
SUBSTITUTE HOUSE BILL 2339

State of Washington

55th Legislature

1998 Regular Session

By House Committee on House Government Reform & Land Use (originally sponsored by Representatives Thompson, Mulliken, Pennington, Gardner, Romero, Chopp, Anderson, Boldt and Lantz)

Read first time 01/22/98. Referred to Committee on .

1 AN ACT Relating to wetlands mitigation banking; adding a new
2 chapter to Title 90 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that wetlands
5 mitigation banks are an important tool for providing compensatory
6 mitigation for unavoidable impacts to wetlands. The legislature
7 further finds that the benefits of mitigation banks include: (a)
8 Maintenance of the ecological functioning of a watershed by
9 consolidating compensatory mitigation into a single large parcel rather
10 than smaller individual parcels; (b) increased potential for the
11 establishment and long-term management of successful mitigation by
12 bringing together financial resources, planning, and scientific
13 expertise not practicable for many project-specific mitigation
14 proposals; (c) increased certainty over the success of mitigation and
15 reduction of temporal losses of wetlands since mitigation banks are
16 typically implemented and functioning in advance of project impacts;
17 (d) potential enhanced protection and preservation of the state's
18 highest value and highest functioning wetlands; (e) a reduction in
19 permit processing times and increased opportunity for more cost-

1 effective compensatory mitigation for development projects; and (f) the
2 ability to provide compensatory mitigation in an efficient,
3 predictable, and economically and environmentally responsible manner.

4 (2) The purpose of this chapter is to support the establishment of
5 mitigation banks by providing a predictable, efficient, regulatory
6 framework, including timely review of mitigation bank proposals. It is
7 not the intent of the legislature to create any new authority for
8 regulating wetlands or wetlands banks beyond what is specifically
9 provided for in this chapter. The legislature intends that, in the
10 development and adoption of rules for banks, the department establish
11 and use a collaborative process involving interested public and private
12 entities.

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

15 (1) "Banking instrument" means the documentation of agency and bank
16 sponsor concurrence on the objectives and administration of the bank
17 that describes in detail the physical and legal characteristics of the
18 bank and how the bank will be established and operated.

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

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

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

25 (5) "Wetlands mitigation bank" or "bank" means a site where
26 wetlands are restored, created, enhanced, or in exceptional
27 circumstances, preserved expressly for the purpose of providing
28 compensatory mitigation in advance of authorized impacts to similar
29 resources.

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

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

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

1 (9) "Unavoidable" means adverse impacts that remain after all
2 appropriate and practicable avoidance and minimization have been
3 achieved.

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

7 NEW SECTION. **Sec. 3.** Subject to the requirements of this chapter,
8 the department, through a collaborative process, shall adopt rules for:

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

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

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

16 (c) Banks involving the preservation of wetlands or associated
17 uplands are certified only when the preservation is in conjunction with
18 the restoration, enhancement, or creation of a wetland, or in other
19 exceptional circumstances as determined by the department consistent
20 with this chapter;

21 (2) Determination and release of credits from banks. Procedures
22 regarding credits shall authorize the use and sale of credits to offset
23 adverse impacts and the release of credits before all of the
24 performance standards have been met;

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

27 (4) Coordination of governmental agencies;

28 (5) Establishment of criteria for determining service areas for
29 each bank;

30 (6) Performance standards; and

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

33 Before adopting rules under this section, the department shall
34 submit the rules to the appropriate standing committees of the
35 legislature.

1 NEW SECTION. **Sec. 4.** (1) The department may certify only those
2 banks that meet the requirements of this chapter. Certification shall
3 be accomplished through a banking instrument.

4 (2) State agencies may approve use of a bank for any compensatory
5 mitigation of a wetland impact required under a permit issued or
6 approved by that state agency.

7 (3) This chapter applies to public and private mitigation banks.

8 NEW SECTION. **Sec. 5.** The department shall approve use of a
9 particular mitigation bank to satisfy mitigation required under a
10 permit issued or approved by the department on a project-specific basis
11 and shall determine the number of credits to compensate for the
12 proposed impacts of a specific project. Prior to authorizing use of a
13 bank as a means of mitigation, the department must assure that all
14 appropriate and practicable steps have been undertaken to first avoid
15 and then minimize adverse impacts to wetlands. The department may
16 approve use of a bank when there is no practicable opportunity for on-
17 site compensation, or when use of a bank is environmentally preferable
18 to on-site compensation.

19 NEW SECTION. **Sec. 6.** The interpretation of this chapter and rules
20 adopted under this chapter must be consistent with applicable federal
21 guidance for the establishment, use, and operation of wetlands
22 mitigation banks as it existed on the effective date of this section,
23 or such subsequent date as may be provided by the department by rule,
24 consistent with the purposes of this chapter.

25 NEW SECTION. **Sec. 7.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 8.** The director of the department of ecology
30 may take the necessary steps to ensure that this act is implemented on
31 its effective date.

1 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute
2 a new chapter in Title 90 RCW.

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