

2 SSB 5351 - S AMD - 125
3 By Senators Benton and Hargrove

4 ADOPTED 3/13/97

5 Strike everything after the enacting clause and insert the
6 following:

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

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

26 In the event that any person or government agency desires to
27 construct any form of hydraulic project or perform other work that will
28 use, divert, obstruct, or change the natural flow or bed of any of the
29 salt or fresh waters of the state, such person or government agency
30 shall, before commencing construction or work thereon and to ensure the
31 proper protection of fish life, secure the written approval of the
32 department as to the adequacy of the means proposed for the protection
33 of fish life. This approval shall not be unreasonably withheld.
34 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department
35 shall grant or deny approval within forty-five calendar days of the

1 receipt of a complete application and notice of compliance with any
2 applicable requirements of the state environmental policy act, made in
3 the manner prescribed in this section. The applicant may document
4 receipt of application by filing in person or by registered mail. A
5 complete application for approval shall contain general plans for the
6 overall project, complete plans and specifications of the proposed
7 construction or work within the mean higher high water line in salt
8 water or within the ordinary high water line in fresh water, and
9 complete plans and specifications for the proper protection of fish
10 life. The forty-five day requirement shall be suspended if (1) after
11 ten working days of receipt of the application, the applicant remains
12 unavailable or unable to arrange for a timely field evaluation of the
13 proposed project; (2) the site is physically inaccessible for
14 inspection; or (3) the applicant requests delay. Immediately upon
15 determination that the forty-five day period is suspended, the
16 department shall notify the applicant in writing of the reasons for the
17 delay. Approval is valid for a period of up to five years from date of
18 issuance. The permittee must demonstrate substantial progress on
19 construction of that portion of the project relating to the approval
20 within two years of the date of issuance. If the department denies
21 approval, the department shall provide the applicant, in writing, a
22 statement of the specific reasons why and how the proposed project
23 would adversely affect fish life. Protection of fish life shall be the
24 only ground upon which approval may be denied or conditioned. Chapter
25 34.05 RCW applies to any denial of project approval, conditional
26 approval, or requirements for project modification upon which approval
27 may be contingent. If any person or government agency commences
28 construction on any hydraulic works or projects subject to this section
29 without first having obtained written approval of the department as to
30 the adequacy of the means proposed for the protection of fish life, or
31 if any person or government agency fails to follow or carry out any of
32 the requirements or conditions as are made a part of such approval, the
33 person or director of the agency is guilty of a gross misdemeanor. If
34 any such person or government agency is convicted of violating any of
35 the provisions of this section and continues construction on any such
36 works or projects without fully complying with the provisions hereof,
37 such works or projects are hereby declared a public nuisance and shall
38 be subject to abatement as such.

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

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

12 In case of an emergency arising from weather or stream flow
13 conditions or other natural conditions, the department, through its
14 authorized representatives, shall issue immediately upon request oral
15 approval for removing any obstructions, repairing existing structures,
16 restoring stream banks, or to protect property threatened by the stream
17 or a change in the stream flow without the necessity of obtaining a
18 written approval prior to commencing work. Conditions of an oral
19 approval shall be reduced to writing within thirty days and complied
20 with as provided for in this section. Oral approval shall be granted
21 immediately upon request, for a stream crossing during an emergency
22 situation.

23 This section shall not apply to the construction of any form of
24 hydraulic project or other work which diverts water for agricultural
25 irrigation or stock watering purposes authorized under or recognized as
26 being valid by the state's water codes, or when such hydraulic project
27 or other work is associated with streambank stabilization to protect
28 farm and agricultural land as defined in RCW 84.34.020. These
29 irrigation or stock watering diversion and streambank stabilization
30 projects shall be governed by RCW 75.20.103.

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

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

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

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

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8 On page 1, line 1 of the title, after "mining;" strike the
9 remainder of the title and insert "amending RCW 75.20.100; adding a new
10 section to chapter 75.20 RCW; and creating a new section."

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