

**A-Engrossed
Senate Bill 830**

Ordered by the Senate April 27
Including Senate Amendments dated April 27

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.

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.

Requires Department of Environmental Quality and Department of State Lands, and authorizes Department of Environmental Quality and certain other state agencies, to enter memoranda of agreement assigning Department of **Environmental Quality** duties related to permitting of motorized in-stream placer mining and motorized upland placer mining.

Repeals moratorium on mining using motorized equipment **on effective date of Act.**

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~~ **2017**. 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 830.589 and 830.998 and sections 5 and 7, chapter 783, Oregon Laws 2013; repealing ORS 468B.052 and sections 2, 3, 4, 12 and 13, 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 Sections 2, 3 and 4, chapter 783, Oregon Laws 2013, are repealed.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 11 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.

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

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

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

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

14 (5) “Operator” means any person that is engaged in motorized in-stream placer mining
15 operations or motorized upland placer mining operations.

16 (6) “Waters of the state” has the meaning given that term in ORS 468B.005.

17 **SECTION 3.** (1) An operator may not engage in motorized in-stream placer mining or
18 motorized upland placer mining in any location without holding or being covered by a valid
19 operating permit for that location that is issued by Department of Environmental Quality.
20 Separate permit coverage is required for each separate motorized mining operation. An op-
21 erator seeking an operating permit or permit coverage from the department shall submit an
22 application by completing an online application form developed by the department by rule and
23 available on the department’s website that contains the following information:

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

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

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

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

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

34 (2) The department may authorize motorized in-stream placer mining and motorized up-
35 land placer mining under a general operating permit or an individual operating permit.

36 (3) The department may refuse to issue an operating permit or grant permit coverage to
37 an operator who:

38 (a) Has not, in the determination of the department, substantially complied with the
39 conditions of an operating permit, the provisions of this section or section 4 or 6 of this 2015
40 Act or the rules adopted by the department to carry out the purposes of this section or
41 section 4 or 6 of this 2015 Act; or

42 (b) Has been convicted of a violation of any provision of this section or section 4 or 6 of
43 this 2015 Act or any rule, order or permit adopted or issued under this section or section 4
44 or 6 of this 2015 Act.

45 **SECTION 4.** (1) The Environmental Quality Commission, in consultation with the De-

1 department of State Lands, the State Historic Preservation Officer, and federally recognized
2 Indian tribes in Oregon, shall adopt by rule a program for the authorization by permit of
3 motorized in-stream placer mining and motorized upland placer mining in this state, as de-
4 scribed in section 3 of this 2015 Act.

5 (2) Rules adopted under this section must:

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

8 (b) Include an application review process that allows for the Department of State Lands,
9 the State Historic Preservation Officer, federally recognized Indian tribes in Oregon and any
10 other state and federal agencies with an interest in or statutory responsibility related to
11 mining described in this section to have adequate authority and no longer than 30 working
12 days within which to make recommendations to the Department of Environmental Quality
13 regarding permit conditions or whether to approve or deny a permit for motorized in-stream
14 placer mining or motorized upland placer mining;

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

17 (d) Limit the combined total number of permits of any type described in section 3 of this
18 2015 Act to no more than 850 annually.

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

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

23 (b) Prohibit the movement of rock or large woody debris, as defined in ORS 196.800, if the
24 rock or large woody debris could not physically be moved by a person without the aid of an-
25 other person or tools;

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

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

31 (e) Ensure that motorized in-stream placer mining equipment is operated at a distance
32 from other motorized equipment that is safe for the operators and protective of water qual-
33 ity;

34 (f) Protect cultural resources and high value natural resources;

35 (g) Protect drinking water;

36 (h) Require operators to keep daily activity logs of information related to the location
37 and extent of mining that may be reportable to the department;

38 (i) Require operators to stop and submit to an inspection at an aquatic invasive species
39 check station as provided under ORS 830.589 while transporting motorized in-stream placer
40 mining equipment; and

41 (j) Require motorized in-stream placer mining operators to secure equipment that is not
42 in use in a manner that:

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

45 (B) Ensures the removal of hazardous materials from the equipment while it is unat-

1 tended.

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

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

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

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

13 (5) Rules adopted under this section:

14 (a) May allow for adaptive management;

15 (b) Must be based on the precautionary principle as informed by best available science;
16 and

17 (c) Must incorporate effective best management practices.

