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HOUSE BILL 1077

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Fitzgibbon, Pollet, and McBride

Read first time 01/10/17. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to establishing rules for motorized suction  
2 dredge mining in rivers and streams equal to other hydraulic projects  
3 by modifying a hydraulic project approval exemption; amending RCW  
4 77.55.091; reenacting and amending RCW 77.55.011; and creating a new  
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that state laws and  
8 rules relating to motorized suction dredge mining in rivers and  
9 streams allow direct and harmful impacts to water quality, fish  
10 habitat, and fish species. The legislature further finds that because  
11 Washington state neither regulates nor prohibits motorized suction  
12 dredge mining like other nearby states, that our state's streams and  
13 rivers are targeted by people from across the country who seek to  
14 conduct motorized suction dredge mining in an unregulated  
15 jurisdiction. The legislature further finds that the federal Ninth  
16 Circuit Court of Appeals has concluded that motorized suction dredge  
17 mining in rivers and streams results in the discharge of materials,  
18 which requires a permit under the federal clean water act, and  
19 section 7 consultation under the federal endangered species act in  
20 order to avoid the unlawful take of endangered species act-listed  
21 species. It is the intent of the legislature to enact a regulatory

1 system to protect fish habitat in streams and rivers and to protect  
2 Washington state from liability for failing to regulate motorized  
3 suction dredge mining.

4 **Sec. 2.** RCW 77.55.091 and 2005 c 146 s 402 are each amended to  
5 read as follows:

6 (1) Nonmotorized small scale prospecting and mining shall not  
7 require a permit under this chapter if the prospecting is conducted  
8 in accordance with rules established by the department.

9 (2) By December 31, (~~1998~~) 2018, the department shall adopt  
10 rules applicable to nonmotorized small scale prospecting and mining  
11 activities subject to this section. The department shall develop the  
12 rules in cooperation with the recreational mining community and other  
13 interested parties.

14 (3) Within two months of adoption of the rules, the department  
15 shall distribute an updated gold and fish pamphlet that describes  
16 methods of mineral prospecting that are consistent with the  
17 department's rule. The pamphlet shall be written to clearly indicate  
18 the prospecting methods that require a permit under this chapter and  
19 the prospecting methods that require compliance with the pamphlet. To  
20 the extent possible, the department shall use the provisions of the  
21 gold and fish pamphlet to minimize the number of specific provisions  
22 of a written permit issued under this chapter.

23 (4) Nonmotorized small scale prospecting and mining is not  
24 subject to any fee under this chapter.

25 **Sec. 3.** RCW 77.55.011 and 2012 1st sp.s. c 1 s 101 are each  
26 reenacted and amended to read as follows:

27 The definitions in this section apply throughout this chapter  
28 unless the context clearly requires otherwise.

29 (1) "Bed" means the land below the ordinary high water lines of  
30 state waters. This definition does not include irrigation ditches,  
31 canals, storm water runoff devices, or other artificial watercourses  
32 except where they exist in a natural watercourse that has been  
33 altered artificially.

34 (2) "Board" means the pollution control hearings board created in  
35 chapter 43.21B RCW.

36 (3) "Commission" means the state fish and wildlife commission.

37 (4) "Date of receipt" has the same meaning as defined in RCW  
38 43.21B.001.

1 (5) "Department" means the department of fish and wildlife.

2 (6) "Director" means the director of the department of fish and  
3 wildlife.

4 (7) "Emergency" means an immediate threat to life, the public,  
5 property, or of environmental degradation.

6 (8) "Emergency permit" means a verbal hydraulic project approval  
7 or the written follow-up to the verbal approval issued to a person  
8 under RCW 77.55.021(12).

9 (9) "Expedited permit" means a hydraulic project approval issued  
10 to a person under RCW 77.55.021 (14) and (16).

11 (10) "Forest practices hydraulic project" means a hydraulic  
12 project that requires a forest practices application or notification  
13 under chapter 76.09 RCW.

14 (11) "Hydraulic project" means the construction or performance of  
15 work that will use, divert, obstruct, or change the natural flow or  
16 bed of any of the salt or freshwaters of the state.

17 (12) "Imminent danger" means a threat by weather, water flow, or  
18 other natural conditions that is likely to occur within sixty days of  
19 a request for a permit application.

20 (13) "Marina" means a public or private facility providing boat  
21 moorage space, fuel, or commercial services. Commercial services  
22 include but are not limited to overnight or live-aboard boating  
23 accommodations.

24 (14) "Marine terminal" means a public or private commercial wharf  
25 located in the navigable water of the state and used, or intended to  
26 be used, as a port or facility for the storing, handling,  
27 transferring, or transporting of goods to and from vessels.

28 (15) "Multiple site permit" means a hydraulic project approval  
29 issued to a person under RCW 77.55.021 for hydraulic projects  
30 occurring at more than one specific location and which includes  
31 site-specific requirements.

32 (16) "Ordinary high water line" means the mark on the shores of  
33 all water that will be found by examining the bed and banks and  
34 ascertaining where the presence and action of waters are so common  
35 and usual, and so long continued in ordinary years as to mark upon  
36 the soil or vegetation a character distinct from the abutting upland.  
37 Provided, that in any area where the ordinary high water line cannot  
38 be found, the ordinary high water line adjoining saltwater is the  
39 line of mean higher high water and the ordinary high water line  
40 adjoining freshwater is the elevation of the mean annual flood.

1 (17) "Pamphlet hydraulic project" means a hydraulic project for  
2 the removal or control of aquatic noxious weeds conducted under the  
3 aquatic plants and fish pamphlet authorized by RCW 77.55.081, or for  
4 nonmotorized mineral prospecting and mining conducted under the gold  
5 and fish pamphlet authorized by RCW 77.55.091.

6 (18) "Permit" means a hydraulic project approval permit issued  
7 under this chapter.

8 (19) "Permit modification" means a hydraulic project approval  
9 issued to a person under RCW 77.55.021 that extends, renews, or  
10 changes the conditions of a previously issued hydraulic project  
11 approval.

12 (20) "Sandbars" includes, but is not limited to, sand, gravel,  
13 rock, silt, and sediments.

14 (21) "Small scale prospecting and mining" means the use of only  
15 the following methods: Pans; nonmotorized sluice boxes;  
16 concentrators; and minirocker boxes for the discovery and recovery of  
17 minerals.

18 (22) "Spartina," "purple loosestrife," and "aquatic noxious  
19 weeds" have the same meanings as defined in RCW 17.26.020.

20 (23) "Stream bank stabilization" means those projects that  
21 prevent or limit erosion, slippage, and mass wasting. These projects  
22 include, but are not limited to, bank resloping, log and debris  
23 relocation or removal, planting of woody vegetation, bank protection  
24 using rock or woody material or placement of jetties or groins,  
25 gravel removal, or erosion control.

26 (24) "Tide gate" means a one-way check valve that prevents the  
27 backflow of tidal water.

28 (25) "Waters of the state" and "state waters" means all salt and  
29 freshwaters waterward of the ordinary high water line and within the  
30 territorial boundary of the state.

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