

2 **E2SHB 2339** - S AMD - 1030
3 By Senators Swecker and Fraser

4 ADOPTED 3/12/98

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

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that wetlands
8 mitigation banks are an important tool for providing compensatory
9 mitigation for unavoidable impacts to wetlands. The legislature
10 further finds that the benefits of mitigation banks include: (a)
11 Maintenance of the ecological functioning of a watershed by
12 consolidating compensatory mitigation into a single large parcel rather
13 than smaller individual parcels; (b) increased potential for the
14 establishment and long-term management of successful mitigation by
15 bringing together financial resources, planning, and scientific
16 expertise not practicable for many project-specific mitigation
17 proposals; (c) increased certainty over the success of mitigation and
18 reduction of temporal losses of wetlands since mitigation banks are
19 typically implemented and functioning in advance of project impacts;
20 (d) potential enhanced protection and preservation of the state's
21 highest value and highest functioning wetlands; (e) a reduction in
22 permit processing times and increased opportunity for more cost-
23 effective compensatory mitigation for development projects; and (f) the
24 ability to provide compensatory mitigation in an efficient,
25 predictable, and economically and environmentally responsible manner.
26 Therefore, the legislature declares that it is the policy of the state
27 to authorize wetland mitigation banking.

28 (2) The purpose of this chapter is to support the establishment of
29 mitigation banks by: (a) Authorizing state agencies and local
30 governments, as well as private entities, to achieve the goals of this
31 chapter; and (b) providing a predictable, efficient, regulatory
32 framework, including timely review of mitigation bank proposals. The
33 legislature intends that, in the development and adoption of rules for
34 banks, the department establish and use a collaborative process
35 involving interested public and private entities.

1 NEW SECTION. **Sec. 2.** This chapter does not create any new
2 authority for regulating wetlands or wetlands banks beyond what is
3 specifically provided for in this chapter. No authority is granted to
4 the department under this chapter to adopt rules or guidance that apply
5 to wetland projects other than banks under this chapter.

6 NEW SECTION. **Sec. 3.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Banking instrument" means the documentation of agency and bank
9 sponsor concurrence on the objectives and administration of the bank
10 that describes in detail the physical and legal characteristics of the
11 bank, including the service area, and how the bank will be established
12 and operated.

13 (2) "Bank sponsor" means any public or private entity responsible
14 for establishing and, in most circumstances, operating a bank.

15 (3) "Credit" means a unit of trade representing the increase in the
16 ecological value of the site, as measured by acreage, functions, and/or
17 values, or by some other assessment method.

18 (4) "Department" means the department of ecology.

19 (5) "Wetlands mitigation bank" or "bank" means a site where
20 wetlands are restored, created, enhanced, or in exceptional
21 circumstances, preserved expressly for the purpose of providing
22 compensatory mitigation in advance of authorized impacts to similar
23 resources.

24 (6) "Mitigation" means sequentially avoiding impacts, minimizing
25 impacts, and compensating for remaining unavoidable impacts.

26 (7) "Practicable" means available and capable of being done after
27 taking into consideration cost, existing technology, and logistics in
28 light of overall project purposes.

29 (8) "Service area" means the designated geographic area in which a
30 bank can reasonably be expected to provide appropriate compensation for
31 unavoidable impacts to wetlands.

32 (9) "Unavoidable" means adverse impacts that remain after all
33 appropriate and practicable avoidance and minimization have been
34 achieved.

35 NEW SECTION. **Sec. 4.** Subject to the requirements of this chapter,
36 the department, through a collaborative process, shall adopt rules for:

1 (1) Certification, operation, and monitoring of wetlands mitigation
2 banks. The rules shall include procedures to assure that:

3 (a) Priority is given to banks providing for the restoration of
4 degraded or former wetlands;

5 (b) Banks involving the creation and enhancement of wetlands are
6 certified only where there are adequate assurances of success and that
7 the bank will result in an overall environmental benefit; and

8 (c) Banks involving the preservation of wetlands or associated
9 uplands are certified only when the preservation is in conjunction with
10 the restoration, enhancement, or creation of a wetland, or in other
11 exceptional circumstances as determined by the department consistent
12 with this chapter;

13 (2) Determination and release of credits from banks. Procedures
14 regarding credits shall authorize the use and sale of credits to offset
15 adverse impacts and the phased release of credits as different levels
16 of the performance standards are met;

17 (3) Public involvement in the certification of banks, using
18 existing statutory authority;

19 (4) Coordination of governmental agencies;

20 (5) Establishment of criteria for determining service areas for
21 each bank;

22 (6) Performance standards; and

23 (7) Long-term management, financial assurances, and remediation for
24 certified banks.

25 Before adopting rules under this chapter, the department shall
26 submit the proposed rules to the appropriate standing committees of the
27 legislature. By January 30, 1999, the department shall submit a report
28 to the appropriate standing committees of the legislature on its
29 progress in developing rules under this chapter.

30 NEW SECTION. **Sec. 5.** (1) The department may certify only those
31 banks that meet the requirements of this chapter. Certification shall
32 be accomplished through a banking instrument. The local jurisdiction
33 in which the bank is located shall be signatory to the banking
34 instrument.

35 (2) State agencies and local governments may approve use of credits
36 from a bank for any mitigation required under a permit issued or
37 approved by that state agency or local government to compensate for the
38 proposed impacts of a specific public or private project.

1 NEW SECTION. **Sec. 6.** Prior to authorizing use of credits from a
2 bank as a means of mitigation under a permit issued or approved by the
3 department, the department must assure that all appropriate and
4 practicable steps have been undertaken to first avoid and then minimize
5 adverse impacts to wetlands. In determining appropriate steps to avoid
6 and minimize adverse impacts to wetlands, the department shall take
7 into consideration the functions and values of the wetland, including
8 fish habitat, ground water quality, and protection of adjacent
9 properties. The department may approve use of credits from a bank
10 when:

11 (1) The credits represent the creation, restoration, or enhancement
12 of wetlands of like kind and in close proximity when estuarine wetlands
13 are being mitigated;

14 (2) There is no practicable opportunity for on-site compensation;
15 or

16 (3) Use of credits from a bank is environmentally preferable to on-
17 site compensation.

18 NEW SECTION. **Sec. 7.** The interpretation of this chapter and rules
19 adopted under this chapter must be consistent with applicable federal
20 guidance for the establishment, use, and operation of wetlands
21 mitigation banks as it existed on the effective date of this section,
22 or such subsequent date as may be provided by the department by rule,
23 consistent with the purposes of this chapter.

24 NEW SECTION. **Sec. 8.** This chapter applies to public and private
25 mitigation banks.

26 NEW SECTION. **Sec. 9.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 10.** The director of the department of ecology
31 may take the necessary steps to ensure that this act is implemented on
32 its effective date.

33 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
34 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 1998, in the omnibus appropriations act, this act
2 is null and void.

3 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act constitute
4 a new chapter in Title 90 RCW."

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8 On page 1, line 1 of the title, after "banking;" strike the
9 remainder of the title and insert "adding a new chapter to Title 90
10 RCW; and creating new sections."

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