

2 **ESSB 5273** - H COMM AMD **ADOPTED 4-8-97**
3 By Committee on Agriculture & Ecology

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) The state lacks a clear policy relating to the mitigation of
9 wetlands and aquatic habitat for infrastructure development;

10 (b) Regulatory agencies have generally required project proponents
11 to use compensatory mitigation only at the site of the project's
12 impacts and to mitigate narrowly for the habitat or biological
13 functions impacted by a project;

14 (c) This practice of considering traditional on-site, in-kind
15 mitigation may provide fewer environmental benefits when compared to
16 innovative mitigation proposals that provide benefits in advance of a
17 project's planned impacts and that restore functions or habitat other
18 than those impacted at a project site; and

19 (d) Regulatory decisions on development proposals that attempt to
20 incorporate innovative mitigation measures take an unreasonably long
21 period of time and are subject to a great deal of uncertainty and
22 additional expenses.

23 (2) The legislature therefore declares that it is the policy of the
24 state to authorize innovative mitigation measures by requiring state
25 regulatory agencies to consider mitigation proposals for infrastructure
26 projects that are timed, designed, and located in a manner to provide
27 equal or better biological functions and values compared to traditional
28 on-site, in-kind mitigation proposals.

29 (3) It is the intent of the legislature to authorize local
30 governments to accommodate the goals of this chapter. It is not the
31 intent of the legislature to: (a) Restrict the ability of a project
32 proponent to pursue project specific mitigation; or (b) create any new
33 authority for regulating wetlands or aquatic habitat beyond what is
34 specifically provided for in this chapter.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Mitigation" means sequentially avoiding impacts, minimizing
4 impacts, or compensating for remaining unavoidable impacts.

5 (2) "Compensatory mitigation" means the restoration, creation,
6 enhancement, or preservation of uplands, wetlands, or other aquatic
7 resources for the purposes of compensating for unavoidable adverse
8 impacts that remain after all appropriate and practicable avoidance and
9 minimization has been achieved. "Compensatory mitigation" includes
10 mitigation that:

11 (a) Occurs at the same time as, or in advance of, a project's
12 planned environmental impacts;

13 (b) Is located in a site either on, near, or distant from the
14 project's impacts; and

15 (c) Provides either the same or different biological functions and
16 values as the functions and values impacted by the project.

17 (3) "Infrastructure development" means an action that is critical
18 for the maintenance or expansion of an existing infrastructure feature
19 such as a highway, rail line, airport, marine terminal, utility
20 corridor, harbor area, or hydroelectric facility and is consistent with
21 an approved land use planning process. This planning process may
22 include the growth management act, chapter 36.70A RCW, or the shoreline
23 management act, chapter 90.58 RCW, in areas covered by those chapters.

24 (4) "Mitigation plan" means a document or set of documents
25 developed through joint discussions between a project proponent and
26 environmental regulatory agencies that describe the unavoidable wetland
27 or aquatic resource impacts of the proposed infrastructure development
28 and the proposed compensatory mitigation for those impacts.

29 (5) "Project proponent" means a public or private entity
30 responsible for preparing a mitigation plan.

31 (6) "Watershed" means an area identified as a state of Washington
32 water resource inventory area under WAC 173-500-040 as it exists on the
33 effective date of this section.

34 NEW SECTION. **Sec. 3.** (1) Project proponents may use a mitigation
35 plan to propose compensatory mitigation within a watershed. A
36 mitigation plan shall:

37 (a) Contain provisions that guarantee the long-term viability of
38 the created, restored, enhanced, or preserved habitat, including

1 assurances for protecting any essential biological functions and values
2 defined in the mitigation plan;

3 (b) Contain provisions for long-term monitoring of any created,
4 restored, or enhanced mitigation site; and

5 (c) Be consistent with the local comprehensive land use plan and
6 any other applicable planning process in effect for the development
7 area, such as an adopted subbasin or watershed plan.

8 (2) The departments of ecology and fish and wildlife may not limit
9 the scope of options in a mitigation plan to areas on or near the
10 project site, or to habitat types of the same type as contained on the
11 project site. The departments of ecology and fish and wildlife shall
12 fully review and give due consideration to compensatory mitigation
13 proposals that improve the overall biological functions and values of
14 the watershed or bay and accommodate the mitigation needs of
15 infrastructure development.

16 The departments of ecology and fish and wildlife are not required
17 to grant approval to a mitigation plan that the departments find does
18 not provide equal or better biological functions and values within the
19 watershed or bay.

20 (3) When making a permit or other regulatory decision under the
21 guidance of this chapter, the departments of ecology and fish and
22 wildlife shall consider whether the mitigation plan provides equal or
23 better biological functions and values, compared to the existing
24 conditions, for the target resources or species identified in the
25 mitigation plan. This consideration shall be based upon the following
26 factors:

27 (a) The relative value of the mitigation for the target resources,
28 in terms of the quality and quantity of biological functions and values
29 provided;

30 (b) The compatibility of the proposal with the intent of broader
31 resource management and habitat management objectives and plans, such
32 as existing resource management plans, watershed plans, critical areas
33 ordinances, and shoreline master programs;

34 (c) The ability of the mitigation to address scarce functions or
35 values within a watershed;

36 (d) The benefits of the proposal to broader watershed landscape,
37 including the benefits of connecting various habitat units or providing
38 population-limiting habitats or functions for target species;

1 (e) The benefits of early implementation of habitat mitigation for
2 projects that provide compensatory mitigation in advance of the
3 project's planned impacts; and

4 (f) The significance of any negative impacts to nontarget species
5 or resources.

6 (4) A mitigation plan may be approved through a memorandum of
7 agreement between the project proponent and either the department of
8 ecology or the department of fish and wildlife, or both.

9 NEW SECTION. **Sec. 4.** (1) In making regulatory decisions relating
10 to wetland or aquatic resource mitigation, the departments of ecology
11 and fish and wildlife shall, at the request of the project proponent,
12 follow the guidance of sections 1 through 3 of this act.

13 (2) If the department of ecology or the department of fish and
14 wildlife receives multiple requests for review of mitigation plans,
15 each department may schedule its review of these proposals to conform
16 to available budgetary resources.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 75.20 RCW
18 to read as follows:

19 The department shall not require mitigation for sediment dredging
20 or capping actions that result in a cleaner aquatic environment and
21 equal or better habitat functions and values, if the actions are taken
22 under a state or federal cleanup action.

23 This chapter shall not be construed to require habitat mitigation
24 for navigation and maintenance dredging of existing channels and
25 berthing areas.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 75.20 RCW
27 to read as follows:

28 When reviewing a mitigation plan under RCW 75.20.100 or RCW
29 75.20.103, the department shall, at the request of the project
30 proponent, follow the guidance contained in sections 1 through 4 of
31 this act.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.48 RCW
33 to read as follows:

1 When exercising its powers under RCW 90.48.260, the department
2 shall, at the request of the project proponent, follow the guidance
3 contained in sections 1 through 4 of this act.

4 NEW SECTION. **Sec. 8.** Sections 1 through 4 of this act constitute
5 a new chapter in Title 90 RCW."

6 Correct the title.

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