

Senate Bill 830

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Environmental Quality Commission to adopt by rule consolidated permitting program for motorized in-stream placer mining and motorized upland placer mining. Requires adoption of certain rules related to review of applications, issuance of permits and conditions on permits.

Authorizes Department of Environmental Quality and certain other state agencies to enter memoranda of agreement assigning department duties related to permitting of motorized in-stream placer mining and motorized upland placer mining.

Repeals moratorium on mining using motorized equipment.

Requires operating permit to engage in motorized in-stream placer mining or motorized upland placer mining.

Prohibits motorized in-stream placer mining or motorized upland placer mining in certain protected areas.

Imposes civil penalties of not more than \$1,000 per day for violating permit provisions.

Punishes violation of permitting provisions by maximum of \$2,000 fine.

Becomes operative January 2, 2016. Authorizes Environmental Quality Commission to take certain actions prior to operative date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to mining; creating new provisions; amending ORS 468B.052; repealing sections 2, 3 and 4, chapter 783, Oregon Laws 2013; and declaring an emergency.

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

REPEAL OF MORATORIUM ON CERTAIN MINING OPERATIONS

SECTION 1. Sections 2, 3 and 4, chapter 783, Oregon Laws 2013, are repealed.

CONSOLIDATED PERMITTING PROGRAM FOR MOTORIZED IN-STREAM PLACER MINING AND MOTORIZED UPLAND PLACER MINING

SECTION 2. As used in sections 2 to 10 of this 2015 Act:

(1) **“Biological resource habitat” means essential indigenous anadromous salmonid habitat and habitat that is essential to the recovery and conservation of pacific lamprey, bull trout and freshwater mollusks.**

(2) **“Line of ordinary high water” has the meaning given that term in ORS 274.005.**

(3) **“Motorized in-stream placer mining” means mining using any form of motorized equipment, including but not limited to the use of a motorized suction dredge, for the purpose of extracting gold, silver or any other precious metal from placer deposits of the beds or banks of the waters of the state.**

(4) **“Motorized upland placer mining” means:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Mining that uses any form of motorized equipment for the purpose of extracting gold,
2 silver or any other precious metal from placer deposits located between the line of ordinary
3 high water and 100 yards upland perpendicular to the line of ordinary high water of the
4 length of any waters of the state; and

5 (b) Any activity related to mining described in paragraph (a) of this subsection, including
6 the establishment of camps or access routes, that takes place in a location that is between
7 the line of ordinary high water and 100 yards upland perpendicular to the line of ordinary
8 high water of the length of any waters of the state.

9 (5) "Operator" means any person that is engaged in motorized in-stream placer mining
10 operations or motorized upland placer mining operations.

11 (6) "Waters of the state" has the meaning given that term in ORS 468B.005.

12 **SECTION 3.** (1) An operator may not engage in motorized in-stream placer mining or
13 motorized upland placer mining without holding or being covered by a valid operating permit
14 issued by Department of Environmental Quality. Separate permit coverage is required for
15 each separate motorized mining operation. An operator seeking an operating permit or per-
16 mit coverage from the department shall submit an application by completing an online ap-
17 plication form developed by the department by rule and available on the department's website
18 that contains the following information:

19 (a) The name and address of the operator;

20 (b) The global positioning system coordinates for where the motorized in-stream placer
21 mining or motorized upland placer mining operation is proposed to occur;

22 (c) Information on how the mining location will be accessed by the operator;

23 (d) An affirmation by the operator that the operator has reviewed information available
24 as part of the online application process related to cultural resource preservation and best
25 management practices for motorized in-stream placer mining and motorized upland placer
26 mining; and

27 (e) Any other information that the department requires by rule to be included in the
28 application.

29 (2) The department may authorize motorized in-stream placer mining and motorized up-
30 land placer mining under a general permit or an individual permit. An operator proposing to
31 conduct an action under a general permit shall apply to the department in accordance with
32 this section and shall pay the applicable fee required under ORS 468B.052.

33 (3) The department may refuse to issue an operating permit or grant permit coverage to
34 an operator who has not, in the determination of the department, substantially complied with
35 the conditions of an operating permit, the provisions of this section or section 4 or 6 of this
36 2015 Act or the rules adopted by the department to carry out the purposes of this section
37 or section 4 or 6 of this 2015 Act.

38 **SECTION 4.** (1) The Environmental Quality Commission, in consultation with the De-
39 partment of Environmental Quality, the Department of State Lands, the State Historic
40 Preservation Officer, and federally recognized Indian tribes in Oregon, shall adopt by rule a
41 program for the authorization by permit of motorized in-stream placer mining and motorized
42 upland placer mining in this state.

