

SENATE BILL REPORT

ESSB 5273

As Passed Senate, March 6, 1997

Title: An act relating to compensatory mitigation.

Brief Description: Regulating compensatory mitigation.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Fraser, Swecker, Prentice, Strannigan and Haugen).

Brief History:

Committee Activity: Agriculture & Environment: 1/28/97, 2/13/97 [DPS].
Passed Senate, 3/6/97, 39-9.

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5273 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Fraser, McAuliffe, Newhouse, Oke and Rasmussen.

Staff: Kari Guy (786-7437)

Background: Development impacts to wetlands and aquatic resources are regulated at the state level by the Department of Ecology and the Department of Fish and Wildlife.

The Department of Ecology issues a water quality certification for any federally-permitted activities that may result in a discharge to state water. Modification of wetlands or aquatic resources will typically require a Clean Water Act 404 Permit from the Army Corps of Engineers. The Department of Ecology may condition the federal permit to meet applicable state laws.

The Department of Fish and Wildlife issues a Hydraulic Project Approval (HPA) for any project that will use or change the natural flow of any waters of the state. In accordance with the State Hydraulic Code, the HPA may be conditioned or denied for the protection of fish life. The Department of Fish and Wildlife typically requires that impacts to wetlands or aquatic resources be mitigated on the project site and with a similar habitat type.

Clean up of aquatic resources under state or federal hazardous waste cleanup laws may include dredging or capping of contaminated sediments. Currently, agencies may require mitigation for any activities with impacts to aquatic resources.

Concern exists that the process for review of wetland and aquatic resource mitigation is unpredictable and time consuming. Requiring that mitigation be completed on the project site may preclude larger mitigation projects that could improve the habitat within a watershed. It has been suggested that a process of advanced mitigation planning that would

allow off-site mitigation would provide greater predictability in the permitting process and improve habitat protection.

Summary of Bill: Advanced compensatory mitigation is defined as mitigation in advance of known, unavoidable impacts of planned development projects.

A project proponent may propose a mitigation plan that includes advanced compensatory mitigation and off-site mitigation. The mitigation plan must include provisions guaranteeing the long-term viability of the mitigation site, and provisions for long-term monitoring. The mitigation plan must also be consistent with any local comprehensive land use plan, and any applicable sub-basin or watershed plan.

The Department and Ecology and the Department of Fish and Wildlife must give due consideration to mitigation plans that include advanced compensatory mitigation and off-site mitigation. Consideration must be based on a number of factors, including the relative value of the mitigation for the target resources, the compatibility of the proposal with broader management plans, and the benefits of the proposal for the entire habitat landscape. The departments are not required to grant approval to any proposal that does not provide equal or better biological functions and values with the watershed or bay.

It is the policy of the state not to require habitat mitigation for aquatic sediment cleanups that result in a cleaner aquatic environment and provide equal or better habitat.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The current process for approval of mitigation is unpredictable and expensive, and better opportunities to improve habitat within the watershed may be lost. This bill would allow the consolidation of mitigation for a number of small projects into one, more viable wetland mitigation site. The bill would not allow a developer to get out of wetland mitigation, just provide an opportunity to do it better. Preservation of high quality wetlands should be allowed as a mitigation option.

Testimony Against: The top priority in wetland regulation should be avoidance. This bill eliminates agency discretion to require on-site mitigation, and will likely lead to more permit denials. The bill should include a requirement for long-term monitoring or protection of the mitigation sites.

Testified: Eric Johnson, Ports Association (pro); Patsy Martin, Port of Skagit County (pro); Jerry Alb, WSDOT (pro); Karen Terwilleger, Ed Manary, Dept. of Fish & Wildlife; Dan Dingfield (pro); Bob Geddes, Pend Oreille PUD (pro); Dave Arbaugh, Washington PUD Association (pro); Paul Parker, WSAC (pro); Maggie Coon, The Nature Conservancy (pro); Doug Levy, City Everett (pro); R. Ted Bottiger, WA Conservation Districts; Tom Mark, Dept. of Ecology (pro); Bruce Wishart, People for Puget Sound; Ron Shultz, National Audubon Society (concerns).

House Amendment(s): The intent and definition sections are revised. The section relating to dredging and capping of aquatic sediments is clarified.