

# HOUSE BILL REPORT

## SHB 1380

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### As Amended by the Senate

**Title:** An act relating to creating the crime of mineral trespass.

**Brief Description:** Criminalizing interference with certain mining rights and activities.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Ericksen, Sump, Mielke, Ahern, Clements, Hatfield, Pearson, Buck, Sullivan and Carrell).

#### **Brief History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 2/14/03, 2/18/03 [DPS].

##### **Floor Activity:**

Passed House: 2/28/03, 96-0.

Senate Amended.

Passed Senate: 4/8/03, 47-0.

#### **Brief Summary of Substitute Bill**

- Creates a gross misdemeanor offense of mineral trespass for intentionally (1) disturbing or removing minerals, equipment, or identifying markers at a posted mining claim; or (2) interfering with or stopping a lawful small scale mining operation.

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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 Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

**Staff:** Caroleen Dineen (786-7156).

#### **Background:**

##### Mining

Regulations on mining are administered by both the state and federal governments. On certain federal land, a person may file a mining claim for mineral deposits, such as gold and silver. Mining claims on federal land also must comply with state regulations. Under Washington law, a federal mining claim must be recorded with the county auditor, and the claim site must have a posted notice of the claim. The posting must comply with specific requirements, including marking the boundaries of the claim and clearing brush or trees that interfere with the posting.

State land is not subject to the federal mining claim system. Instead, Washington leases land for prospecting purposes and enters into contracts for mining on state land. State law distinguishes small mining operations from other mining operations for certain regulatory purposes. A "small scale prospecting and mining" designation exempts small mining operations from some Department of Fish and Wildlife permitting requirements that regulate mining operations near rivers, streams and other bodies of water. Small scale prospecting and mining operations are defined as using pans, non-motorized sluice boxes, concentrators, and mini-rocker boxes for the discovery of minerals.

#### Current Offenses

There are general laws against trespassing, malicious mischief and theft. A person commits the crime of criminal trespass for knowingly entering or remaining unlawfully on a premises. If the premises is a building, the crime is defined as a gross misdemeanor. If the premises is not a building, it is a misdemeanor.

A person commits the crime of malicious mischief for knowingly and maliciously causing physical damage to the property of another or for interfering with public services. The gravity of the offense varies from a class B felony to a misdemeanor, depending upon the amount of property damage caused.

A person commits the crime of theft for wrongfully obtaining or exerting control over another's property with the intent to deprive the person of the property. The gravity of the offense ranges from a class B felony to a gross misdemeanor.

There are also more specific offenses for certain activities that fall under these crimes. For example, a person who trespasses on public lands of the state and harms or removes any trees, engages in any mining operations, or removes any valuable materials is guilty of theft.

Unless otherwise specified, general provisions establish the maximum sentence allowed for each type of crime. The maximum sentences are: 10 years and/or \$20,000 for a class B felony; five years and/or \$10,000 for a class C felony; one year and/or \$5,000 for a gross misdemeanor; and 90 days and/or \$1,000 dollars for a misdemeanor offense.

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

The offense of mineral trespassing is created. A person commits the crime of mineral trespass by:

- (1) Entering and intentionally disturbing, removing, or attempting to remove any minerals at a posted mining claim; tampering with or disturbing any mining equipment at a posted mining claim; or defacing any landmarks or other markers at a posted mining claim; or
- (2) intentionally interfering with, stopping, or causing the stopping of a lawful small scale mining operation that is in full compliance with the law.

Mineral trespass is a gross misdemeanor. The maximum sentence for this offense is the same as for other gross misdemeanors.

An exception to the mineral trespass offense is created for conduct that is required or authorized by law or is performed by a public servant reasonably acting in an official capacity.

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### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes the crime of mineral trespassing a Class C felony rather than a gross misdemeanor and ranks the crime in the adult and juvenile offender sentencing systems. The Senate amendment revises language regarding the circumstances: (1) in which the crime occurs; and (2) to which the crime does not apply. The Senate amendment also adds definitions of "mining claim" and certain terms related to mining activities for purposes of establishing the crime.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Mining has a rich history in the State; it is very important to the culture and it can be important to the economy as well. This bill creates complementary state regulations for federal laws. A problem for small scale miners is when a claim is "over-posted" by another person, requiring the claim holder to prove in court his or her rightful claim. Posts and claim sites are also often disrupted and vandalized. This bill addresses these problems and does not interfere with officials reasonably exercising their duties.

**Testimony Against:** None.

**Testified:** Representative Ericksen, prime sponsor; and Greg Christensen, Small Scale Miners and Resources Coalition.