43 (2) Rules adopted under this section must:

44 (a) Provide for the Department of Environmental Quality to serve as the single point of
45 contact for operators with relation to the permitting of mining described in this section;

1 (b) Include an application review process that allows for the Department of State Lands,
 2 the State Historic Preservation Officer, federally recognized Indian tribes in Oregon and any
 3 other state agencies with an interest in or statutory responsibility related to mining de-
 4 scribed in this section to have adequate time and authority to make recommendations to the
 5 Department of Environmental Quality regarding permit conditions or whether to approve or
 6 deny a permit for motorized in-stream placer mining or motorized upland placer mining;

7 (c) Include criteria for the issuance of permits by the Department of Environmental
 8 Quality that are consistent with all applicable state and local laws; and

9 (d) Provide for an expedited application review process for applications submitted under
 10 section 3 of this 2015 Act that meet certain criteria as determined by the commission.

11 (3) The commission shall adopt by rule conditions that may be applied to permits as
 12 necessary to:

13 (a) Limit the amount of removal or fill activity in waters of the state and the amount
 14 of removal or disturbance of streamside vegetation that may occur under the permit;

15 (b) Ensure that permits are displayed in plain view and clearly visible on or near motor-
 16 ized equipment in order to aid in the identification of operators;

17 (c) Prevent or mitigate social conflict due to the noise caused by, or the proximity of,
 18 mining described in this section to residences, campgrounds, parks or other areas where
 19 social conflict could reasonably be expected to occur;

20 (d) Ensure that motorized in-stream placer mining equipment is operated at a distance
 21 from other motorized equipment that is safe for the operators and protective of water qual-
 22 ity;

23 (e) Protect cultural resources and high value natural resources;

24 (f) Protect drinking water;

25 (g) Require operators to keep daily activity logs of information related to the location and
 26 extent of mining that may be reportable to the department; and

27 (h) Require motorized in-stream placer mining operators to secure equipment that is not
 28 in use in a manner that:

29 (A) Does not prevent or obstruct navigation within the beds or banks of waters of the
 30 state; and

31 (B) Ensures the removal of hazardous materials from the equipment while it is unat-
 32 tended.

33 (4) Rules adopted under this section may include the establishment of a system of man-
 34 agement zones, to the extent allowed by law, that are designed to address conditions unique
 35 to the management zone through:

36 (a) The establishment of caps on the total number of permits for motorized in-stream
 37 placer mining and motorized upland placer mining that may occur in a management zone;

38 (b) Notwithstanding subsection (3) of this section, the establishment of conditions that
 39 may be applied to permits issued under this section that are in addition to, or in lieu of, the
 40 requirements under subsection (3) of this section and that are specific to the management
 41 zone; and

42 (c) Research, monitoring, compliance and enforcement efforts that are specific to the
 43 management zone.

44 (5) Rules adopted under this section must, to the extent feasible and practicable, allow
 45 for adaptive management, be based on the best available science and precautionary princi-

1 ples, and incorporate best management practices.

2 **SECTION 5.** (1) The Department of State Lands and the Department of Environmental
3 Quality may enter into a memorandum of agreement concerning motorized in-stream placer
4 mining and motorized upland placer mining with respect to the operating permit program
5 established under sections 2 to 10 of this 2015 Act, water pollution programs administered
6 by the Department of Environmental Quality under ORS chapter 468B and the issuance of
7 permits under the provisions of ORS 196.600 to 196.905.

8 (2) The memorandum described in subsection (1) of this section may assign sole respon-
9 sibility for permitting to the Department of Environmental Quality when the motorized in-
10 stream placer mining or motorized upland placer mining would otherwise be under the
11 permitting jurisdiction of both the Department of State Lands and the Department of Envi-
12 ronmental Quality.

13 (3) In addition to a memorandum entered into under subsection (1) of this section, the
14 Department of Environmental Quality and any other state agencies imposing requirements
15 on motorized in-stream placer mining or motorized upland placer mining may enter into
16 agreements for the department to act on behalf of the agencies in informing operators of the
17 requirements and overseeing enforcement of the requirements.

18 (4) Nothing in this section shall be interpreted as authorizing the Department of Envi-
19 ronmental Quality to issue a permit for motorized in-stream placer mining or motorized
20 upland placer mining without first meeting the review and consultation requirements
21 adopted by the department by rule under section 4 (2) of this 2015 Act.

22 **SECTION 6.** (1) In addition to the prohibition against placer mining in scenic waterways
23 under ORS 390.835, no motorized in-stream placer mining may be permitted to occur directly
24 in the banks of the waters of the state or up to the line of ordinary high water in the beds
25 of segments of waters of the state that are:

26 (a) Designated biological resource habitat, unless protection for the habitat may be oth-
27 erwise achieved pursuant to rules adopted under section 4 of this 2015 Act. "Biological re-
28 source habitat" as defined under section 2 of this 2015 Act shall be further defined and
29 designated by rule by the Department of State Lands in consultation with the State Depart-
30 ment of Fish and Wildlife and in consultation with other affected parties.

31 (b) Waters listed as water quality impaired under the Federal Water Pollution Control
32 Act (P.L. 92-500, as amended) for sediment, turbidity, toxics or heavy metals that are asso-
33 ciated with sediments.

34 (c) Waters flowing through a state park.

