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SENATE BILL 6779

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State of Washington

56th Legislature

2000 Regular Session

By Senators Patterson, Swecker, Rasmussen, Spanel, Kline and Jacobsen

Read first time 01/26/2000. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to wetlands mitigation; adding a new section to  
2 chapter 90.74 RCW; adding a new chapter to Title 90 RCW; and creating  
3 new sections.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

8 (1) "Approval" of a project that impacts wetlands includes the  
9 issuance by any state agency of any regulatory permit, water quality  
10 certification, or other regulatory action approving or conditioning the  
11 project.

12 (2) "Compensatory mitigation" means the restoration, creation, or  
13 enhancement of wetlands for the purpose of compensating for unavoidable  
14 adverse impacts that remain after all appropriate and practicable  
15 avoidance and minimization has been achieved.

16 (3) "Department" means the department of ecology.

17 (4) "Off-site compensatory mitigation" and "off-site mitigation"  
18 means compensatory mitigation undertaken at a location other than the  
19 project site.

1 (5) "Project site" means all contiguous real property used or  
2 proposed to be used for the project and compensatory mitigation of  
3 wetland or other impacts.

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

7 NEW SECTION. **Sec. 2.** DOCUMENTING SEQUENCING OF ALTERNATIVES. The  
8 administrative record developed by a state agency approving off-site  
9 compensatory mitigation shall document and explain the agency's  
10 determination that adverse impacts to wetlands are unavoidable and that  
11 all appropriate and practicable avoidance and minimization of impacts  
12 has been achieved.

13 NEW SECTION. **Sec. 3.** OPERATIONAL STANDARDS FOR OFF-SITE  
14 MITIGATION. (1) A state agency approving off-site compensatory  
15 mitigation shall:

16 (a) Require the project proponent to demonstrate financial  
17 assurance to fund the cost of monitoring and maintenance of the  
18 mitigation site for the operational life of the mitigation site;

19 (b) Require the project proponent to award the contract for  
20 monitoring and site maintenance no later than the date upon which the  
21 agency determines the mitigation site construction work to be complete;

22 (c) Require the project proponent or the proponent's authorized  
23 contractor to submit periodic monitoring reports regarding the  
24 mitigation site's progress toward meeting mitigation objectives; and

25 (d) Develop a schedule for the state agency or lead state agency to  
26 periodically review monitoring reports, make independent site  
27 inspections, and independently assess the mitigation site's progress  
28 toward meeting mitigation objectives.

29 (2) When more than one state agency has regulatory jurisdiction  
30 over the approval of a project involving off-site compensatory  
31 mitigation, the agencies shall coordinate their responsibilities under  
32 this chapter and may designate a lead agency in applying this chapter  
33 to a project.

34 (3) The department may adopt policies to provide further guidance  
35 to state agencies in implementing this section.

1        NEW SECTION.    **Sec. 4.**    ASSESSMENT.    The department of natural  
2 resources shall conduct an assessment of off-site compensatory  
3 mitigation projects and submit a report on its findings and  
4 recommendations to the appropriate standing committees of the  
5 legislature no later than December 31, 2000.    The assessment shall  
6 include a review of existing studies on the performance of off-site  
7 compensatory mitigation in meeting mitigation objectives established in  
8 project approvals, and the processes and standards typically used in  
9 the state in approving and monitoring such mitigation.    The assessment  
10 shall also include a review of a representative selection of individual  
11 mitigation sites in a variety of ecological settings and geographical  
12 areas of the state.    State agencies having wetland regulatory  
13 responsibilities shall assist the department in the review by providing  
14 information on currently operating mitigation sites approved by the  
15 agencies.    The department shall consult with stakeholder interests, as  
16 well as local, state, and federal wetland regulatory agencies in  
17 conducting the report.

18        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 90.74 RCW  
19 to read as follows:

20        The departments of ecology and fish and wildlife shall implement  
21 this chapter consistent with sections 1 through 3 of this act.

22        NEW SECTION.    **Sec. 6.**    Sections 1 through 3 of this act apply to  
23 any state agency approval of a project that impacts wetlands where the  
24 approval is made on or after January 1, 2000.

25        NEW SECTION.    **Sec. 7.**    Sections 1 through 3 of this act constitute  
26 a new chapter in Title 90 RCW.

27        NEW SECTION.    **Sec. 8.**    Captions used in this act constitute no part  
28 of the law.

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