

Enrolled Senate Bill 838

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to mining; creating new provisions; amending ORS 468B.052 and 517.123; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly finds that:

(1) Prospecting, small scale mining and recreational mining are part of the unique heritage of the State of Oregon.

(2) Prospecting, small scale mining and recreational mining provide economic benefits to the State of Oregon and local communities and support tourism, small businesses and recreational opportunities, all of which are economic drivers in Oregon's rural communities.

(3) Exploration of potential mine sites is necessary to discover the minerals that underlie the surface and inherently involves natural resource disturbance.

(4) Mining that uses motorized equipment in the beds and banks of the rivers of Oregon can pose significant risks to Oregon's natural resources, including fish and other wildlife, riparian areas, water quality, the investments of this state in habitat enhancement and areas of cultural significance to Indian tribes.

(5) Between 2007 and 2013, mining that uses motorized equipment in the beds and banks of the rivers of Oregon increased significantly, raising concerns about the cumulative environmental impacts.

(6) The regulatory system related to mining that uses motorized equipment in the beds and banks of the rivers of Oregon should be efficient and structured to best protect environmental values.

SECTION 2. (1) A moratorium is imposed until January 2, 2021, on mining that uses any form of motorized equipment for the purpose of extracting gold, silver or any other precious metal from placer deposits of the beds or banks of the waters of this state, as defined in ORS 196.800, or from other placer deposits, that results in the removal or disturbance of streamside vegetation in a manner that may impact water quality. The moratorium applies up to the line of ordinary high water, as defined in ORS 274.005, and 100 yards upland perpendicular to the line of ordinary high water that is located above the lowest extent of the spawning habitat in any river and tributary thereof in this state containing essential indigenous anadromous salmonid habitat, as defined in ORS 196.810, or naturally reproducing populations of bull trout, except in areas that do not support populations of anadromous salmonids or natural reproducing populations of bull trout due to a naturally occurring or lawfully placed physical barrier to fish passage.

(2) The moratorium does not apply to any mining for which the State Department of Geology and Mineral Industries issues an operating permit under ORS 517.702 to 517.989.

(3) In areas where the moratorium does not apply as described in subsection (1) of this section, the Department of State Lands shall limit the individual permits issued under ORS 196.810 and the general authorizations issued under ORS 196.850 to not more than 850 permits and authorizations for mining described in this section at any time during the moratorium period. The Department of State Lands shall give priority, to the greatest extent practicable, to persons who held permits or authorizations for the longest period of time before January 1, 2014.

(4) Any maps developed by the State Department of Fish and Wildlife, or any other state agency, that delineate the area of the moratorium established by subsection (1) of this section are not subject to the rulemaking requirements of ORS chapter 183.

(5) Violation of the moratorium established by subsection (1) of this section is a Class A misdemeanor.

SECTION 3. Section 2 of this 2013 Act becomes operative on January 2, 2016.

SECTION 4. Sections 2 and 3 of this 2013 Act are repealed on January 2, 2021.

SECTION 5. (1) On and after January 1, 2014, and before January 2, 2016, mining that uses any form of motorized equipment for the purpose of extracting gold, silver or any other precious metal from placer deposits of the beds or banks of the waters of this state, as defined in ORS 196.800, or from other placer deposits, that results in the removal or disturbance of streamside vegetation in a manner that may impact water quality, is subject to the following:

(a) The motorized dredge equipment must be operated at least 500 feet from other motorized dredge equipment, unless the Department of Environmental Quality determines that another distance is appropriate to protect water quality.

(b) The motorized equipment may not be left unattended within the wetted perimeter of any waters of this state.

(c) The motorized equipment may be operated only between the hours of 9 a.m. and 5 p.m.

(2) The provisions of subsection (1) of this section apply to mining that occurs up to the line of ordinary high water, as defined in ORS 274.005, and 100 yards upland perpendicular to the line of ordinary high water of the full length of any river and tributary thereof in this state, of which any portion contains essential indigenous anadromous salmonid habitat, as defined in ORS 196.810, or naturally reproducing populations of bull trout.

(3) The provisions of subsection (1) of this section do not apply to any mining for which the State Department of Geology and Mineral Industries issues an operating permit under ORS 517.702 to 517.989.

(4) During the period described in this section, the Department of State Lands shall limit the individual permits issued under ORS 196.810 and the general authorizations issued under ORS 196.850 to not more than 850 permits and authorizations for mining described in this section at any time during the period described in this section. The Department of State Lands shall give priority, to the greatest extent practicable, to persons who held permits or authorizations for the longest period of time before January 1, 2014.

(5) Violation of any provision of this section is a Class A violation.

SECTION 6. (1) Section 5 of this 2013 Act becomes operative on January 1, 2014.

(2) Section 5 of this 2013 Act applies without regard to whether the permits, licenses, authorizations or other forms of permission required by law for mining were issued before, on or after January 1, 2014.

SECTION 7. (1) Sections 5 and 6 of this 2013 Act are repealed on January 2, 2016.

(2) The repeal of sections 5 and 6 of this 2013 Act by subsection (1) of this section does not affect any fine imposed under section 5 of this 2013 Act.