35 (d) Unless otherwise specifically authorized by the federal agency with jurisdiction over
36 the area, waters flowing through or wholly contained within a federally designated wilderness
37 area or wilderness study area, national monument, national botanical area or an area of
38 critical environmental concern designated by the Bureau of Land Management.

39 (e) Waters flowing through public land set aside or withdrawn from mineral entry, unless
40 the land is set aside or withdrawn for the purpose of recreational mining.

41 (f) Unless specifically authorized by the appropriate Indian tribe pursuant to the appli-
42 cation review process provided for by rules adopted under section 4 of this 2015 Act:

43 (A) Waters forming the boundaries of an Indian reservation; or

44 (B) Waters flowing through or wholly contained within an Indian reservation, tribal trust
45 lands or property that is owned exclusively by an Indian tribe or an entity wholly owned by

1 an Indian tribe.

2 (2) No motorized upland placer mining may be permitted to occur on land that is between
 3 the line of ordinary high water and 100 yards upland perpendicular to the line of ordinary
 4 high water of the full length of any segment of waters of the state that are:

5 (a) Designated biological resource habitat, as that term is defined under section 2 of this
 6 2015 Act and subsection (1) of this section, unless protection for the habitat may be other-
 7 wise achieved pursuant to the rules adopted under section 4 of this 2015 Act.

8 (b) Scenic waterways in this state designated under ORS 390.826 and bodies of water
 9 flowing through state parks.

10 (c) Unless otherwise specifically authorized by the federal agency with jurisdiction over
 11 the area, waters flowing through or wholly contained within a federally designated wilderness
 12 area or wilderness study area, national monument, national botanical area or an area of
 13 critical environmental concern designated by the Bureau of Land Management.

14 (d) Waters flowing through public land set aside or withdrawn from mineral entry, unless
 15 the land is set aside or withdrawn for the purpose of recreational mining.

16 (e) Unless specifically authorized by the appropriate Indian tribe pursuant to the appli-
 17 cation review process provided for by rules adopted under section 4 of this 2015 Act;

18 (A) Waters forming the boundaries of an Indian reservation; or

19 (B) Waters flowing through or wholly contained within an Indian reservation, tribal trust
 20 lands or property that is owned exclusively by an Indian tribe or an entity wholly owned by
 21 an Indian tribe.

22 (3) Subsections (1) and (2) of this section shall not be interpreted to require the denial
 23 of a permit for motorized in-stream placer mining or motorized upland placer mining if the
 24 denial of the permit would:

25 (a) Result in an obligation for compensation under Article I, section 18, Oregon Consti-
 26 tution, or the Fifth Amendment to the United States Constitution; or

27 (b) Be in violation of federal law.

28 **SECTION 7.** Any person who violates any provision of section 3, 4 or 6 of this 2015 Act
 29 or any rule, order or permit adopted or issued under section 3, 4 or 6 of this 2015 Act shall
 30 be subject to a civil penalty in an amount to be determined by the Department of Environ-
 31 mental Quality of not more than \$1,000 per day of violation.

32 **SECTION 8.** Violation of any provisions of section 3, 4 or 6 of this 2015 Act, or any rule,
 33 order or permit adopted or issued under section 3, 4 or 6 of this 2015 Act is a Class A vio-
 34 lation.

35 **SECTION 9.** Sections 2 to 8 of this 2015 Act do not apply to any mining for which the
 36 State Department of Geology and Mineral Industries issues an operating permit under ORS
 37 517.702 to 517.989.

38 **SECTION 10.** The Department of Environmental Quality shall annually convene a team
 39 of representatives of each of the parties listed in section 4 (1) of this 2015 Act to review the
 40 effectiveness of the program adopted under section 4 of this 2015 Act. The department shall
 41 submit a report with the team's findings, that may include recommendations for legislation,
 42 to the Legislative Assembly in the manner provided in ORS 192.245 on or before February 1
 43 of each odd-numbered year.

44
 45 CONFORMING AMENDMENT

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

468B.052. (1) Unless the Environmental Quality Commission, as provided in ORS 468.065, establishes different fees for permits issued under [*ORS 468B.050, a person who operates a suction dredge having a suction hose with an inside diameter of eight inches or less*] **section 4 of this 2015 Act, a motorized in-stream placer mining operator or motorized upland placer mining operator** shall, upon application for or renewal of a permit issued under [*ORS 468B.050*] **section 4 of this 2015 Act**, pay to the Department of Environmental Quality:

(a) For an individual permit:

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

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

(b) For a general permit, either:

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

(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*] **section 4 of this 2015 Act** for a person to [*operate a suction dredge*] **engage in motorized in-stream placer mining or motorized upland placer mining** 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.

MISCELLANEOUS

SECTION 12. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

SECTION 13. (1) Sections 1 to 10 of this 2015 Act and the amendments to ORS 468B.052 by section 11 of this 2015 Act become operative on January 2, 2016.

(2) The Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary for the commission to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission by sections 1 to 10 of this 2015 Act and the amendments to ORS 468B.052 by section 11 of this 2015 Act.

SECTION 14. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.