

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 255

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO DREDGE MINING; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7043, IDAHO CODE, TO PROVIDE A CRIMINAL OFFENSE FOR INTERFERENCE WITH MINING ACTIVITIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1734J, IDAHO CODE, TO PROVIDE INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-SCALE DREDGE MINING FOR STATE WATER PLANS AND THE DEPARTMENT OF WATER RESOURCES AND THE WATER RESOURCE BOARD; AMENDING SECTION 42-3802, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING CHAPTER 38, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-3813, IDAHO CODE, TO PROVIDE INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-SCALE DREDGE MINING FOR THE STREAM CHANNEL ALTERATION ACT; AMENDING SECTION 47-1313, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 13, TITLE 47, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 47-1325, IDAHO CODE, TO PROVIDE INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-SCALE DREDGE MINING; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. The Legislature finds that recreational prospecting and small-scale dredge mining: are important parts of the heritage of the State of Idaho; provide economic benefits to federal and state governments, local communities and prospectors and miners; and can be conducted in a manner that is not harmful, and may be beneficial, to fish habitat and fish propagation. Additionally, the Legislature of the State of Idaho finds that recreational prospecting and small-scale dredge mining do not discharge or add pollutants into the involved waters and therefore are not in need of regulation under the Idaho Dredge and Placer Mining Protection Act, Chapter 13, Title 47, Idaho Code, and are not in need of regulation under the Idaho Stream Channel Alteration Act, Chapter 38, Title 42, Idaho Code, and do not need to be subject to state comprehensive water plans. The Legislature further finds that recreational prospecting and small-scale dredge mining remove lead and other contaminants present in waters, which has long-lasting beneficial effects on the environment.

SECTION 2. That Chapter 70, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-7043, Idaho Code, and to read as follows:

18-7043. INTERFERENCE WITH MINING ACTIVITIES. (1) A person commits the crime of interference with mining activities, unless otherwise authorized by law, if the person intentionally:

1 (a) Interferes, or attempts to interfere, with access to areas where  
2 mining activities may occur;

3 (b) Interferes, attempts to interfere, harasses, menaces, annoys or  
4 otherwise disrupts mining activities or a person engaged in mining ac-  
5 tivities;

6 (c) Enters an area where mining activities may occur, without permis-  
7 sion of the person entitled to engage in mining activities in that area,  
8 and disturbs or removes, or attempts to disturb or remove, any valuable  
9 mineral;

10 (d) Enters an area where mining activities may occur, without permis-  
11 sion of the person entitled to engage in mining activities in that area,  
12 and disturbs, removes, tampers with, or attempts to disturb, remove or  
13 tamper with, any tools, equipment, machinery, goods and other personal  
14 property located thereat for use in the mining activities;

15 (e) Enters an area where mining activities may occur, without permis-  
16 sion of the person entitled to engage in mining activities in that area,  
17 and disturbs, removes, tampers with, or attempts to disturb, remove  
18 or tamper with, any location stake, sign, signpost, side post, corner  
19 post, landmark, monument or other written notice or indicator of the  
20 mining activities.

21 (2) For purposes of this section, "mining activities" shall mean  
22 "recreational prospecting," "small-scale dredge mining," "surface mining  
23 operations" and "placer or dredge mining" all as defined in section 47-1313,  
24 Idaho Code.

25 (3) A person found guilty of committing the crime of interference with  
26 mining activities shall be guilty of a misdemeanor and shall be punished by a  
27 term of imprisonment of not more than one (1) year or by a fine not in excess  
28 of five thousand dollars (\$5,000), or by both such fine and imprisonment.

29 (4) In addition to any other penalty imposed for a violation of this  
30 section, the court shall require any person convicted, found guilty or who  
31 pleads guilty to a violation of this section to make restitution to the vic-  
32 tim of the offense in accordance with the terms of section 19-5304, Idaho  
33 Code, provided however that such award shall be in an amount equal to twice  
34 the value of the damage resulting from the violation of this section.

