

A-Engrossed Senate Bill 3

Ordered by the Senate April 5
Including Senate Amendments dated April 5

Sponsored by Senator COURTNEY; Senator HASS (Presession filed.)

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.

[Modifies area where moratorium on mining using motorized equipment applies.]

[Exempts certain mining operations from exclusion certificate requirements.]

[Operative January 2, 2019, excludes certain upland placer mining operations from moratorium and requires certain upland placer mining operators to hold operating permit. Requires motorized equipment used for certain upland placer mining operations to be operated only during certain hours. Punishes upland placer mining operation outside certain hours or without permit coverage by maximum of \$2,000 fine.]

[Establishes permitting requirements for motorized in-stream placer mining. Requires Director of Department of State Lands and Director of Department of Environmental Quality to enter memorandum of understanding allowing Department of Environmental Quality to issue certain removal fill permits. Authorizes Department of Environmental Quality to issue consolidated water quality and removal fill permits for motorized in-stream placer mining. Places certain restrictions on motorized in-stream placer mining.]

Repeals moratorium on mining using motorized equipment.

Prohibits motorized in-stream placer mining in certain areas in order to protect indigenous anadromous salmonids and habitat essential to recovery and conservation of Pacific lamprey.

Requires applications for water quality permits to engage in motorized in-stream placer mining to include certain information. Places certain conditions on motorized in-stream placer mining pursuant to water quality permit.

Establishes certain fees for water quality permits for motorized in-stream placer mining.

Punishes motorized in-stream placer mining without permit coverage by maximum of \$2,000 fine.

[Requires motorized equipment used for motorized in-stream placer mining to be inspected at aquatic invasive species check stations.]

[Provides that motorized in-stream placer mining permitting, use restriction, inspection and penalty provisions become operative January 3, 2021.]

[Requires consultation to determine whether state and federal mining programs can be better coordinated.]

[Declares emergency, effective on passage.]

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A BILL FOR AN ACT

Relating to mining; creating new provisions; and repealing ORS 468B.052 and sections 2, 3, 4, 12 and 13, chapter 783, Oregon Laws 2013.

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

REPEAL OF MORATORIUM ON MINING USING MOTORIZED EQUIPMENT

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

PROHIBITION ON CERTAIN PLACER MINING OPERATIONS

SECTION 2. Sections 3 to 6 of this 2017 Act are added to and made a part of ORS chapter

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 468B.

2 **SECTION 3.** As used in sections 3 to 6 of this 2017 Act:

3 (1) “Essential indigenous anadromous salmonid habitat” has the meaning given that term
4 in ORS 196.810, as further defined and designated by rule by the Department of State Lands
5 pursuant to ORS 196.810.

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

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

11 (4) “Operator” means any person that is engaged in motorized in-stream placer mining
12 operations.

13 **SECTION 4.** (1) An operator may not allow a discharge to waters of the state from a
14 motorized in-stream placer mining operation or activity without having an individual permit
15 or being covered by a general permit issued under ORS 468B.050.

16 (2) In order to protect indigenous anadromous salmonids and habitat essential to the
17 recovery and conservation of Pacific lamprey, motorized in-stream placer mining may not
18 be permitted to occur up to the line of ordinary high water in any river in this state con-
19 taining essential indigenous anadromous salmonid habitat, from the lowest extent of essen-
20 tial indigenous anadromous salmonid habitat to the highest extent of essential indigenous
21 anadromous salmonid habitat.

22 (3) The prohibition in subsection (2) of this section does not apply to the use of nonmo-
23 torized mining technology, including but not limited to gravity dredges and syphon dredges.

24 **SECTION 5.** (1) An application for a permit under ORS 468B.050 to engage in motorized
25 in-stream placer mining must include:

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

27 (b) Information on how the proposed motorized in-stream placer mining location will be
28 accessed by the operator;

29 (c) A written affirmation furnished by the operator stating that the operator has re-
30 viewed information that is available as part of an application process and that is related to
31 cultural resource preservation and best management practices for motorized in-stream
32 placer mining;

33 (d) The geographic coordinates for the proposed motorized in-stream placer mining op-
34 eration; and

35 (e) Any other information required to be included in the application.

36 (2) In addition to any other condition imposed by the permit, motorized in-stream placer
37 mining pursuant to a permit issued under ORS 468B.050 may not:

38 (a) Involve the operation of motorized equipment between the hours of the earlier of 8
39 p.m. or sunset and 8 a.m. within 1,000 feet of a residence or a campground;

40 (b) Involve the operation of a motorized suction dredge having a suction hose with an
41 inside diameter exceeding four inches; or

42 (c) To the extent feasible and as may be further specified in the permit, involve the op-
43 eration of motorized equipment in a manner deleterious to freshwater mollusks, essential
44 indigenous anadromous salmonid habitat or habitat essential to the recovery and conserva-
45 tion of Pacific lamprey.

1 (3) The condition under subsection (2)(a) of this section may be waived in a permit or
2 permit coverage issued to the owner of a federal mining claim, but only to the extent that
3 the permit or permit coverage applicant demonstrates that the exercise of the prohibition
4 will violate federal law or constitute a regulatory taking requiring compensation under the
5 United States Constitution or the Oregon Constitution. An applicant seeking a waiver must
6 provide substantial evidence specific to the mining claim in question that establishes the
7 potential violation or regulatory taking. The Department of Environmental Quality shall re-
8 view and make a determination regarding the request for a waiver as part of the permit or
9 permit coverage decision.

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11 **FEES**

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13 **SECTION 6.** A person shall pay the following fees to the Department of Environmental
14 Quality for a general permit issued under ORS 468B.050 for motorized in-stream placer min-
15 ing, unless the Environmental Quality Commission establishes a lower fee amount under
16 ORS 468.065:

- 17 (1) A fee of \$250 for the initial application for or renewal of permit coverage; and
18 (2) An annual fee of \$250.

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20 **PENALTIES**

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22 **SECTION 7.** Section 8 of this 2017 Act is added to and made a part of ORS 468.922 to
23 468.956.

24 **SECTION 8.** (1) A person commits the offense of unlawful motorized in-stream placer
25 mining if the person knowingly engages in motorized in-stream placer mining, as defined in
26 section 3 of this 2017 Act, without a permit issued under ORS 468B.050 or in violation of any
27 rule, permit, order or any applicable requirement adopted or issued under ORS 468B.050 or
28 sections 3 to 6 of this 2017 Act.

29 (2) Subject to ORS 153.022, unlawful motorized in-stream placer mining is a Class A vio-
30 lation.

31 (3) Notwithstanding ORS 153.042, an enforcement officer, as defined in ORS 153.005, may
32 issue a citation under subsection (1) of this section when the conduct alleged to constitute
33 a violation has not taken place in the presence of the enforcement officer, if the enforcement
34 officer has reasonable grounds to believe that the conduct constitutes a violation on the ba-
35 sis of information received from an employee of the Department of Environmental Quality.

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37 **SUCTION DREDGE STUDY FUND AND FEES**

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39 **SECTION 9.** ORS 468B.052 and sections 12 and 13, chapter 783, Oregon Laws 2013, are
40 repealed.

41 **SECTION 10.** Any moneys remaining in the Suction Dredge Study Fund established by
42 section 13, chapter 783, Oregon Laws 2013, on the effective date of this 2017 Act that are
43 unexpended, unobligated and not subject to any conditions shall be transferred by the State
44 Treasurer to the credit of an account of the Department of Environmental Quality to be used
45 in the same manner as fees collected for permits issued under ORS 468B.050.

CAPTIONS

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SECTION 11. The unit captions used in this 2017 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 2017 Act.
