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**HOUSE BILL 1162**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Tarleton, Pollet, Moeller, Hudgins, Orwall, S. Hunt, Morris, Gregerson, Jinkins, and Ryu

AN ACT Relating to motorized mineral prospecting; amending RCW 77.55.091, 77.55.321, and 77.55.021; adding a new section to chapter 77.55 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1)(a) The department of fish and wildlife must initiate and complete a scientific study that evaluates the effects, both acute and cumulative, of motorized mineral prospecting on native fish species and related habitat. The department may conduct the scientific study internally or contract all or a portion of the study out to an in-state college or university.

(b) The department of fish and wildlife may design and implement the scientific study required by this section in the manner deemed most appropriate by the department to meet the goals of this section. However, the department must first complete a comprehensive review of relevant scientific literature to identify any information gaps, decide if new data collection is needed or beneficial, and if so, to help focus any additional new data collection. If deemed practicable and helpful by the department, it may utilize the permit issuing process created in chapter 77.55 RCW to track and monitor motorized prospecting operations for the purposes of generating new data.

(c) If, after conducting a scientific literature review, the department decides that new data collection is warranted, it must coordinate with the work group required in subsection (2) of this section in the scope and design of any studies.

(2)(a) The department of fish and wildlife must convene a work group to analyze the results of the literature review required to be completed by department under this section, help guide the initiation of any new data collection completed under this section, receive other related information, and formulate recommendations regarding the proper level of regulation or governmental oversight relating to motorized mineral prospecting.

(b) All members of the work group must be appointed by the director of the department of fish and wildlife. The director shall strive to create a work group composition that provides technical expertise and a diversity of perspectives. At a minimum, the director should invite representatives of the following to participate in the work group:

(i) Staff representatives of the department of fish and wildlife, the department of ecology, and the department of natural resources;

(ii) Representatives of the United States fish and wildlife service, the United States national oceanic and atmospheric administration, the United States forest service, and region X of the United States environmental protection agency;

(iii) Representatives of interested tribal nations;

(iv) Individuals who participate in motorized mineral prospecting;

(v) Representatives of conservation interests, including at least one conservation group with a mission to protect and restore cold water fisheries; and

(vi) Representatives of outdoor recreation interests such as camping, hiking, and angling.

(c) The work group must provide to the legislature, consistent with RCW 43.01.036, formal recommendations as to whether policy reforms related to motorized mineral prospecting are warranted, and if so, detailed potential reforms. In formulating its recommendations, the work group may consider any sources of information deemed relevant by the work group, including the results of the department literature review required by this section and testimony received by the work group from scientists, department staff, and other experts.

(d) The study required by this section and the formal recommendations of the work group must be completed by October 31, 2016.

(3) This section expires July 31, 2017.

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

(1) Except as otherwise provided in this section, small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.

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

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

(4)(a) During the time period from the effective date of this section until October 31, 2016, the provisions of this section, and the resulting gold and fish pamphlet, do not apply to mineral prospecting that uses a suction dredge or other form of motorized mineral prospecting equipment within the wetted perimeter of a river or stream.

(b) After October 31, 2016, the department may, by rule, allow for motorized mineral prospecting to occur in the wetted perimeter of rivers or streams under the provisions of the gold and fish pamphlet, and any conditions on that permission, if the department finds that motorized mineral prospecting has no significant negative effect on native fish species and related fish habitat.

(c) During any time period in which the gold and fish pamphlet is not applicable to motorized mineral prospecting, all motorized mineral prospecting occurring in the wetted perimeter of rivers or streams must be conducted under an individual permit issued under RCW 77.55.021.

NEW SECTION. **Sec.**  A new section is added to chapter 77.55 RCW to read as follows:

(1) During the time period from the effective date of this section until October 31, 2016, the department may not issue a permit under RCW 77.55.021 for motorized mineral prospecting in any segment of a river or stream where all fishing is prohibited either by the commission or the federal government.

(2) After October 31, 2016, the department may, by rule, allow for the issuance of permits authorizing motorized mineral prospecting to occur in a river or stream segment where fishing is prohibited if the department finds that motorized mineral prospecting has no significant negative affect on native fish species and the related habitat in the river or stream segments.

**Sec.**  RCW 77.55.321 and 2012 1st sp.s. c 1 s 103 are each amended to read as follows:

(1) The department shall charge an application fee of one hundred fifty dollars for a hydraulic project permit or permit modification issued under RCW 77.55.021 where the project is located at or below the ordinary high water line. The application fee established under this subsection may not be charged after June 30, 2017.

(2) The following hydraulic projects are exempt from all fees listed under this section:

(a) Hydraulic projects approved under applicant‑funded contracts with the department that pay for the costs of processing those projects;

(b) If RCW 77.55.361, 76.09.490, and 76.09.040 are enacted into law by June 30, 2012, forest practices hydraulic projects;

(c) Pamphlet hydraulic projects;

(d) Mineral prospecting and mining activities eligible to be conducted under the gold and fish pamphlet issued by the department pursuant to RCW 77.55.091; and

(e) Hydraulic projects occurring on farm and agricultural land, as that term is defined in RCW 84.34.020.

(3) All fees collected under this section must be deposited in the hydraulic project approval account created in RCW 77.55.331.

(4) The fee provisions contained in this section are prospective only. The department of fish and wildlife may not charge fees for hydraulic project permits issued under this title prior to July 10, 2012.

(5) This section expires June 30, 2017.

**Sec.**  RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and 77.55.361, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life. However, no permit may be issued under this chapter in violation of the provisions provided in section 3 of this act.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life;

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter; and

(e) Payment of all applicable application fees charged by the department under RCW 77.55.321.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of RCW 77.55.321.

(4) The department may accept complete, written applications as provided in this section for multiple site permits and may issue these permits. For multiple site permits, each specific location must be identified.

(5) With the exception of emergency permits as provided in subsection (12) of this section, applications for permits must be submitted to the department's headquarters office in Olympia. Requests for emergency permits as provided in subsection (12) of this section may be made to the permitting biologist assigned to the location in which the emergency occurs, to the department's regional office in which the emergency occurs, or to the department's headquarters office.

(6) Except as provided for emergency permits in subsection (12) of this section, the department may not proceed with permit review until all fees are paid in full as required in RCW 77.55.321.

(7)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned.

(b) Except as provided in this subsection and subsections (12) through (14) and (16) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(c) Immediately upon determination that the forty-five day period is suspended under (b) of this subsection, the department shall notify the applicant in writing of the reasons for the delay.

(d) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(8) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(9)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for stream bank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the stream bank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

(10) The department may, after consultation with the permittee, modify a permit due to changed conditions. A modification under this subsection is not subject to the fees provided under RCW 77.55.321. The modification is appealable as provided in subsection (8) of this section. For a hydraulic project that diverts water for agricultural irrigation or stock watering purposes, when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under RCW 77.55.321. A decision by the department is appealable as provided in subsection (8) of this section. For a hydraulic project that diverts water for agricultural irrigation or stock watering purposes, when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(12)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, verbal approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore stream banks, protect fish life, or protect property threatened by the stream or a change in the streamflow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency verbal permit must be reduced to writing within thirty days and complied with as provided for in this chapter.

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

(d) The department may not charge a person requesting an emergency permit any of the fees authorized by RCW 77.55.321 until after the emergency permit is issued and reduced to writing.

(13) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

(14) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(15)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (7) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

(16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

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