in RCW 78.44.200 and related rules.

17 This chapter shall not alter or preempt any provisions of the state
18 fisheries laws (Title 75 RCW), the state water allocation and use laws
19 (chapters 90.03 and 90.44 RCW), the state water pollution control laws
20 (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state
21 noise laws or air quality laws (Title 70 RCW), shoreline management
22 (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C
23 RCW), state growth management (chapter 36.70A RCW), state drinking
24 water laws (chapters 43.20 and 70.119A RCW), or any other state
25 statutes.

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

28 (1) Each county that is required or chooses to plan under RCW
29 36.70A.040, and each city within such county, shall adopt development
30 regulations on or before September 1, 1991, to assure the conservation
31 of agricultural, forest, and mineral resource lands designated under
32 RCW 36.70A.170. Regulations adopted under this subsection may not
33 prohibit uses legally existing on any parcel prior to their adoption
34 and shall remain in effect until the county or city adopts development
35 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
36 that the use of lands adjacent to agricultural, forest, or mineral
37 resource lands shall not interfere with the continued use, in the
38 accustomed manner and in accordance with best management practices, of

1 these designated lands for the production of food, agricultural
2 products, or timber, or for the extraction of minerals. Counties and
3 cities shall require that all plats, short plats, development permits,
4 and building permits issued for development activities on, or within
5 three hundred feet of, lands designated as agricultural lands, forest
6 lands, or mineral resource lands, contain a notice that the subject
7 property is within or near designated agricultural lands, forest lands,
8 or mineral resource lands on which a variety of commercial activities
9 may occur that are not compatible with residential development for
10 certain periods of limited duration.

11 (2) Each county and city shall adopt development regulations that
12 protect critical areas that are required to be designated under RCW
13 36.70A.170. For counties and cities that are required or choose to
14 plan under RCW 36.70A.040, such development regulations shall be
15 adopted on or before September 1, 1991. For the remainder of the
16 counties and cities, such development regulations shall be adopted on
17 or before March 1, 1992.

18 (3) Such counties and cities shall review these designations and
19 development regulations when adopting their comprehensive plans under
20 RCW 36.70A.040 and implementing development regulations under RCW
21 36.70A.120 and may alter such designations and development regulations
22 to insure consistency.

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

26 (5) Forest land and agricultural land located within urban growth
27 areas shall not be designated by a county or city as forest land or
28 agricultural land of long-term commercial significance under RCW
29 36.70A.170 unless the city or county has enacted a program authorizing
30 transfer or purchase of development rights.

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