

FINAL BILL REPORT

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PARTIAL VETO

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SYNOPSIS AS ENACTED

Brief Description: Revising mining reclamation laws.

SPONSORS: Senate Committee on Ways & Means (originally sponsored by Senators Sutherland and Prentice)

SENATE COMMITTEE ON NATURAL RESOURCES

SENATE COMMITTEE ON WAYS & MEANS

BACKGROUND:

There are about 1,750 surface mines in Washington. Of the 1,293 state surface mining reclamation permits issued by the Department of Natural Resources, 893 mines are privately owned and about 400 mines are owned by the Department of Transportation or by local governments. The remainder of the mines are exempt since they are smaller than three acres and are not required to have state surface mining reclamation permits.

Sand and gravel surface mines, the most numerous type of mine in the state, are used as round rock aggregate in concrete, as drain rock, or as crushed rock. Crushed rock is used to produce roadbase or asphalt aggregate. Both types of aggregate function mainly to reduce the amount of cement and tar used in concrete and asphalt. Revenues from Washington sand and gravel business are about \$150 million per year.

Since the surface mining law was passed in 1971, 753 mines have been reclaimed to the standards established in the statute and by rule. Most of this reclamation would not meet present standards because the reclaimed slopes have rectilinear appearances and revegetation efforts have been inadequate. The Department of Natural Resources has improved techniques and has developed methods of mine restoration and operation impact control.

Local jurisdictions regulate mines through the State Environmental Policy Act (SEPA) by conditioning their SEPA declarations with site specific requirements.

SUMMARY:

The purposes of the chapter are to: 1) require surface mine lands restoration; 2) provide for statewide consistency in the regulation of surface mines; 3) apportion regulatory authority

between state and local governments; 4) ensure reclamation plans are consistent with local land uses; and 5) give local governments specific regulatory powers.

The Department of Natural Resources (DNR) is charged with the administration and enforcement of reclamation, and local government may regulate surface mining operations and mine siting pursuant to the provisions in this act. DNR has exclusive authority to regulate surface mining reclamation, but may delegate enforcement to local government through contracts.

This act is cumulative and nonexclusive and does not alter or preempt any state fisheries, water pollution or wildlife laws or the laws relating to noise, air quality, shoreline management, SEPA, growth management, drinking water or other relevant state laws.

After July 1, 1993, reclamation permits issued by DNR are required for all surface mines. Separate permits are required for noncontiguous sites. Operating permits granted between January 1, 1971, and June 30, 1993, will be considered reclamation permits if, within five years, they meet the protection, mitigation, and reclamation goals of this act. A reclamation permit is granted for the period required to deplete essentially all of the minerals identified in the permit. It is valid until the reclamation is complete unless it is cancelled by the department.

Before reclamation permits are granted, applicants must provide reclamation plans to DNR and to local government. DNR solicits comments from affected local governments before approving reclamation plans, but DNR has sole authority to approve plans. Reclamation plans must include a description of the proposed mining and reclamation scheme and a statement addressing proposed subsequent use of the land after reclamation that is consistent with local land use designation. Reclamation plans shall be updated at least once every ten years. The plans will include a schedule for progressive reclamation of each segment and require a hydrogeologic evaluation where mining is on a flood plain or in a river or stream channel. Requirements for reclamation are established and procedures are created for reclamation plan modification.

In a critical aquifer recharged area, special protection may be required. Reclamation setbacks, screening, conservation of top soil, interim reclamation planning, revegetation and post-mining erosion control, drainage control and provisions for slope stability and disposal of mine wastes will be part of the plan. An estimate of groundwater depth and a description of boundaries and the wetlands adjacent to the surface mining activity are required.

Reclamation plans may be modified jointly by DNR and the permit holder; modified plans are reviewed by the department under SEPA.

DNR may refuse to issue reclamation permits if it determines during the SEPA process that the impact of a proposed mine cannot be mitigated.

DNR shall not issue a reclamation permit until the applicant has deposited an acceptable performance security. The security is maintained until reclamation is completed according to the plan. The department may use such funds to effect reclamation in the event that the permit holder fails to comply with the reclamation plan.

Reclamation permits may be transferred as long as the subsequent permit holder complies with all of the rules and regulations established by the act.

An annual report to the department concerning mining and reclamation activities is required, and the department may order a permit area inspected at any time. The department may also issue emergency notice or orders to rectify deficiencies, to recognize deficiencies, or to cease mining.

A surface mining reclamation account is established in the state treasury for the deposit of annual fees, funds received by the department from federal and state agencies, and other mine-related funds and fines. DNR administers this account which may be used for administration, research, administrative appeals, and incentive and award programs.

Reclamation permit application fees are \$650. After June 30, 1993, permit holders must pay an annual renewal fee of \$650. Annual fees paid by a county for small mines used only for public works projects are capped at \$1,000 a year and are required only on the sites from which the county intends to mine in the next calendar year. All fees are deposited into the surface mining account.