35 SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
37 ignated as Section 42-1734J, Idaho Code, and to read as follows:

38 42-1734J. INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-  
39 SCALE DREDGE MINING. All state comprehensive water plans, and related rules,  
40 regulations, ordinances, orders, standards or other policies adopted pur-  
41 suant to sections 42-1734A through 42-1734I, Idaho Code, shall allow for  
42 "recreational prospecting" and "small-scale dredge mining" without regu-  
43 lation, restriction limitation or prohibition. Any rules, restrictions,  
44 limitations or prohibitions currently in effect through any actions pur-  
45 suant to sections 42-1734A through 42-1734I, Idaho Code, with respect to  
46 "recreational prospecting" and "small-scale dredge mining" is hereby de-  
47 clared invalid, void and unenforceable. For purposes of this section,  
48 "recreational prospecting" and "small-scale dredge mining" has the meaning  
49 set forth in section 42-3802, Idaho Code.

1       SECTION 4. That Section 42-3802, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3       42-3802. DEFINITIONS. Whenever used in this act, the term:

4       (a) "Person" means any individual, partnership, company, corporation,  
5 municipality, county, state or federal agency, or other entity proposing to  
6 alter a stream channel.

7       (b) "Alter" means to obstruct, diminish, destroy, alter, modify, relo-  
8 cate, or change the natural existing shape or direction of water flow of any  
9 stream channel within or below the mean high watermark thereof.

10       (c) "Board" means the Idaho water resource board.

11       (d) "Stream channel" means a natural watercourse of perceptible ex-  
12 tent, with definite bed and banks, which confines and conducts continuously  
13 flowing water. Ditches, canals, laterals and drains that are constructed  
14 and used for irrigation or drainage purposes are not stream channels.

15       (e) "Department" means the Idaho department of water resources.

16       (f) "Director" means the director of the Idaho department of water re-  
17 sources.

18       (g) "Plans" means maps, sketches, engineering drawings, word descrip-  
19 tions and specifications sufficient to describe the extent, nature and lo-  
20 cation of the proposed stream channel alteration and the proposed method of  
21 accomplishing same.

22       (h) "Recreational prospecting" and "small-scale dredge mining" has the  
23 same meaning as defined in section 47-1313, Idaho Code.

24       (i) "Mean high watermark" means a water level corresponding to the nat-  
25 ural or ordinary high watermark and is the line which the water impresses on  
26 the soil by covering it for sufficient periods of time to deprive the soil of  
27 its terrestrial vegetation and destroy its value for commonly accepted agri-  
28 cultural purposes.

29       SECTION 5. That Chapter 38, Title 42, Idaho Code, be, and the same is  
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
31 ignated as Section 42-3813, Idaho Code, and to read as follows:

32       42-3813. INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-SCALE  
33 DREDGE MINING. The provisions of sections 42-3802 through 42-3812, Idaho  
34 Code, are not applicable to, and may not be enforced with respect to, recre-  
35 ational prospecting and small-scale dredge mining. The board, department,  
36 director, any agency of the state of Idaho and any political subdivision of  
37 the state of Idaho shall not adopt, enact or promulgate any rule, regulation,  
38 ordinance, order, standard or other policy with the force and effect of law  
39 that would in any way regulate, restrict, limit or prohibit recreational  
40 prospecting or small-scale dredge mining, provided that the foregoing shall  
41 not be construed to limit the leasing of lands of the state by the state board  
42 of land commissioners as allowed by chapter 7, title 47, Idaho Code.

43       SECTION 6. That Section 47-1313, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

45       47-1313. DEFINITIONS. As used in this chapter:

1 (a) "Board" means the state board of land commissioners or such repre-  
2 sentative as may be designated by the board.

3 (b) "Director" means the director of the department of lands or such  
4 representative as may be designated by the director.

5 (c) "Disturbed land" means land, natural watercourses, or existing  
6 stockpiles and waste piles affected by placer or dredge mining, remining,  
7 exploration, stockpiling of ore or wastes from placer or dredge mining, or  
8 construction of roads, tailings ponds, structures, or facilities appur-  
9 tenant to placer or dredge mining operations.

10 (d) "Mean high watermark" has the same meaning as defined in section  
11 42-3802, Idaho Code.

12 (e) "Mineral" means any ore, rock, or substance extracted from a placer  
13 deposit or from an existing placer stockpile or waste pile, but does not in-  
14 clude coal, clay, stone, sand, gravel, phosphate, uranium, oil, or gas.

