
SENATE BILL 6014

State of Washington

56th Legislature

1999 Regular Session

By Senators Benton, Rossi, Bauer and Swecker

Read first time 02/22/1999. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to small scale prospecting and mining; amending RCW
2 75.20.100; adding a new section to chapter 75.20 RCW; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 75.20.100 and 1998 c 190 s 87 are each amended to read
6 as follows:

7 (1) In the event that any person or government agency desires to
8 construct any form of hydraulic project or perform other work that will
9 use, divert, obstruct, or change the natural flow or bed of any of the
10 salt or fresh waters of the state, such person or government agency
11 shall, before commencing construction or work thereon and to ensure the
12 proper protection of fish life, secure the approval of the department
13 as to the adequacy of the means proposed for the protection of fish
14 life. This approval shall not be unreasonably withheld.

15 (2)(a) Except as provided in RCW 75.20.1001, the department shall
16 grant or deny approval of a standard permit within forty-five calendar
17 days of the receipt of a complete application and notice of compliance
18 with any applicable requirements of the state environmental policy act,
19 made in the manner prescribed in this section.

1 (b) The applicant may document receipt of application by filing in
2 person or by registered mail. A complete application for approval
3 shall contain general plans for the overall project, complete plans and
4 specifications of the proposed construction or work within the mean
5 higher high water line in salt water or within the ordinary high water
6 line in fresh water, and complete plans and specifications for the
7 proper protection of fish life.

8 (c) The forty-five day requirement shall be suspended if:

9 (i) After ten working days of receipt of the application, the
10 applicant remains unavailable or unable to arrange for a timely field
11 evaluation of the proposed project;

12 (ii) The site is physically inaccessible for inspection; or

13 (iii) The applicant requests delay. Immediately upon determination
14 that the forty-five day period is suspended, the department shall
15 notify the applicant in writing of the reasons for the delay.

16 (d) For purposes of this section, "standard permit" means a written
17 permit issued by the department when the conditions under subsections
18 (3) and (5)(b) of this section are not met.

19 (3)(a) The department may issue an expedited written permit in
20 those instances where normal permit processing would result in
21 significant hardship for the applicant or unacceptable damage to the
22 environment. In cases of imminent danger, the department shall issue
23 an expedited written permit, upon request, for work to repair existing
24 structures, move obstructions, restore banks, protect property, or
25 protect fish resources. Expedited permit requests require a complete
26 written application as provided in subsection (2)(b) of this section
27 and shall be issued within fifteen calendar days of the receipt of a
28 complete written application. Approval of an expedited permit is valid
29 for up to sixty days from the date of issuance.

30 (b) For the purposes of this subsection, "imminent danger" means a
31 threat by weather, water flow, or other natural conditions that is
32 likely to occur within sixty days of a request for a permit
33 application.

34 (c) The department may not require the provisions of the state
35 environmental policy act, chapter 43.21C RCW, to be met as a condition
36 of issuing a permit under this subsection.

37 (d) The department or the county legislative authority may
38 determine if an imminent danger exists. The county legislative

1 authority shall notify the department, in writing, if it determines
2 that an imminent danger exists.

3 (4) Approval of a standard permit is valid for a period of up to
4 five years from date of issuance. The permittee must demonstrate
5 substantial progress on construction of that portion of the project
6 relating to the approval within two years of the date of issuance. If
7 the department denies approval, the department shall provide the
8 applicant, in writing, a statement of the specific reasons why and how
9 the proposed project would adversely affect fish life based on sound
10 science and applicable documentation. Protection of fish life shall be
11 the only ground upon which approval may be denied or conditioned.
12 Chapter 34.05 RCW applies to any denial of project approval,
13 conditional approval, or requirements for project modification upon
14 which approval may be contingent.

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

26 (b) For purposes of this section and RCW 75.20.103, "emergency"
27 means an immediate threat to life, the public, property, or of
28 environmental degradation.

29 (c) The department or the county legislative authority may declare
30 and continue an emergency when one or more of the criteria under (b) of
31 this subsection are met. The county legislative authority shall
32 immediately notify the department if it declares an emergency under
33 this subsection.

34 (6) The department shall, at the request of a county, develop five-
35 year maintenance approval agreements, consistent with comprehensive
36 flood control management plans adopted under the authority of RCW
37 86.12.200, or other watershed plan approved by a county legislative
38 authority, to allow for work on public and private property for bank
39 stabilization, bridge repair, removal of sand bars and debris, channel

1 maintenance, and other flood damage repair and reduction activity under
2 agreed-upon conditions and times without obtaining permits for specific
3 projects.

4 (7) This section shall not apply to the construction of any form of
5 hydraulic project or other work which diverts water for agricultural
6 irrigation or stock watering purposes authorized under or recognized as
7 being valid by the state's water codes, or when such hydraulic project
8 or other work is associated with streambank stabilization to protect
9 farm and agricultural land as defined in RCW 84.34.020. These
10 irrigation or stock watering diversion and streambank stabilization
11 projects shall be governed by RCW 75.20.103.

12 A landscape management plan approved by the department and the
13 department of natural resources under RCW 76.09.350(2), shall serve as
14 a hydraulic project approval for the life of the plan if fish are
15 selected as one of the public resources for coverage under such a plan.

16 (8) For the purposes of this section and RCW 75.20.103, "bed" means
17 the land below the ordinary high water lines of state waters. This
18 definition does not include irrigation ditches, canals, storm water
19 run-off devices, or other artificial watercourses except where they
20 exist in a natural watercourse that has been altered by man.

21 (9) The phrase "to construct any form of hydraulic project or
22 perform other work" does not include the act of driving across an
23 established ford. Driving across streams or on wetted stream beds at
24 areas other than established fords requires approval. Work within the
25 ordinary high water line of state waters to construct or repair a ford
26 or crossing requires approval.

27 This section does not apply to small scale prospecting and mining
28 activities, which are governed by section 2 of this act.

29 NEW SECTION. Sec. 2. A new section is added to chapter 75.20 RCW
30 to read as follows:

31 (1) Small scale prospecting and mining is exempt from the
32 provisions of this chapter, provided that aggregate containing fish
33 eggs or fry are not collected or processed at any time.

34 (2) Small scale prospecting and mining may take place landward of
35 the ordinary high water mark of any stream at any time of the year, if
36 such activity does not require an approved plan of operation on public
37 lands provided for in 43 C.F.R. Sec. 3830 through 3850 or 36 C.F.R.

1 Sec. 228 subpart A as they existed on the effective date of this
2 section.

3 (3) For the purposes of this chapter, "small scale prospecting and
4 mining" means the use of methods such as pans, sluice boxes,
5 concentrators, and minirocker boxes for the discovery and recovery of
6 minerals at or below the ordinary high water mark.

7 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

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