After July 1, 1995, DNR may modify annual fees by rule if the total amount of fees is reasonably related to the administration costs. After July 1, 1995, DNR may lower annual fees for small surface mines used primarily for public service. In any case, the annual fee is capped at \$5,000.

A person appealing any DNR decision must still pay the annual fee.

If DNR delegates enforcement responsibilities to local governments, DNR may allocate money from these fees to those local governments.

Counties are granted the authority to regulate operations of a surface mine. If a county, city or town has classified mineral lands and mineral resource lands of long-term commercial significance, a county, city or town must designate in its comprehensive plan enough of these mineral resource lands to meet a 20-year, county-wide need. "Long-term commercial significance" is defined. After this designation, surface mining operations will be an allowed use in local development regulations, subject to permitting processes.

Counties, cities, and towns will designate their mineral deposits close to where the minerals are likely to be used. Through their comprehensive plans and development regulations, counties, cities and towns will discourage the siting of incompatible uses next to mineral resource industries, deposits, and holdings. Proposed surface mines must be approved under local zoning and land use regulation.

Counties, cities, and towns may regulate surface mining operations only by ordinance and only within specified terms. Local ordinances regarding mine operations can only address traffic, light and noise emissions, visual screening, and other significant or substantial mining impacts not subject to regulation under other state or federal laws including water allocation, use, or control laws and fisheries and wildlife laws. Local ordinances must also be performance-based, objective, related to limiting surface mining impacts, and reasonably capable of being achieved given existing and available technology. Local governments must limit application and monitoring fees to amounts necessary to carry out the regulation of surface mines.

Local governments implement their ordinances through an operating plan review and approval process, which must include submission of sufficient information to allow the decision maker to review the plan for compliance with local standards, provide for administrative approval subject to appeal or for initial consideration via public hearing, and produce written findings of fact.

Local ordinances may be applied to existing mines only if the local ordinance: (1) enforces the section regarding traffic regulation only to haul routes; (2) exempts existing mines from any operating plan review and approval process; (3) provides reasonable time for compliance; and (4) includes a procedure to obtain a variance to allow for continued nonconforming operations if strict adherence to a local ordinance would be economically or operationally impractical.

Counties, cities, and towns are not precluded from exercising authority delegated to them by state agencies, nor are counties, cities, and towns precluded from complying with state law when required as a regulated entity.

A temporary surface mining model ordinance advisory committee is established and directed to develop model ordinances for counties, cities, and towns.

DNR can regulate water control only as necessary to effect reclamation and to protect ground and surface waters after reclamation is complete. DNR's regulations must be consistent with existing water control laws. DNR solicits comments from other agencies with expertise in water control laws.

For surface mining projects, control of surface mine water is pursuant to state water pollution laws. Water availability, hydraulic continuity, allocation, and use is controlled under the state water code, state public ground water law, and the

Water Resource Act of 1971. Regulation of drinking water and protection of fisheries and wildlife are provided for under several statutes. Counties, cities, or towns may ask the Department of Ecology to consult with affected individuals and incorporate additional site-specific requirements into individual surface mine national pollutant discharge elimination systems permits.

Counties, cities, and towns may pass ordinances to regulate the impacts of water if these impacts are significant or substantial and are not subject to regulation under other state or federal laws. Counties, cities, and towns may also regulate the impacts of water if regulatory or enforcement authority has been expressly delegated by a state agency.

DNR may declare a mine to be abandoned if there has been no mining activity for 180 days. There are exceptions, such as in the case of labor disputes or reduced demand for minerals.

Appeals from the actions of the department under this act follow the provisions of the Administrative Procedure Act (APA) and are considered adjudicative proceedings. Only a person aggrieved under the meaning of the APA has standing to appeal.

A reclamation awards program is established, and the department designates a percent of the state annual fees to fund these awards. A reclamation service to provide no-cost consulting is established within the Division of Geology and Earth Resources to assist miners, permit holders, local government and the public on technical matters relating to mine regulation, operation and reclamation. The department is not liable for any negligent advice.

VOTES ON FINAL PASSAGE:

Senate	40	5	
House	90	4	(House amended)
Senate	43	1	(Senate concurred)

EFFECTIVE: July 1, 1993

Partial Veto Summary: All language restricting the ability of local governments to regulate surface mining operations is removed. The ability of the state to direct the designation of mineral resource lands, which the Growth Management Act allowed counties pre-authority to designate, is eliminated. The ability of local jurisdictions to regulate surface mining and to provide local protection for air and water resources is continued by eliminating the section of the bill which limited air and water protection authority. Local jurisdictions will be able to deal with water impacts of surface mines. Restrictions on local jurisdictions' regulatory ability to those areas not already regulated by the state or federal government are removed. The effect of the veto will be that the authority of local governments to regulate the ongoing operations of surface mining activities will be settled by a pending appeal to the state Supreme Court. (See VETO MESSAGE)