

# ANALYSIS OF HB 1298

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House Agriculture & Ecology Committee  
1997

January 27,

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## **BACKGROUND:**

Modification of wetlands and aquatic habitat is regulated at the state level by the Department of Ecology and the Department of Fish and Wildlife.

The Department of Ecology provides a water quality certification for federally permitted activities that may result in a discharge to state water, including modification of some wetlands. The most common federal permit is that issued by the Army Corps of Engineers for activities in the nation's waters, as provided in the federal Clean Water Act. The Department of Ecology may condition the federal permit to meet water quality laws. The Department of Ecology also has some permit authority under the Shoreline Management Act.

The Department of Fish and Wildlife issues Hydraulic Project Approval (HPA) permits to protect fish from impacts associated with work that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. Dredging or other work involving contaminated sediments typically requires an HPA permit.

Appeals of water quality certification permit decisions are heard by the Pollution Control Hearings Board. Appeals of shoreline permit decisions are heard by the Shoreline Hearings Board. Appeals of HPA decisions are heard by the Hydraulics Appeals Board.

## **SUMMARY:**

Legislative findings are made regarding the value of advanced compensatory mitigation to provide certainty to project applicants, reduce permit times, and provide better overall habitat protection than individual mitigation projects. Advanced compensatory mitigation is voluntary on the part of a project proponent.

The Department of Ecology and Department of Fish and Wildlife are required to consider advanced compensatory mitigation that is proposed in a development plan. The development plan must be consistent with the local comprehensive land use plan, and any other plans in effect for the area. The departments are not required to approve advanced compensatory mitigation that does not provide equal or better resource values within a watershed or bay.

The departments may schedule review of advanced compensatory mitigation proposals to conform to available budgetary resources. The departments may develop an agreement with the project proponent that allows the proponent to fund a position within the department for project review. The mitigation element of the development plan must contain provisions to guarantee the long-term viability of the proposed mitigation. Provisions for long term monitoring of the mitigation site may be included. A decision by the Department of Ecology or the Department of Fish and Wildlife regarding advanced compensatory mitigation may be appealed to the Hydraulics Appeals Board.

Legislative findings are made that state and federal hazardous laws require cleanup of contaminated sediments and that these cleanups improve the aquatic environment. A legislative policy is established declaring that mitigation for sediment dredging or capping is not required