
HOUSE BILL 2986

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By Representatives Ericksen, Anderson, Holmquist, Schindler, Morell, Mielke, Hankins, Pflug, Mulliken, Boldt, Woods and Kessler

Read first time 02/27/2002. Referred to Committee on Transportation.

1 AN ACT Relating to habitat mitigation banks; and adding a new
2 chapter to Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. (1) The
5 legislature finds that habitat mitigation banks are an important tool
6 for providing compensatory mitigation for unavoidable impacts to fish
7 and wildlife habitat conservation areas. The legislature further finds
8 that the benefits of habitat mitigation banks include:

9 (a) Maintenance of the ecological functioning of a habitat
10 conservation area by consolidating compensatory mitigation into a
11 single large parcel rather than in separate, isolated individual
12 parcels;

13 (b) Increased potential for the establishment and long-term
14 management of successful mitigation by bringing together financial
15 resources, planning, and scientific expertise not practicable for many
16 project-specific mitigation proposals;

17 (c) Increased certainty over the success of mitigation and
18 reduction of temporal losses of fish and wildlife habitat areas since

1 habitat mitigation banks are typically implemented and functioning in
2 advance of project impacts;

3 (d) Potential enhanced protection and preservation of the state's
4 most valuable fish and wildlife habitat;

5 (e) A reduction in permit processing times and increased
6 opportunity for more cost-effective compensatory mitigation for
7 development projects; and

8 (f) The ability to provide compensatory mitigation in an efficient,
9 predictable, and economically and environmentally responsible manner.

10 Therefore, the legislature declares that it is the policy of the
11 state to authorize habitat mitigation banking.

12 (2) The purpose of this chapter is to support the establishment and
13 operation of habitat mitigation banks by:

14 (a) Authorizing state agencies and local governments, as well as
15 private entities, to achieve the goals of this chapter;

16 (b) Providing a predictable, efficient regulatory framework,
17 including timely review of habitat mitigation bank proposals and
18 approval of habitat mitigation bank credits for projects; and

19 (c) Establishing a preference for the use of habitat mitigation
20 bank credits for transportation projects of statewide significance over
21 individual, isolated, on-site mitigation.

22 The legislature intends that, in the development and adoption of
23 rules for habitat mitigation banks, the department establish and use a
24 collaborative process involving interested public agencies and private
25 entities.

26 NEW SECTION. **Sec. 2.** APPLICABILITY. (1) This chapter applies to
27 the establishment, operation, and maintenance of public and private
28 fish, wildlife, or fish and wildlife habitat mitigation banks,
29 including the review and certification of mitigation banks and the
30 approval of the use of credits from habitat mitigation banks for
31 mitigation of proposed impacts of public and private projects,
32 including but not limited to public transportation projects.

33 (2) This chapter does not create any new authority for regulating
34 fish, wildlife, or fish and wildlife habitat conservation areas or
35 habitat mitigation banks beyond what is specifically provided for in
36 this chapter. No authority is granted to the department under this
37 chapter to adopt rules or guidance that apply to fish, wildlife, or

1 fish and wildlife habitat conservation projects other than habitat
2 mitigation banks under this chapter.

3 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Bank sponsor" means any public or private entity responsible
7 for establishing and, in most circumstances, operating a bank.

8 (2) "Banking instrument" means the documentation of agency and bank
9 sponsor concurrence on the objectives and administration of the bank
10 that describes in detail the physical and legal characteristics of the
11 bank, including the service area and how the bank will be established
12 and operated.

13 (3) "Compensatory mitigation" means the preservation, restoration,
14 enhancement, or creation of fish, wildlife, or fish and wildlife
15 habitat areas for the purpose of compensating for adverse impacts to
16 habitat areas resulting from a proposed development project.

17 (4) "Creation" means the establishment of fish, wildlife, or fish
18 and wildlife habitat area functions and values in an area, either on or
19 off the project site, where none previously existed.

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

23 (6) "Department" means the department of ecology.

24 (7) "Enhancement" means actions taken within an existing fish,
25 wildlife, or fish and wildlife habitat area to increase or augment one
26 or more functions or values of the area. "Enhancement" may also
27 include actions taken to improve the functions provided by a buffer or
28 upland area.

29 (8) "Habitat" means the environmental conditions surrounding the
30 location where a particular species of fish or wildlife lives,
31 including air, water, soil, mineral elements, moisture, temperature,
32 and topography.

33 (9) "Habitat mitigation bank" or "bank" means a site where fish,
34 wildlife, or fish and wildlife habitat is preserved, restored,
35 enhanced, or created for the purpose of providing compensatory
36 mitigation in advance of authorized impacts to similar habitat areas.

37 (10) "Impact" means the effect or consequence of a proposed action,
38 as identified by the state agency or local government issuing the

1 project permit, in particular upon fish, wildlife, or fish and wildlife
2 habitat conservation areas and specific to an element of the habitat
3 for a particular species.

4 (11) "Performance standards" means measurable benchmarks for a
5 specific project objective, in particular to allow evaluation of the
6 characteristics associated with certified habitat mitigation banks.

