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**HOUSE BILL 1106**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Tarleton, Gregerson, and Pollet

AN ACT Relating to regulating water pollution discharges from motorized mineral prospecting activities; adding a new section to chapter 90.48 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the impacts to water quality associated with motorized mineral prospecting are currently unregulated by the state of Washington under state and federal water pollution laws. Washington's existing method of regulating small scale mineral prospecting through the gold and fish pamphlet is insufficient to adequately address the impacts to fish and water quality from this activity. Washington stands as an outlier among neighboring western states in its failure to apply clean water act regulatory authority to the water pollution associated with this type of mining, which includes water temperature and sediment discharge impacts. Furthermore, because federal clean water laws allow third-party lawsuits in the absence of sufficient state regulation of water pollution, there is a possibility that the outcome of litigation will include the state losing discretion on how to best regulate this activity.

(2) Therefore, it is the intent of the legislature to direct the department of ecology to begin regulating the water pollution from small scale mineral prospecting under existing regulatory authority.

NEW SECTION. **Sec.**  A new section is added to chapter 90.48 RCW to read as follows:

(1) The department shall issue a national pollution pollutant discharge elimination system general permit consistent with its responsibilities under RCW 90.48.260 or a general permit issued under the authority of this chapter, or both, that applies to small scale motorized mining.

(2) Under the permit issued pursuant to this section, at minimum the department shall restrict small scale motorized mining:

(a) During the same times and in the same locations for any waters that are subject to a selective fishing requirement or closure under a rule adopted by the department of fish and wildlife under chapter 77.12 RCW;

(b) During other times and places as the department deems consistent with the requirements of this chapter; and

(c) So as not to provide coverage under the permit for use of equipment with an intake nozzle with a diameter exceeding five inches or that uses an engine that exceeds fifteen horsepower.

(3) In order to obtain coverage under a general permit issued pursuant to this section, an applicant must provide the dates and specific locations of activities that the applicant will commence under the permit, including the locations within individual rivers, streams, and tributaries.

(4) In implementing the permit under this section, the department shall coordinate with the regional office of the United States environmental protection agency. The department shall encourage the United States environmental protection agency to establish similar permit conditions that apply in Indian country, and other waters outside of state jurisdiction, for the purposes of ensuring that enhanced state regulation of small scale motorized mining does not unfairly and damagingly concentrate the impacts of small scale motorized mining activities in waters within the state but outside of state jurisdiction.

(5) For the purposes of this section, small scale motorized mining means motorized mining that is subject to rules adopted by the department of fish and wildlife for small scale prospecting and mining activities under RCW 77.55.091.

(6) The requirements of this section are in addition to the requirements of RCW 77.55.091 and nothing in this section alters or limits the requirements established pursuant to RCW 77.55.091.

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