18 **SECTION 5.** (1) The Department of State Lands and the Department of Environmental
19 Quality shall enter into a memorandum of agreement concerning motorized in-stream placer
20 mining and motorized upland placer mining with respect to the operating permit program
21 established under sections 2 to 11 of this 2015 Act, water quality programs administered by
22 the Department of Environmental Quality under ORS chapter 468B and the issuance of per-
23 mits under the provisions of ORS 196.600 to 196.905.

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

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

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

38 **SECTION 6.** (1) In order to protect important natural resources, and in addition to the
39 prohibition against placer mining in scenic waterways under ORS 390.835, no motorized in-
40 stream placer mining may be permitted to occur directly in the banks of the waters of the
41 state or up to the line of ordinary high water in the beds of segments of waters of the state
42 that are:

43 (a) Designated biological resource habitat. "Biological resource habitat" as defined under
44 section 2 of this 2015 Act shall be further defined and designated by rule by the Department
45 of State Lands in consultation with the State Department of Fish and Wildlife and in con-

1 sultation with other affected parties.

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

5 (c) Waters flowing through a state park.

6 (d) Waters flowing through or wholly contained within a federally designated wilderness
7 area or wilderness study area, national monument, Botanical Special Interest Area as des-
8 ignated by the United States Forest Service or an area of critical environmental concern
9 designated by the Bureau of Land Management.

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

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

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

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

18 (g) Waters flowing through a waterway for which \$100,000 or more of state funds have
19 been spent on restoration, as documented by the Oregon Watershed Enhancement Board.

20 (2) Subject to the provisions of subsection (1)(a) and (b) of this section, motorized in-
21 stream placer mining may be permitted only under an individual operating permit, as pro-
22 vided in section 3 of this 2015 Act, if the mining is to occur directly in the banks of the
23 waters of the state or up to the line of ordinary high water in the beds of waters of the state
24 that are within watersheds containing:

25 (a) Designated biological resource habitat; or

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

29 (3) In order to protect important natural resources, no motorized upland placer mining
30 may be permitted to occur on land that is between the line of ordinary high water and 100
31 yards upland perpendicular to the line of ordinary high water of the full length of any seg-
32 ment of waters of the state that are:

33 (a) Designated biological resource habitat, as that term is defined under section 2 of this
34 2015 Act and subsection (1) of this section, unless protection for the habitat may be other-
35 wise achieved through the issuance of an individual operating permit subject to the condi-
36 tions adopted by rule under section 4 of this 2015 Act.

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

39 (c) Waters flowing through or wholly contained within a federally designated wilderness
40 area or wilderness study area, national monument, Botanical Special Interest Area as des-
41 ignated by the United States Forest Service or an area of critical environmental concern
42 designated by the Bureau of Land Management.

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

45 (e) Unless specifically authorized by the appropriate Indian tribe pursuant to the appli-

1 cation review process provided for by rules adopted under section 4 of this 2015 Act:

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

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

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

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

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

16 **SECTION 9.** Sections 2 to 8 of this 2015 Act do not apply to any mining for which the
17 State Department of Geology and Mineral Industries issues an operating permit under ORS
18 517.702 to 517.989.

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

25 **SECTION 11.** The Environmental Quality Commission may establish by rule a schedule
26 of fees for operating permits under sections 3 and 4 of this 2015 Act. The fees may be set in
27 amounts sufficient to recover the costs of administering the program.

28
29 **CONFORMING AMENDMENTS**

30
31 **SECTION 12.** ORS 830.589 is amended to read:

32 830.589. (1) The State Department of Fish and Wildlife, the State Marine Board or the State
33 Department of Agriculture may require a person transporting a recreational or commercial
34 watercraft, **or a piece of motorized equipment used for motorized in-stream placer mining as**
35 **defined in section 2 of this 2015 Act**, to stop at a check station to inspect the watercraft **or piece**
36 **of motorized equipment** for the presence of aquatic invasive species. The purpose of the admin-
37 istrative search authorized under this section is to prevent and limit the spread of aquatic invasive
38 species within Oregon.

39 (2) The State Department of Fish and Wildlife, the State Marine Board or the State Department
40 of Agriculture may decontaminate, or recommend decontamination of, any recreational or commer-
41 cial watercraft **or piece of motorized equipment** that the agency inspects at a check station op-
42 erated under authority of this section.

43 (3) All check stations operated under authority of this section must be plainly marked by signs
44 that comply with all state and federal laws and must be staffed by at least one uniformed employee
45 of the State Department of Fish and Wildlife, the State Marine Board or the State Department of

1 Agriculture trained in inspection and decontamination of recreational or commercial watercraft **and**
2 **motorized equipment**.

