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**ENGROSSED SUBSTITUTE SENATE BILL 5351**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Benton, Strannigan, Oke, Anderson, Swecker, Zarelli and Rossi)

Read first time 03/05/97.

1       AN ACT Relating to small scale prospecting and mining; amending RCW  
2 75.20.100; adding a new section to chapter 75.20 RCW; and creating a  
3 new section.

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

5       NEW SECTION.   **Sec. 1.**   The legislature finds that small scale  
6 prospecting and mining is an important part of the heritage of the  
7 state. The legislature further finds that small scale prospecting and  
8 mining provide economic benefits to the state, and help to meet the  
9 national security demand and industrial demand for minerals. The  
10 legislature further finds that it is critical that small scale miners  
11 and prospectors be allowed access to open public lands in the state.  
12 The legislature further finds that mineral prospecting and mining  
13 activities can be conducted in a manner that is consistent with fish  
14 habitat and fish-life population. Now, therefore, the legislature  
15 declares that small scale prospecting and mining must not be  
16 unreasonably regulated. The legislature further declares that small  
17 scale prospecting and mining must not be unfairly limited or obstructed  
18 from access to open public lands. The legislature further declares  
19 that all restrictions or regulations of small scale prospecting and

1 mining activities must be based on sound scientific evidence and  
2 applicable documentation supporting the need for such restrictions.

3       **Sec. 2.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to  
4 read as follows:

5       In the event that any person or government agency desires to  
6 construct any form of hydraulic project or perform other work that will  
7 use, divert, obstruct, or change the natural flow or bed of any of the  
8 salt or fresh waters of the state, such person or government agency  
9 shall, before commencing construction or work thereon and to ensure the  
10 proper protection of fish life, secure the written approval of the  
11 department as to the adequacy of the means proposed for the protection  
12 of fish life. This approval shall not be unreasonably withheld.  
13 Except as provided in RCW 75.20.1001 ((and 75.20.1002)), the department  
14 shall grant or deny approval within forty-five calendar days of the  
15 receipt of a complete application and notice of compliance with any  
16 applicable requirements of the state environmental policy act, made in  
17 the manner prescribed in this section. The applicant may document  
18 receipt of application by filing in person or by registered mail. A  
19 complete application for approval shall contain general plans for the  
20 overall project, complete plans and specifications of the proposed  
21 construction or work within the mean higher high water line in salt  
22 water or within the ordinary high water line in fresh water, and  
23 complete plans and specifications for the proper protection of fish  
24 life. The forty-five day requirement shall be suspended if (1) after  
25 ten working days of receipt of the application, the applicant remains  
26 unavailable or unable to arrange for a timely field evaluation of the  
27 proposed project; (2) the site is physically inaccessible for  
28 inspection; or (3) the applicant requests delay. Immediately upon  
29 determination that the forty-five day period is suspended, the  
30 department shall notify the applicant in writing of the reasons for the  
31 delay. Approval is valid for a period of up to five years from date of  
32 issuance. The permittee must demonstrate substantial progress on  
33 construction of that portion of the project relating to the approval  
34 within two years of the date of issuance. If the department denies  
35 approval, the department shall provide the applicant, in writing, a  
36 statement of the specific reasons why and how the proposed project  
37 would adversely affect fish life. Protection of fish life shall be the  
38 only ground upon which approval may be denied or conditioned. Chapter

1   34.05 RCW applies to any denial of project approval, conditional  
2   approval, or requirements for project modification upon which approval  
3   may be contingent. If any person or government agency commences  
4   construction on any hydraulic works or projects subject to this section  
5   without first having obtained written approval of the department as to  
6   the adequacy of the means proposed for the protection of fish life, or  
7   if any person or government agency fails to follow or carry out any of  
8   the requirements or conditions as are made a part of such approval, the  
9   person or director of the agency is guilty of a gross misdemeanor. If  
10   any such person or government agency is convicted of violating any of  
11   the provisions of this section and continues construction on any such  
12   works or projects without fully complying with the provisions hereof,  
13   such works or projects are hereby declared a public nuisance and shall  
14   be subject to abatement as such.

15   For the purposes of this section and RCW 75.20.103, "bed" shall  
16   mean the land below the ordinary high water lines of state waters.  
17   This definition shall not include irrigation ditches, canals, storm  
18   water run-off devices, or other artificial watercourses except where  
19   they exist in a natural watercourse that has been altered by man.

20   The phrase "to construct any form of hydraulic project or perform  
21   other work" shall not include the act of driving across an established  
22   ford. Driving across streams or on wetted stream beds at areas other  
23   than established fords requires approval. Work within the ordinary  
24   high water line of state waters to construct or repair a ford or  
25   crossing requires approval.

26   In case of an emergency arising from weather or stream flow  
27   conditions or other natural conditions, the department, through its  
28   authorized representatives, shall issue immediately upon request oral  
29   approval for removing any obstructions, repairing existing structures,  
30   restoring stream banks, or to protect property threatened by the stream  
31   or a change in the stream flow without the necessity of obtaining a  
32   written approval prior to commencing work. Conditions of an oral  
33   approval shall be reduced to writing within thirty days and complied  
34   with as provided for in this section. Oral approval shall be granted  
35   immediately upon request, for a stream crossing during an emergency  
36   situation.

37   This section shall not apply to the construction of any form of  
38   hydraulic project or other work which diverts water for agricultural  
39   irrigation or stock watering purposes authorized under or recognized as

1 being valid by the state's water codes, or when such hydraulic project  
2 or other work is associated with streambank stabilization to protect  
3 farm and agricultural land as defined in RCW 84.34.020. These  
4 irrigation or stock watering diversion and streambank stabilization  
5 projects shall be governed by RCW 75.20.103.

6       This section does not apply to small scale prospecting and mining  
7 activities, which are governed by section 3 of this act.

8       NEW SECTION.   **Sec. 3.** A new section is added to chapter 75.20 RCW  
9 to read as follows:

10       (1) Small scale prospecting and mining is exempt from the  
11 provisions of this chapter, provided that such activity does not  
12 undercut streambanks or disturb rooted live woody plants such as trees  
13 or shrubs.

14       (2) For the purposes of this chapter, "small scale prospecting and  
15 mining" means the use of methods such as pans, sluice boxes,  
16 concentrators, and mini-rocker boxes for the discovery and recovery of  
17 minerals.

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