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**SENATE BILL 5435**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senators Stevens, Hargrove, Anderson, Benton, Rossi and Rasmussen

Read first time 01/27/97. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to surface mining; amending RCW 78.44.011,  
2 78.44.020, 78.44.040, 78.44.050, 78.44.085, and 36.70A.060; and  
3 creating a new 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 78.44.085 and 1996 c 70 s 1 are each amended to read  
11 as follows:

12 (1) An applicant for a public or private reclamation permit shall  
13 pay an application fee to the department before being granted a surface  
14 mining permit. The amount of the application fee shall be six hundred  
15 fifty dollars.

16 (2) After June 30, 1993, each public or private permit holder shall  
17 pay an annual permit fee of six hundred fifty dollars. The annual  
18 permit fee shall be payable to the department on the first anniversary  
19 of the permit date and each year thereafter. Annual fees paid by a  
20 county for mines used exclusively for public works projects and having  
21 less than seven acres of disturbed area per mine shall not exceed one  
22 thousand dollars. Annual fees are waived for all mines used primarily  
23 for public works projects if the mines are owned and primarily operated  
24 by counties with 1993 populations of less than twenty thousand persons.

25 (3) After July 1, 1995, the department may modify annual permit  
26 fees by rule if:

27 (a) The total annual permit fees are reasonably related to the  
28 approximate costs of administering the department's surface mining  
29 regulatory program;

30 (b) The annual fee does not exceed five thousand dollars; and

31 (c) The mines are small mines in remote areas that are used  
32 primarily for public service, then lower annual permit fees may be  
33 established.

34 (4) Appeals from any determination of the department shall not stay  
35 the requirement to pay any annual permit fee. Failure to pay the  
36 annual fee may constitute grounds for an order to suspend surface  
37 mining or cancellation of the reclamation permit as provided in this  
38 chapter.

1 (5) All fees collected by the department shall be deposited into  
2 the surface mining reclamation account.

3 ~~((6) If the department delegates enforcement responsibilities to  
4 a county, city, or town, the department may allocate funds collected  
5 under this section to the county, city, or town.))~~

6 **Sec. 7.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended  
7 to read as follows:

8 (1) Each county that is required or chooses to plan under RCW  
9 36.70A.040, and each city within such county, shall adopt development  
10 regulations on or before September 1, 1991, to assure the conservation  
11 of agricultural, forest, and mineral resource lands designated under  
12 RCW 36.70A.170. Regulations adopted under this subsection may not  
13 prohibit uses legally existing on any parcel prior to their adoption  
14 and shall remain in effect until the county or city adopts development  
15 regulations pursuant to RCW 36.70A.120. Such regulations shall assure  
16 that the use of lands adjacent to agricultural, forest, or mineral  
17 resource lands shall not interfere with the continued use, in the  
18 accustomed manner and in accordance with best management practices, of  
19 these designated lands for the production of food, agricultural  
20 products, or timber, or for the extraction of minerals. Counties and  
21 cities shall require that all plats, short plats, development permits,  
22 and building permits issued for development activities on, or within  
23 three hundred feet of, lands designated as agricultural lands, forest  
24 lands, or mineral resource lands, contain a notice that the subject  
25 property is within or near designated agricultural lands, forest lands,  
26 or mineral resource lands on which a variety of commercial activities  
27 may occur that are not compatible with residential development for  
28 certain periods of limited duration.

29 (2) Each county and city shall adopt development regulations that  
30 protect critical areas that are required to be designated under RCW  
31 36.70A.170. For counties and cities that are required or choose to  
32 plan under RCW 36.70A.040, such development regulations shall be  
33 adopted on or before September 1, 1991. For the remainder of the  
34 counties and cities, such development regulations shall be adopted on  
35 or before March 1, 1992.

36 (3) Such counties and cities shall review these designations and  
37 development regulations when adopting their comprehensive plans under  
38 RCW 36.70A.040 and implementing development regulations under RCW

1 36.70A.120 and may alter such designations and development regulations  
2 to insure consistency.

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

6 (5) Forest land and agricultural land located within urban growth  
7 areas shall not be designated by a county or city as forest land or  
8 agricultural land of long-term commercial significance under RCW  
9 36.70A.170 unless the city or county has enacted a program authorizing  
10 transfer or purchase of development rights.

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