

# HOUSE BILL REPORT

## HB 2871

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to penalties for small scale prospecting and mining violations.

**Brief Description:** Regarding penalties for small scale prospecting and mining violations.

**Sponsors:** Representatives Kretz and McCune.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/30/08, 2/4/08 [DPS].

**Brief Summary of Substitute Bill**

- Provides that small scale prospecting and mining violations of the "Gold and Fish Pamphlet" and an individual hydraulic permit approval, including those with motorized equipment, are punishable as a natural resource infraction and are no longer subject to criminal penalty.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Kristiansen, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

**Staff:** Colleen Kerr (786-7168).

**Background:**

Hydraulic Project Approvals

Before beginning a construction project, a person must obtain a hydraulic project approval (HPA) for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. The HPAs are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

Small Scale Prospecting

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Under the hydraulic code, the WDFW must develop rules for small scale prospecting and mining without requiring a hydraulic permit. The rules, published in the "Gold and Fish Pamphlet," describe allowable small scale prospecting and mining activities, as well as activities that would require a hydraulic permit. Small scale prospecting is defined as discovering and recovering minerals using pans, nonmotorized sluice boxes, concentrators, and mini-rocker boxes.

#### Enforcement

Small scale prospecting in violation of the standards established in the "Gold and Fish Pamphlet" may be subject to civil and criminal enforcement. The unlawful undertaking of a hydraulics activity is a gross misdemeanor. Civil penalties can be up to \$100 per day.

#### Natural Resources Infractions

The Legislature has decriminalized certain statutory violations of the natural resources code and provided for a civil process. Natural resource infraction notices are brought before the district court in the district in which the infraction occurred. A person who is found guilty of a natural resources infraction is assessed a monetary penalty not to exceed \$500 unless specifically authorized by statute; alternatively, the court may order community restitution. Failure to pay or to complete community restitution is a misdemeanor.

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#### **Summary of Substitute Bill:**

Violations of the "Gold and Fish Pamphlet" or an individual hydraulic approval permit involving small scale prospecting and mining is punishable as a natural resources infraction and is no longer subject to criminal penalty, including small scale prospecting with motorized equipment.

#### **Substitute Bill Compared to Original Bill:**

Provides that violations under this bill apply to those activities under the "Gold and Fish Pamphlet" as well as those under an individual HPA. This includes small scale prospecting with motorized equipment as violations that will be subject to a natural resources infraction and not subject to criminal penalties.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) The small scale prospecting and mining law has a positive impact: it allows recreational prospecting and has helped to remove mercury and lead from the state

waterways. But under the current statutory provisions, families and children can be subject to criminal penalties. Essentially, recreational prospecting can result in a \$5,000 gross misdemeanor criminal penalty, which is not a proportionate response.

Recreation does not equal development. The state has laws in place to allow recreational prospecting and mining and the sanctions for violations of those laws should not be the same as for violations of HPA laws for development purposes. This is fundamentally incongruous. Mining is a right granted to the people of Washington State by Congress in the original land grant for statehood. Having a disproportionate penalty for recreational prospecting and mining is an inappropriate restriction of those rights. A civil infraction is the commensurate penalty for these types of violations.

Everything that is included in the "Gold and Fish Pamphlet" needs to be included in this bill. The impact of a criminal conviction can be devastating. People can lose their jobs, their right to vote, and their ability to travel to Canada and Mexico. Such convictions can ruin a person's entire life.

(With concerns) The agency is in support of this bill and would offer three technical amendments for clarity.

(Opposed) None.

**Persons Testifying:** Representative Kretz, prime sponsor; Mark Erickson, Resources Coalition; Bruce Beatty; Ron Wilcortcheibi, Bedrock; Harley Edwards; William Thomas, Washington Prospectors Mining Association; James Curtiss; Scott Atkinson, Northwest Mineral Prospectors; and Steve Berggren, North Central Cascades Mining Association.

(With concerns) Bruce Bjork and Greg Hueckel, Washington Department of Fish and Wildlife.

**Persons Signed In To Testify But Not Testifying:** None.