15 (ef) "Motorized earth-moving equipment" means backhoes, bulldozers,  
16 front loaders, trenchers, core drills, suction dredges with an intake diame-  
17 ter exceeding eight ~~(8)~~ inches (8"), and other similar equipment.

18 (fg) "Natural watercourse" means any stream in the state of Idaho hav-  
19 ing definite bed and banks, and which confines and conducts continuously  
20 flowing water.

21 (gh) "Permit area" means that area designated under section 47-1317,  
22 Idaho Code, as the site of a proposed placer or dredge mining operation, in-  
23 cluding all lands to be disturbed by the operation.

24 (hi) "Person" means any person, corporation, partnership, associa-  
25 tion, or public or governmental agency engaged in placer or dredge mining,  
26 whether individually, jointly, or through subsidiaries, agents, employees,  
27 or contractors.

28 (ij) "Placer deposit" means naturally occurring unconsolidated surfi-  
29 cial detritus containing valuable minerals, whether located inside or out-  
30 side the confines of a natural watercourse.

31 (jk) "Placer or dredge exploration operation" means activities includ-  
32 ing, but not limited to, the construction of roads, trenches, and test holes,  
33 performed on a placer deposit for the purpose of locating and determining the  
34 economic feasibility of extracting minerals by placer or dredge mining.

35 (kl) "Placer or dredge mining" or "dredge or other placer mining" means  
36 the extraction of minerals from a placer deposit, including remining for  
37 sale, processing, or other disposition of earth material excavated from  
38 previous placer or dredge mining. The term "dredge or other placer mining,"  
39 wherever used in this chapter, is subject to this definition and all provi-  
40 sions regarding it.

41 (lm) "Placer or dredge mining operation" means placer or dredge mining  
42 which disturbs in excess of one-half (1/2) acre of land.

43 (n) "Recreational prospecting" means the act of hand panning for the  
44 location and extraction of valuable minerals, hand shoveling for the loca-  
45 tion and extraction of valuable minerals, locating and extracting valuable  
46 minerals through the use of nonmotorized sluice boxes, and locating and ex-  
47 tracting valuable minerals through the use of nonmotorized rocker boxes, all  
48 of which are conducted and occur at or below the mean high watermark of a  
49 stream channel.

(m) "Road" means a way, including bed, slopes, and shoulders, (1) constructed within the circular tract circumscribed by a placer or dredge mining operation, or (2) constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation, provided, that a way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations, and not constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation, shall not be considered a road for purposes of this act.

(p) "Small-scale dredge mining" means the location and extraction of valuable minerals through the use of a dredge unit equipped with a subsurface hose of eight inches (8") or less in diameter that is powered by an engine, natural siphon or natural gravity pressure and is used to draw up mineral material, in a quantity of no greater than five (5) cubic yards per hour, to a sluice portion of the unit, all of which is conducted and occurs at or below the mean high watermark of a stream channel. A small-scale dredge mining apparatus may include a mechanically powered or motorized winch.

(q) "Stream channel" has the same meaning as defined in section 42-3802, Idaho Code.

SECTION 7. That Chapter 13, Title 47, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 47-1325, Idaho Code, and to read as follows:

47-1325. INAPPLICABILITY TO RECREATIONAL PROSPECTING AND SMALL-SCALE DREDGE MINING. The provisions of sections 47-1314 through 47-1320, Idaho Code, are not applicable to, and may not be enforced with respect to, recreational prospecting and small-scale dredge mining, provided that small-scale dredge mining may be prohibited on national wild and scenic rivers as designated in section 47-1323, Idaho Code. The board, director, any agency of the state of Idaho and any political subdivision of the state of Idaho shall not adopt, enact or promulgate any rule, regulation, ordinance, order, standard or other policy with the force and effect of law that would in any way regulate, restrict, limit or prohibit recreational prospecting or small-scale dredge mining, with the exceptions of prohibition of small-scale dredge mining on national wild and scenic rivers as designated in section 47-1323, Idaho Code, and further provided that the foregoing shall not be construed to limit the leasing of lands of the state by the state board of land commissioners as allowed by chapter 7, title 47, Idaho Code.

SECTION 8. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 9. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.