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SENATE BILL 6195

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State of Washington

56th Legislature

2000 Regular Session

By Senators T. Sheldon, Morton, Rasmussen, Stevens, Benton, Swecker and Oke

Read first time 01/10/2000. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to small scale prospecting and mining; amending RCW  
2 75.20.100; and creating a new section.

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

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

1 mining activities must be based on sound scientific evidence and  
2 applicable documentation supporting the need for such restrictions.

3 **Sec. 2.** RCW 75.20.100 and 1998 c 190 s 87 are each amended to read  
4 as follows:

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

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

18 (b) The applicant may document receipt of application by filing in  
19 person or by registered mail. A complete application for approval  
20 shall contain general plans for the overall project, complete plans and  
21 specifications of the proposed construction or work within the mean  
22 higher high water line in salt water or within the ordinary high water  
23 line in fresh water, and complete plans and specifications for the  
24 proper protection of fish life.

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

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

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

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

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

36 (3)(a) The department may issue an expedited written permit in  
37 those instances where normal permit processing would result in  
38 significant hardship for the applicant or unacceptable damage to the

1 environment. In cases of imminent danger, the department shall issue  
2 an expedited written permit, upon request, for work to repair existing  
3 structures, move obstructions, restore banks, protect property, or  
4 protect fish resources. Expedited permit requests require a complete  
5 written application as provided in subsection (2)(b) of this section  
6 and shall be issued within fifteen calendar days of the receipt of a  
7 complete written application. Approval of an expedited permit is valid  
8 for up to sixty days from the date of issuance.

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

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

16 (d) The department or the county legislative authority may  
17 determine if an imminent danger exists. The county legislative  
18 authority shall notify the department, in writing, if it determines  
19 that an imminent danger exists.

20 (4) Approval of a standard permit is valid for a period of up to  
21 five years from date of issuance. The permittee must demonstrate  
22 substantial progress on construction of that portion of the project  
23 relating to the approval within two years of the date of issuance. If  
24 the department denies approval, the department shall provide the  
25 applicant, in writing, a statement of the specific reasons why and how  
26 the proposed project would adversely affect fish life. Protection of  
27 fish life shall be the only ground upon which approval may be denied or  
28 conditioned. Chapter 34.05 RCW applies to any denial of project  
29 approval, conditional approval, or requirements for project  
30 modification upon which approval may be contingent.

31 (5)(a) In case of an emergency arising from weather or stream flow  
32 conditions or other natural conditions, the department, through its  
33 authorized representatives, shall issue immediately, upon request, oral  
34 approval for removing any obstructions, repairing existing structures,  
35 restoring stream banks, or to protect property threatened by the stream  
36 or a change in the stream flow without the necessity of obtaining a  
37 written approval prior to commencing work. Conditions of an oral  
38 approval to protect fish life shall be established by the department  
39 and reduced to writing within thirty days and complied with as provided

1 for in this section. Oral approval shall be granted immediately, upon  
2 request, for a stream crossing during an emergency situation.

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

6 (c) The department or the county legislative authority may declare  
7 and continue an emergency when one or more of the criteria under (b) of  
8 this subsection are met. The county legislative authority shall  
9 immediately notify the department if it declares an emergency under  
10 this subsection.

11 (6) The department shall, at the request of a county, develop five-  
12 year maintenance approval agreements, consistent with comprehensive  
13 flood control management plans adopted under the authority of RCW  
14 86.12.200, or other watershed plan approved by a county legislative  
15 authority, to allow for work on public and private property for bank  
16 stabilization, bridge repair, removal of sand bars and debris, channel  
17 maintenance, and other flood damage repair and reduction activity under  
18 agreed-upon conditions and times without obtaining permits for specific  
19 projects.

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

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

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

37 (9) The phrase "to construct any form of hydraulic project or  
38 perform other work" does not include the act of driving across an  
39 established ford. Driving across streams or on wetted stream beds at

1 areas other than established fords requires approval. Work within the  
2 ordinary high water line of state waters to construct or repair a ford  
3 or crossing requires approval.

4 (10) This section does not apply to small scale prospecting and  
5 mining activities, which include the use of pans, sluice boxes,  
6 concentrators, and minirocker boxes for the discovery and recovery of  
7 minerals.

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