3 (4) An agency that operates a check station under this section shall require all persons trans-
4 porting recreational or commercial watercraft **or pieces of motorized equipment** to stop at the
5 check station, and the agency shall inspect every recreational or commercial watercraft **and piece**
6 **of motorized equipment** that goes through the check station.

7 (5) Notwithstanding ORS 496.992, a person transporting a recreational or commercial watercraft
8 **or piece of motorized equipment** who stops at a check station for inspection and who cooperates
9 in the decontamination process is not subject to criminal sanctions for possessing or transporting
10 aquatic invasive species.

11 (6) The State Department of Fish and Wildlife, the State Marine Board and the State Depart-
12 ment of Agriculture may adopt rules to carry out the provisions of this section.

13 **SECTION 13.** ORS 830.998 is amended to read:

14 830.998. (1) A person who is transporting a recreational or commercial watercraft, **or piece of**
15 **motorized equipment used for motorized in-stream placer mining as defined in section 2 of**
16 **this 2015 Act**, and fails to stop and submit to an inspection at an aquatic invasive species check
17 station operated by the State Department of Fish and Wildlife, the State Marine Board or the State
18 Department of Agriculture as provided under ORS 830.589 commits a Class D violation.

19 (2) Notwithstanding ORS 153.042, an enforcement officer may issue a citation under subsection
20 (1) of this section when the conduct alleged to constitute a violation has not taken place in the
21 presence of the enforcement officer, if the enforcement officer has reasonable grounds to believe that
22 the conduct constitutes a violation on the basis of information received from an employee of an
23 agency authorized to operate an aquatic invasive species check station who observed the violation.

24
25 **MISCELLANEOUS**

26
27 **SECTION 14.** Sections 2 to 11 of this 2015 Act are added to and made a part of ORS
28 chapter 468B.

29 **SECTION 15.** Section 7, chapter 783, Oregon Laws 2013, is amended to read:

30 **Sec. 7.** (1) Sections 5 and 6, **chapter 783, Oregon Laws 2013**, [of this 2013 Act] are repealed
31 on January 2, [2016] **2017**.

32 (2) The repeal of sections 5 and 6, **chapter 783, Oregon Laws 2013**, [of this 2013 Act] by sub-
33 section (1) of this section does not affect any fine imposed under section 5, **chapter 783, Oregon**
34 **Laws 2013** [of this 2013 Act].

35 **SECTION 16.** Section 5, chapter 783, Oregon Laws 2013, is amended to read:

36 **Sec. 5.** (1) On and after January 1, 2014, and before January 2, [2016] **2017**, mining that uses
37 any form of motorized equipment for the purpose of extracting gold, silver or any other precious
38 metal from placer deposits of the beds or banks of the waters of this state, as defined in ORS
39 196.800, or from other placer deposits, that results in the removal or disturbance of streamside
40 vegetation in a manner that may impact water quality, is subject to the following:

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

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

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

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

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

10 (4) During the period described in this section, the Department of State Lands shall limit the
11 individual permits issued under ORS 196.810 and the general authorizations issued under ORS
12 196.850 to not more than 850 permits and authorizations for mining described in this section at any
13 time during the period described in this section. The Department of State Lands shall give priority,
14 to the greatest extent practicable, to persons who held permits or authorizations for the longest
15 period of time before January 1, 2014.

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

17 **SECTION 17. ORS 468B.052 and sections 12 and 13, chapter 783, Oregon Laws 2013, are**
18 **repealed on January 2, 2017.**

19
20 **OPERATIVE DATE**

21
22 **SECTION 18. (1) Sections 2 to 11 of this 2015 Act and the amendments to ORS 830.589**
23 **and 830.998 by sections 12 and 13 of this 2015 Act become operative on January 2, 2017.**

24 (2) **The Environmental Quality Commission shall take any actions before the operative**
25 **date specified in subsection (1) of this section that are necessary for the commission to im-**
26 **plement the requirements of, and to exercise all of the duties, functions and powers con-**
27 **ferred on the commission by, sections 2 to 11 of this 2015 Act and the amendments to ORS**
28 **830.589 and 830.998 by sections 12 and 13 of this 2015 Act on and after the operative date**
29 **specified in subsection (1) of this section.**

30
31 **CAPTIONS**

32
33 **SECTION 19. The unit captions used in this 2015 Act are provided only for the conven-**
34 **ience of the reader and do not become part of the statutory law of this state or express any**
35 **legislative intent in the enactment of this 2015 Act.**

36
37 **EMERGENCY CLAUSE**

38
39 **SECTION 20. This 2015 Act being necessary for the immediate preservation of the public**
40 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
41 **on its passage.**