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## Governance Reform and Land Use Committee

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### BILL ANALYSIS

#### HB 2341

**Title of the Bill:** Wetlands mitigation banking model ordinance.

**What this Bill Does:** Directs CTED to develop a model wetlands mitigation banking ordinance for optional use by cities and counties.

**Sponsors:** Representative Thompson and Representative Mulliken

**Hearing Date:** January 14, 1998

**Fiscal Note:** Requested 1/7/98

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#### **BACKGROUND:**

General wetlands regulatory framework. A number of federal, state, and local laws govern wetlands. Generally, proposals to drain, fill, or otherwise modify wetlands require a permit from the Army Corps of Engineers under section 404 of the Clean Water Act. Section 404 permits require a Section 401 certification from the Department of Ecology (DOE) that the project meets state water quality standards. (Some limited wetlands activity does not require individual Clean Water Act permits.). DOE also has some permit authority to regulate wetlands under the Shoreline Management Act.

Under the Hydraulic Code, wetlands work that affects the bed or flow of state waters requires a Hydraulic Project Approval for the protection of fish life from the Department of Fish & Wildlife.

Under the Growth Management Act, cities and counties must adopt regulations protecting critical areas, including wetlands. The Department of Community, Trade, and Economic Development (CTED) has adopted guidelines to classify critical areas. Most cities and counties require permits for activities in or near wetlands. Local governments also have some permitting authority for wetlands covered by the Shorelines Management Act.

Mitigation banking overview When a landowner proposes a project for which an impact to a wetland is authorized, generally the landowner must compensate for the impact to the wetland. Mitigation banking is one form of compensation for wetlands impacts.

Typically, a wetland "banker" develops a bank of functioning wetland areas by restoring previously drained or filled wetlands. Units of the banked wetland are then calculated as a certain number of "credits" based on the function or value of the wetlands in the bank. If approved by regulatory agencies, these credits can be withdrawn to offset wetland impacts, or "debits" at a

development site. Banks can be public banks, sponsored by entities impacting wetlands, or can be private entrepreneurial banks, in which a bank sponsor, with regulatory approval, can sell credits in the bank to a developer to compensate for impacts of their development.

Wetland banking is contrasted with project-specific replacement where the project sponsor does the restoration or other mitigation to specifically replace a wetland that is to be impacted.

Existing regulation of mitigation banks. At the federal level, an Interagency Working Group on Federal Wetlands Policy has issued "guidance" on mitigation banks. In Washington, the state and local governments may approve mitigation banks under their general authority to regulate wetlands, but there is no specific statutory authorization for banks. A number of Washington cities and counties have adopted or are considering local ordinances on mitigation banks. At least 10 states have adopted mitigation banking statutes.

GMA technical assistance. Under the GMA, CTED provides technical assistance to cities and

counties. This assistance may include development of model land use ordinances and regional education and training programs.

## **SUMMARY:**

As part of its technical assistance program, CTED is directed to prepare a model wetlands mitigation banking ordinance for optional use by cities and counties. The purpose of the model ordinance is to promote mitigation banking by encouraging consistency among counties and cities, while respecting local autonomy, and by providing technical assistance.