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

10 (13) "Preservation" means the protection of ecologically important
11 fish, wildlife, or fish and wildlife habitat area through the
12 implementation of appropriate legal and physical mechanisms.
13 "Preservation" may include protection of the functions provided by a
14 buffer or upland area to ensure the protection or enhancement of the
15 habitat area.

16 (14) "Restoration" means actions taken to intentionally reestablish
17 fish, wildlife, or fish and wildlife habitat areas at a site where
18 functional and valuable habitat previously existed but where functional
19 and valuable habitat no longer exists.

20 (15) "Service area" means the designated geographic area in which
21 a bank can reasonably be expected to provide appropriate compensatory
22 mitigation.

23 (16) "Transportation project of statewide significance" means a
24 project or combination of projects that cross multiple city or county
25 jurisdictional boundaries or connects major state destinations in
26 support of the state's economy and are so designated by the department
27 of transportation and approved by the transportation committees of the
28 senate and house of representatives. The transportation committees of
29 the senate and house of representatives may also designate such
30 projects.

31 NEW SECTION. **Sec. 4.** RULES. Subject to the requirements of this
32 chapter, the department, through a collaborative process involving
33 interested public agencies and private entities, shall adopt rules for:

34 (1) Certification, operation, and monitoring of fish, wildlife, or
35 fish and wildlife habitat mitigation banks. The rules must include
36 procedures to assure that:

37 (a) Priority is given to banks providing for the restoration of
38 degraded or former habitat areas;

1 (b) Banks involving the creation and enhancement of fish, wildlife,
2 or fish and wildlife habitat are certified only where there are
3 adequate assurances of success and that the bank will result in an
4 overall environmental benefit; and

5 (c) Banks involving the preservation of fish, wildlife, or fish and
6 wildlife habitat are certified only when the preservation is in
7 conjunction with the restoration, enhancement, or creation of a fish,
8 wildlife, or fish and wildlife habitat, or in other exceptional
9 circumstances as determined by the department consistent with this
10 chapter;

11 (2) Determination, release, and use of credits from banks, provided
12 that:

13 (a) Procedures regarding credits must authorize the use and sale of
14 credits to offset adverse impacts and the phased release of credits as
15 different levels of the performance standards are met;

16 (b) Linear projects, including but not limited to transportation
17 projects of statewide significance, transmission or distribution lines,
18 pipelines, and railways, may use bank credits for compensatory
19 mitigation of all adverse impacts of projects even though all of the
20 project's impacts are not located within the bank's service area if (i)
21 at least one impact from the project is located within the bank's
22 service area and (ii) appropriate compensation is provided for impacts
23 lying outside the bank's service area; and

24 (c) Use of habitat mitigation banks for transportation projects of
25 statewide significance are preferred over individual, isolated, on-site
26 mitigation;

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

29 (4) Coordination of governmental agencies;

30 (5) Establishment of criteria for determining service areas for
31 each bank;

32 (6) Performance standards; and

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

35 Before adopting rules under this chapter, the department shall
36 submit the proposed rules to the appropriate standing committees of the
37 legislature. By January 30, 2002, the department shall submit a report
38 to the appropriate standing committees of the legislature on its
39 progress in developing rules under this chapter.

1 NEW SECTION. **Sec. 5.** CERTIFICATION OF BANKS. (1) The department
2 may certify only those banks that meet the requirements of this
3 chapter. Certification shall be accomplished through a banking
4 instrument. The local jurisdiction in which the bank is located shall
5 be signatory to the banking instrument.

6 (2) State agencies and local governments may approve use of credits
7 from a bank for any compensatory mitigation required under a permit
8 issued or approved by that state agency or local government for the
9 proposed impacts of a specific public or private project. For public
10 transportation projects of statewide significance, use of credits from
11 a bank may be approved for any mitigation of impacts of a proposed
12 project even though all of the project's impacts are not located within
13 the bank's service area.

14 NEW SECTION. **Sec. 6.** USE OF CREDITS. If the permitting agency
15 has identified an impact of a proposed project on a habitat
16 conservation area for which compensatory mitigation is required, the
17 department and the permitting agency may approve use of credits from a
18 bank that provide appropriate compensatory mitigation for the project
19 impacts. Credits from a bank may be approved if:

20 (1) The credits represent the restoration, enhancement, or creation
21 of habitat of like kind to the habitat areas on which the proposed
22 project will cause impacts; or

23 (2) Use of credits from a bank is environmentally preferable to on-
24 site compensation.

25 For transportation projects of statewide significance permit
26 applications that require mitigation for impacts on a habitat
27 conservation area, the department and the permitting agency shall
28 authorize use of credits from a certified bank for the applicant public
29 agency that will provide appropriate compensatory mitigation for the
30 project impacts.

31 NEW SECTION. **Sec. 7.** INTERPRETATION OF CHAPTER AND RULES. This
32 chapter and rules adopted under this chapter shall to the extent
33 possible be interpreted to be consistent with applicable federal
34 regulation and guidance on the use of habitat mitigation banking.

35 NEW SECTION. **Sec. 8.** CAPTIONS NOT LAW. Captions used in this act
36 are not any part of the law.

1 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
2 a new chapter in Title 90 RCW.

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