
HOUSE BILL 1162

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

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1 AN ACT Relating to motorized mineral prospecting; amending RCW
2 77.55.091, 77.55.321, and 77.55.021; adding a new section to chapter
3 77.55 RCW; creating a new section; and providing an expiration date.

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

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

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

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

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

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

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

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

24 (iii) Representatives of interested tribal nations;

25 (iv) Individuals who participate in motorized mineral
26 prospecting;

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

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

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

1 (d) The study required by this section and the formal
2 recommendations of the work group must be completed by October 31,
3 2016.

4 (3) This section expires July 31, 2017.

5 **Sec. 2.** RCW 77.55.091 and 2005 c 146 s 402 are each amended to
6 read as follows:

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

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

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

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

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

37 (c) During any time period in which the gold and fish pamphlet is
38 not applicable to motorized mineral prospecting, all motorized
39 mineral prospecting occurring in the wetted perimeter of rivers or

1 streams must be conducted under an individual permit issued under RCW
2 77.55.021.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55
4 RCW to read as follows:

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

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

16 **Sec. 4.** RCW 77.55.321 and 2012 1st sp.s. c 1 s 103 are each
17 amended to read as follows:

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

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

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

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

30 (c) Pamphlet hydraulic projects;

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

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

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

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

5 (5) This section expires June 30, 2017.

6 **Sec. 5.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each
7 amended to read as follows:

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

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

18 (a) General plans for the overall project;

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

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

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

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

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

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

36 (5) With the exception of emergency permits as provided in
37 subsection (12) of this section, applications for permits must be
38 submitted to the department's headquarters office in Olympia.
39 Requests for emergency permits as provided in subsection (12) of this

1 section may be made to the permitting biologist assigned to the
2 location in which the emergency occurs, to the department's regional
3 office in which the emergency occurs, or to the department's
4 headquarters office.

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

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

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

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

18 (ii) The site is physically inaccessible for inspection;

19 (iii) The applicant requests a delay; or

20 (iv) The department is issuing a permit for a storm water
21 discharge and is complying with the requirements of RCW
22 77.55.161(3)(b).

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

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

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

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

38 (b) Issuance, denial, conditioning, or modification of a permit
39 may be informally appealed to the department within thirty days from
40 the date of receipt of the decision. Requests for informal appeals

1 must be filed in the form and manner prescribed by the department by
2 rule. A permit decision that has been informally appealed to the
3 department is appealable to the board within thirty days from the
4 date of receipt of the department's decision on the informal appeal.

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

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

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

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

31 (11) A permittee may request modification of a permit due to
32 changed conditions. The request must be processed within forty-five
33 calendar days of receipt of the written request and payment of
34 applicable fees under RCW 77.55.321. A decision by the department is
35 appealable as provided in subsection (8) of this section. For a
36 hydraulic project that diverts water for agricultural irrigation or
37 stock watering purposes, when the hydraulic project or other work is
38 associated with stream bank stabilization to protect farm and
39 agricultural land as defined in RCW 84.34.020, the burden is on the

1 permittee to show that changed conditions warrant the requested
2 modification and that such a modification will not impair fish life.

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

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

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

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

24 (13) All state and local agencies with authority under this
25 chapter to issue permits or other authorizations in connection with
26 emergency water withdrawals and facilities authorized under RCW
27 43.83B.410 shall expedite the processing of such permits or
28 authorizations in keeping with the emergency nature of such requests
29 and shall provide a decision to the applicant within fifteen calendar
30 days of the date of application.

31 (14) The department or the county legislative authority may
32 determine an imminent danger exists. The county legislative authority
33 shall notify the department, in writing, if it determines that an
34 imminent danger exists. In cases of imminent danger, the department
35 shall issue an expedited written permit, upon request, for work to
36 remove any obstructions, repair existing structures, restore banks,
37 protect fish resources, or protect property. Expedited permit
38 requests require a complete written application as provided in
39 subsection (2) of this section and must be issued within fifteen
40 calendar days of the receipt of a complete written application.

1 Approval of an expedited permit is valid for up to sixty days from
2 the date of issuance. The department may not require the provisions
3 of the state environmental policy act, chapter 43.21C RCW, to be met
4 as a condition of issuing a permit under this subsection.

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

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

24 (16) The department may issue an expedited written permit in
25 those instances where normal permit processing would result in
26 significant hardship for the applicant or unacceptable damage to the
27 environment. Expedited permit requests require a complete written
28 application as provided in subsection (2) of this section and must be
29 issued within fifteen calendar days of the receipt of a complete
30 written application. Approval of an expedited permit is valid for up
31 to sixty days from the date of issuance. The department may not
32 require the provisions of the state environmental policy act, chapter
33 43.21C RCW, to be met as a condition of issuing a permit under this
34 subsection.

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