
SENATE BILL 5895

State of Washington

57th Legislature

2001 Regular Session

By Senators Swecker and Hochstatter

Read first time 02/07/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

1 AN ACT Relating to small scale prospecting and mining; amending
2 RCW 77.55.100; 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
7 and mining provide economic benefits to the state, and help to
8 meet the national security demand and industrial demand for
9 minerals. The legislature further finds that it is critical that
10 small scale miners and prospectors be allowed access to open
11 public lands in the state. The legislature further finds that
12 mineral prospecting and mining activities can be conducted in a
13 manner that is consistent with fish habitat and fish-life
14 population. Now, therefore, the legislature declares that small
15 scale prospecting and mining must not be unreasonably
16 regulated. The legislature further declares that small scale
17 prospecting and mining must not be unfairly limited or obstructed
18 from access to open public lands. The legislature further declares

1 that all restrictions or regulations of small scale prospecting
2 and mining activities must be based on sound scientific evidence
3 and applicable documentation supporting the need for such
4 restrictions.

5 **Sec. 2.** RCW 77.55.100 and 2000 c 107 s 16 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

4 (3)(a) The department may issue an expedited written permit in
5 those instances where normal permit processing would result in
6 significant hardship for the applicant or unacceptable damage to
7 the environment. In cases of imminent danger, the department shall
8 issue an expedited written permit, upon request, for work to
9 repair existing structures, move obstructions, restore banks,
10 protect property, or protect fish resources. Expedited permit
11 requests require a complete written application as provided in
12 subsection (2)(b) of this section and shall be issued within
13 fifteen calendar days of the receipt of a complete written
14 application. Approval of an expedited permit is valid for up to
15 sixty days from the date of issuance.

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

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

23 (d) The department or the county legislative authority may
24 determine if an imminent danger exists. The county legislative
25 authority shall notify the department, in writing, if it
26 determines that an imminent danger exists.

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

1 (5)(a) In case of an emergency arising from weather or stream
2 flow conditions or other natural conditions, the department,
3 through its authorized representatives, shall issue immediately,
4 upon request, oral approval for removing any obstructions,
5 repairing existing structures, restoring stream banks, or to
6 protect property threatened by the stream or a change in the
7 stream flow without the necessity of obtaining a written approval
8 prior to commencing work. Conditions of an oral approval to protect
9 fish life shall be established by the department and reduced to
10 writing within thirty days and complied with as provided for in
11 this section. Oral approval shall be granted immediately, upon
12 request, for a stream crossing during an emergency situation.

13 (b) For purposes of this section and RCW 77.55.110, "emergency"
14 means an immediate threat to life, the public, property, or of
15 environmental degradation.

16 (c) The department or the county legislative authority may
17 declare and continue an emergency when one or more of the criteria
18 under (b) of this subsection are met. The county legislative
19 authority shall immediately notify the department if it declares
20 an emergency under this subsection.

21 (6) The department shall, at the request of a county, develop
22 five-year maintenance approval agreements, consistent with
23 comprehensive flood control management plans adopted under the
24 authority of RCW 86.12.200, or other watershed plan approved by a
25 county legislative authority, to allow for work on public and
26 private property for bank stabilization, bridge repair, removal of
27 sand bars and debris, channel maintenance, and other flood damage
28 repair and reduction activity under agreed-upon conditions and
29 times without obtaining permits for specific projects.

30 (7) This section shall not apply to the construction of any
31 form of hydraulic project or other work which diverts water for
32 agricultural irrigation or stock watering purposes authorized
33 under or recognized as being valid by the state's water codes, or
34 when such hydraulic project or other work is associated with
35 streambank stabilization to protect farm and agricultural land as
36 defined in RCW 84.34.020. These irrigation or stock watering
37 diversion and streambank stabilization projects shall be governed
38 by RCW 77.55.110.

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

6 (8) For the purposes of this section and RCW 77.55.110, "bed"
7 means the land below the ordinary high water lines of state
8 waters. This definition does not include irrigation ditches,
9 canals, storm water run-off devices, or other artificial
10 watercourses except where they exist in a natural watercourse that
11 has been altered by man.

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

18 (10) This section does not apply to small scale prospecting and
19 mining activities, which include the use of pans, sluice boxes,
20 concentrators, and minirocker boxes for the discovery and recovery
21 of minerals.

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