SECTION 8. (1) The Governor's office, in consultation with the Department of Environmental Quality, the Department of State Lands, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the Oregon State Police and other relevant state agencies, the federal government, the federally recognized Indian tribes in Oregon and affected stakeholders shall study matters related to mining that uses any form of motorized equipment for the purpose of extracting gold, silver or any other precious metal from placer deposits of the beds or banks of the waters of this state, as defined in ORS 196.800, or from other placer deposits, and matters related to the removal or disturbance of streamside vegetation resulting from the mining activities, and shall propose a revised state regulatory framework that includes, but is not limited to:

(a) A consolidated regulatory process for mining described in this section, including a system that:

(A) Involves permits, licenses, authorizations or other forms of permission that must be displayed in plain view and be clearly visible on the motorized equipment in order to aid in the identification of persons carrying out mining activities; and

(B) Considers a single permit or a single point of contact approach to authorization.

(b) Effective compliance, monitoring and enforcement mechanisms related to mining described in this section.

(c) Adequate fee structures to cover administration, compliance, monitoring, enforcement, outreach and education related to any permit, license, authorization or other form of permission required by law from a state agency for mining described in this section or for discharges from mining described in this section, including ways to maximize the efficiency in the use of existing state resources.

(d) Conditions for, and restrictions on, mining described in this section, to the extent allowed by law and based on the best available science and precautionary principles, designed to:

(A) Protect and recover in-stream and riparian habitat that is important to achieve water quality standards and the conservation and recovery of indigenous anadromous salmonids, as defined in ORS 196.810, and naturally reproducing populations of bull trout; and

(B) Address social considerations, including concerns related to safety, noise, navigation, cultural resources and other uses of waterways.

(e) The establishment of a system of management zones, to the extent allowed by law, that:

(A) Limits, either by lottery or by other mechanism, the amount of mining activity that uses motorized equipment in the management zones at specific times and cumulatively over time periods;

(B) Requires the payment of a fee, as part of the fee structures described in paragraph (c) of this subsection, for mining described in this section in the management zones; and

(C) Establishes specific conditions and restrictions, as described in paragraph (d) of this subsection, for the respective management zones.

(f) Prohibitions on mining described in this section in specific areas of this state, to the extent allowed by law, including:

(A) Bodies of water currently listed as water quality impaired under the Federal Water Pollution Control Act for sediment, turbidity, toxics or heavy metals;

(B) Bodies of water within federally designated wilderness areas, national monuments and national botanical areas;

(C) Scenic waterways in this state designated under ORS 390.826 and bodies of water flowing through state parks; and

(D) Habitat that is essential to the recovery and conservation of salmon, steelhead, lamprey, freshwater mollusks or other unique habitat values, unless protection for this habitat may be otherwise achieved pursuant to paragraphs (d) and (e) of this subsection.

(2) The Governor's office shall submit a report with the results of the proposed regulatory framework, and shall include recommendations for any necessary legislation and funding, to the interim committees of the Legislative Assembly related to environment and natural resources or other appropriate legislative committee on or before November 1, 2014. The Governor's office may also include any recommendations for proposed rules related to the revised regulatory framework in the report.

SECTION 9. Section 8 of this 2013 Act is repealed on January 2, 2016.

SECTION 10. ORS 517.123 is amended to read:

517.123. The Legislative Assembly finds that prospecting, small scale mining and recreational mining:

(1) Are important parts of the heritage of the State of Oregon; **and**

(2) Provide economic benefits to the state and local communities.[: *and*]

[(3) *Can be conducted in a manner that is not harmful and may be beneficial to fish habitat and fish propagation.*]

SECTION 11. ORS 468B.052 is amended to read:

468B.052. (1) [*Notwithstanding the authority of*] **Unless** the Environmental Quality Commission, as provided in ORS 468.065 [*to establish a schedule of*], **establishes different** fees for permits issued under ORS 468B.050 [*and in lieu of any fee established under the schedule of fees*], a person who operates a suction dredge having a suction hose with an inside diameter of eight inches or less shall, upon application for or renewal of a permit issued under 468B.050, pay to the Department of Environmental Quality:

[(1)] (a) For an individual permit:

[(a)] (A) A one-time application fee of \$300; and

[(b)] (B) An annual renewal fee of \$25.

[(2)] (b) For a general permit, either:

[(a)] (A) A \$25 annual fee for each year the person registers under the general permit; or

[(b)] (B) A \$100 fee for a five-year registration under the general permit.

(2)(a) **In addition to the fees described in subsection (1) of this section, by rule the commission may establish an additional fee for a permit issued under ORS 468B.050 for a person to operate a suction dredge described in this section. The fee must be adequate to cover the costs of administration, compliance, monitoring and enforcement related to the permit.**

(b) After a fee is established by the commission pursuant to this subsection, the fee is subject to the limitations on increases imposed by ORS 468B.051.

SECTION 12. In addition to the fees described in ORS 468B.052, from October 1, 2013, to December 31, 2015, a surcharge of \$150 is imposed on any permits issued under ORS 468B.050 for a person who operates a suction dredge as described in ORS 468B.052. The surcharge must be used to fund data collection and reporting on suction dredge mining in Oregon by the Department of Environmental Quality. The data referred to in this section includes, but is not limited to, data on the locations and number of suction dredge operations, the types and sizes of suction dredges and the physical impacts from suction dredge mining. Amounts collected as surcharges under this section shall be deposited in the Suction Dredge Study Fund established under section 13 of this 2013 Act.

SECTION 13. The Suction Dredge Study Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Suction Dredge Study Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality to carry out the duties of the department described in section 12 of this 2013 Act.

SECTION 14. Notwithstanding any other law limiting expenditures, the amount of \$141,837 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses, from moneys deposited in the Suction Dredge Study Fund, incurred by the Department of Environmental Quality in carrying out the duties of the department described in section 12 of this 2013 Act.

SECTION 15. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate July 3, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House July 7, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State