

HOUSE BILL REPORT

SHB 1380

As Passed Legislature

Title: An act relating to creating the crime of mineral trespass.

Brief Description: Criminalizing interference with certain mining rights and activities.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Ericksen, Sump, Mielke, Ahern, Clements, Hatfield, Pearson, Buck, Sullivan and Carrell).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/14/03, 2/18/03 [DPS].

Floor Activity:

Passed House: 2/28/03, 96-0.

Senate Amended.

Passed Senate: 4/8/03, 47-0.

House Concurred.

Passed House: 4/24/03, 91-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Creates the crime of mineral trespass as a Class C felony.
- Establishes exceptions to crime and defines certain mining-related terms.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Staff: Caroleen Dineen (786-7156).

Background:

Mining

Regulations on mining are administered by both the state and federal governments. On certain federal land, a person may file a mining claim for mineral deposits, such as gold and silver. Mining claims on federal land also must comply with state regulations. Under Washington law, a federal mining claim must be recorded with the county auditor, and the claim site must have a posted notice of the claim. The posting must comply with specific requirements, including marking the boundaries of the claim and clearing brush or trees that interfere with the posting.

State land is not subject to the federal mining claim system. Instead, Washington leases land for prospecting purposes and enters into contracts for mining on state land. State law distinguishes small mining operations from other mining operations for certain regulatory purposes. A "small scale prospecting and mining" designation exempts small mining operations from some Department of Fish and Wildlife permitting requirements that regulate mining operations near rivers, streams and other bodies of water. Small scale prospecting and mining operations are defined as using pans, non-motorized sluice boxes, concentrators, and mini-rocker boxes for the discovery of minerals.

Current Offenses

General laws prohibit trespassing and malicious mischief. Criminal trespass is committed by knowingly entering or remaining unlawfully on a premises. The crime is a gross misdemeanor if the premises is a building and a misdemeanor if the premises is not a building. Malicious mischief is committed by knowingly and maliciously causing physical damage to the property of another or by interfering with public services. The offense varies from a class B felony to a misdemeanor, depending upon the amount of property damage.

The crime of theft includes both general actions and specific conduct on state lands. In general, theft is committed by wrongfully obtaining or exerting control over another's property with the intent to deprive the person of the property. The gravity of the offense ranges from a class B felony to a gross misdemeanor. More specific offenses related to actions on state lands include harming or removing any trees, engaging in any mining operations, or removing any valuable materials.

Unless otherwise specified, general provisions establish the maximum sentence allowed for each type of crime. Maximum sentences are: 10 years and/or \$20,000 for a class B felony; five years and/or \$10,000 for a class C felony; one year and/or \$5,000 for a gross misdemeanor; and 90 days and/or \$1,000 dollars for a misdemeanor offense.

Summary of Substitute Bill:

The crime of mineral trespassing is created. A person commits the crime of mineral trespass by intentionally and without the permission of the claim holder or person conducting the mining operation:

- stopping, causing to be stopped, or interfering with a lawful mining operation;
- entering a posted mining claim and disturbing, removing, or attempting to remove any mineral from the claim site;
- tampering with or disturbing a flume, rocker box, bedrock sluice, sluice box, dredge, quartz mill, or other mining equipment at a posted mining claim; or
- defacing a location stake, side post, corner post, landmark, monument, or posted written notice within a posted mining claim.

Mineral trespass is a class C felony. The crime is ranked on the adult sentencing grid as seriousness level I and on the juvenile sentencing grid as juvenile disposition offense category "C."

The crime of mineral trespass does not apply to conduct that is required or authorized by law or judicial decree or that is performed by a public servant in the exercise of official powers, duties, or functions. "Laws or judicial decrees" are defined for purposes of this exception as laws defining duties and functions of public servants, laws defining duties of private citizens to assist public servants in performing certain functions, and judgments and court orders.

"Mining claim" is defined for purposes of the mineral trespass offense as a portion of public lands claimed for valuable materials in those lands and for which the mineral rights are obtained under federal law or a right recognized by the federal Bureau of Land Management and given an identification number. Certain definitions related to mining activities are specified for purposes of establishing the crime of mineral trespass.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Mining has a rich history in the State; it is very important to the culture and it can be important to the economy as well. This bill creates complementary state regulations for federal laws. A problem for small scale miners is when a claim is "over-posted" by another person, requiring the claim holder to prove in court his or her rightful claim. Posts and claim sites are also often disrupted and vandalized. This bill addresses these problems and does not interfere with officials reasonably exercising their duties.

Testimony Against: None.

Testified: Representative Ericksen, prime sponsor; and Greg Christensen, Small Scale Miners and Resources Coalition.