
Environment & Energy Committee

ESSB 5322

Brief Description: Ensuring compliance with the federal clean water act by prohibiting certain discharges into waters of the state.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Palumbo, Carlyle, Wellman, Hunt, McCoy, Hasegawa, Kuderer, Nguyen and Saldaña).

Brief Summary of Engrossed Substitute Bill

- Prohibits motorized or gravity siphon aquatic mining, or the discharge of effluent from such activity to certain waters of the state.
- Exempts certain activities from the prohibition.
- Requires the Department of Ecology to evaluate whether the number of dischargers subject to this section warrants the adoption of a general permit for motorized or gravity siphon aquatic mining, and to take certain actions depending on the outcome of the evaluation.

Hearing Date: 3/14/19

Staff: Robert Hatfield (786-7117).

Background:

Water Pollution Regulation in Washington State under Federal and State Laws.

The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates discharges of pollutants to surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing the Department of Ecology (Ecology) to issue NPDES permits. In addition to delegated NPDES permitting authority, the Water Pollution Control Act provides Ecology with parallel authority to regulate discharges to state waters, which includes a more expansive scope of waters than are covered under the federal Clean Water Act, including groundwater.

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.

Endangered Species Act—Critical Habitat.

When a species is proposed for listing as endangered or threatened under the Endangered Species Act, depending on the species, the United States Fish and Wildlife Service or the National Marine Fisheries Service must consider whether there are areas of habitat believed to be essential to the species' conservation. Those areas may be proposed for designation as critical habitat. A critical habitat designation requires federal agencies to ensure that actions they plan to undertake, fund, or authorize to not destroy or adversely modify that habitat.

Waters of the State.

Under the Water Pollution Control Act, waters of the state are defined to mean inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the State of Washington.

Summary of Bill:

A discharge to waters of the state from a motorized or gravity siphon aquatic mining operation is subject to the authority of the Department of Ecology (Ecology) pursuant to the federal Clean Water Act and the state Water Pollution Control Act.

The Department of Ecology must evaluate whether the number of dischargers from motorized or gravity siphon aquatic mining activities warrants the adoption of a general permit for motorized or gravity siphon aquatic mining. If so, Ecology must minimize the cost to permit applicants by basing general permit provisions on existing general permits adopted in other states to comply with the federal Clean Water Act.

Motorized or gravity siphon aquatic mining or discharge of effluent from such an activity is prohibited to any waters of the state that have been designated under the Endangered Species Act as critical habitat, or that would impact critical habitat for salmon, steelhead, or bull trout. This prohibition includes fresh waters with the designated uses of salmonid spawning, rearing, and migration.

A person commits the offense of unlawful motorized or gravity siphon aquatic mining if the person engages in such an activity in violation of the Water Pollution Control Act or the Clean Water Act. Such an offense is subject to enforcement under the Water Pollution Control Act.

The prohibition on motorized or gravity siphon aquatic mining or discharge of effluent from such an activity to certain waters of the state does not apply to the following activities:

- aquatic mining using nonmotorized methods;
- mining operations where no part of the operation or discharge of effluent from the operations is to waters of the state;
- surface mining operations regulated by the Department of Natural Resources;
- metals mining and milling operations; or
- activities related to an industrial facility, dredging related to navigability, or activities subject to a Clean Water Act permit for the discharge of dredged or fill material.

"Motorized or gravity siphon aquatic mining" is defined in the Water Pollution Control Act as mining using any form of motorized equipment, including but not limited to a motorized suction dredge or a gravity siphon suction dredge for the purpose of extracting gold, silver, or other

precious metals, that involves a discharge within the ordinary high water mark of waters of the state.

"Motorized or gravity siphon aquatic mining" is defined in the Hydraulic Code as mining using any form of motorized equipment, including but not limited to a motorized suction dredge or a gravity siphon suction dredge for the purpose of extracting gold, silver, or other precious metals, that involves a discharge to the waters of the state, but does not include metals mining and milling operations.

A completed application for a Hydraulic Project Approval for mineral prospecting or mining involving motorized or gravity siphon, or involving a discharge of effluent from such an activity to waters of the state, must include proof of compliance with the requirements of the federal Clean Water Act.

Appropriation: None.

Fiscal Note: Available.

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