
HOUSE BILL 2609

State of Washington

54th Legislature

1996 Regular Session

By Representatives Elliot, Basich, Benton, Sheldon, Schoesler and Thompson

Read first time 01/15/96. Referred to Committee on Natural Resources.

1 AN ACT Relating to regulation of surface mining reclamation and
2 operations; and amending RCW 78.44.040 and 36.70A.060.

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

4 **Sec. 1.** RCW 78.44.040 and 1993 c 518 s 6 are each amended to read
5 as follows:

6 (1) The department of natural resources is charged with the
7 administration of reclamation and operations not regulated by local
8 governments under this chapter. In order to implement and enforce this
9 chapter, the department, under the administrative procedure act
10 (chapter 34.05 RCW), may from time to time adopt those rules necessary
11 to carry out the purposes of this chapter.

12 (2)(a) Counties, cities, and towns may regulate surface mining
13 operations only by ordinance and only in accordance with the
14 requirements and limitations of this subsection.

15 (b) Local surface mining operating standards shall:

16 (i) Be limited to those standards that address mitigation of the
17 following impacts of operations:

18 (A) Traffic;

19 (B) Light emission;

1 (C) Visual screening;
2 (D) Noise emission; and
3 (E) Other significant or substantial mining impacts that are not
4 covered by a subject area of regulation embodied in any other state or
5 federal law;
6 (ii) Be performance-based, objective standards that:
7 (A) Are directly and proportionately related to limiting surface
8 mining impacts;
9 (B) Are reasonable and generally capable of being achieved;
10 (C) Take into account existing and available technologies; and
11 (D) May be met by any lawful means selected by the applicant or
12 operator that, in the judgment of the county, city, or town, achieve
13 compliance with the standard;
14 (iii) Limit application and monitoring fees to the amount necessary
15 to pay the costs of administering, processing, monitoring, and
16 enforcing the regulation of surface mining in accordance with this
17 section;
18 (iv) Except as otherwise provided in this section, implement the
19 ordinance through an operating plan review and approval process. Such
20 approval process shall:
21 (A) Require submittal of sufficient, complete, and accurate
22 information, as specified by the local ordinance, to allow the decision
23 maker to review the plan for compliance with local standards;
24 (B) At the option of the county, city, or town, provide for
25 administrative approval subject to appeal or for initial consideration
26 through a public hearing process; and
27 (C) Require that project-specific conditions or restrictions be
28 based upon written findings of facts demonstrating their need to
29 achieve compliance with local standards;
30 (v) Subject to subsection (3) of this section, provide that
31 approvals issued will be valid for fifty years.
32 (3) Operating regulations and amendments thereto adopted pursuant
33 to this section may be applied to lawfully preexisting mining
34 operations only if the local ordinance:
35 (a) Limits application of subsection (2)(b)(i)(A) of this section
36 relating to traffic to the designation of approved haul routes;
37 (b) Exempts such preexisting operations from any operating plan
38 review and approval process;

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

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

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

13 **Sec. 2.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
14 to read as follows:

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

36 (2) Each county and city shall adopt development regulations that
37 protect critical areas that are required to be designated under RCW
38 36.70A.170. For counties and cities that are required or choose to

1 plan under RCW 36.70A.040, such development regulations shall be
2 adopted on or before September 1, 1991. For the remainder of the
3 counties and cities, such development regulations shall be adopted on
4 or before March 1, 1992.

5 (3) Such counties and cities shall review these designations and
6 development regulations when adopting their comprehensive plans under
7 RCW 36.70A.040 and implementing development regulations under RCW
8 36.70A.120 and may alter such designations and development regulations
9 to insure consistency.

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

13 (5) Forest land and agricultural land located within urban growth
14 areas shall not be designated by a county or city as forest land or
15 agricultural land of long-term commercial significance under RCW
16 36.70A.170 unless the city or county has enacted a program authorizing
17 transfer or purchase of development rights.

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