

HOUSE BILL REPORT

HB 2320

As Reported by House Committee On:
Agriculture & Natural Resources
Appropriations

Title: An act relating to the department of natural resources' authority for compensatory mitigation management on state-owned aquatic lands.

Brief Description: Creating a wetland mitigation program.

Sponsors: Representatives Linville, Schoesler, Sump and Grant; by request of Commissioner of Public Lands.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/13/04, 2/6/04 [DPS];
Appropriations: 2/9/04 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- Authorizes the Department of Natural Resources to accept money to establish mitigation banks on state-owned aquatic lands and to sell mitigation bank credits.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 3 members: Representatives Holmquist, Assistant Ranking Minority Member; Orcutt and Sump.

Staff: Jason Callahan (786-7117).

Background:

The Legislature has delegated to the Department of Natural Resources (DNR) the responsibility for managing the state's aquatic lands for the benefit of the public. The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental

protection, and recreational opportunities. Under current law, the DNR may lease aquatic lands, and exchange state-owned aquatic lands for privately owned lands. The DNR may also accept gifts of aquatic lands.

The DNR does not have the express authority to commence an aquatic lands mitigation banking program.

Summary of Substitute Bill:

The DNR is authorized to accept public and private money in order to create an endowment to generate funds for long-term monitoring, maintenance, and management of compensatory mitigation sites and mitigation bank sites located on state-owned aquatic lands. The amount of funding required to establish the endowment must be determined by the DNR prior to its assumption of management responsibilities for each site, and must be based on the specific conditions of the mitigation site and the long-term management plan for the site.

Compensatory mitigation is defined as the process of restoring, creating, or preserving aquatic resources, either uplands or wetlands, for the purposes of compensating for the unavoidable adverse impacts of construction projects.

The DNR is also authorized to sell mitigation credits from a mitigation bank located on state-owned aquatic lands. A credit is defined as a unit of trade representing the increase in the ecological value of a site. This increase can be measured by acreage, functions, values, or any other assessment method. All credits from the DNR's bank must be sold for no less than market value as determined using current market appraisal techniques.

Revenue generated from the sale of mitigation credits are bifurcated. The amount of money identified as needed for long-term management in the site's endowment must be deposited in the Aquatic Lands Compensatory Mitigation Endowment Account (Endowment Account). This non-appropriated account is created to generate revenues that fund long-term management, maintenance, and monitoring of mitigation sites. The money in the Endowment Account must be pooled and administered by the State Investment Board. Revenues that exceed that amount identified in the site's endowment for long-term management must be distributed to local governments, the Aquatic Lands Management Account, and the Resource Management Cost Account.

Any interest and investment revenues generated by the Endowment Account must be transferred to the Aquatic Lands Compensatory Mitigation Account (Mitigation Account). This non-appropriated account is created to accept revenue transfers from the Endowment Account and in-lieu compensation projects. In-lieu payments are cash payments used to compensate for project impacts. Moneys in the Mitigation Account can be used for purposes similar to the Endowment Account.

Substitute Bill Compared to Original Bill:

The substitute bill includes definitions for the terms: "mitigation bank site," "mitigation partners," "project," "site," and "sponsor;" limits the purposes for which the DNR can accept endowment money to mitigation sites and bank sites that are developed by the entity donating the money; requires the DNR to keep separate accounting records and ensure that the funds for each site are fully secured and approved through state or federal mitigation processes; states that mitigation bank sites may not be used for purposes that will compromise the ecological value of the site; clarifies that the act does not affect the DNR's authority to exchange state-owned tidelands and shorelands; and allows the Aquatic Lands Compensatory Mitigation Endowment Account to keep the interest that it earns.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) The DNR will be able to help ensure the likelihood that those who are compelled to mitigate will be successful by allowing the agency to be the long-term managers of the mitigation sites. Currently, the DNR does not have the authority to accept in-lieu fees or other payments from mitigators that would allow the agency to pay for the management of the sites. Giving the DNR the authority to manage mitigation banks and sell mitigation credits has the potential to increase the health of an ecosystem more than site-by-site mitigation trading. This bill is not designed to give the DNR the ability to effect the state mitigation process or rules. It is instead a proprietary proposal that will have to comply with state and federal mitigation rules.

(Concerns) (Original bill) Mitigation is a complicated procedure. The state needs to be creative and enterprising with its land holdings. This allows new thinking in terms of mitigation; however, valuing and trading aquatic lands may prove different and more difficult than wetlands.

Testimony Against: None.

Persons Testifying: (In support) (Original bill) Jay Udelhoven, Washington State Department of Natural Resources.

(Neutral) (Original bill) Andy Cook, Building Industry Association of Washington.

(In support with concerns) (Original bill) Nina Carter, National Audubon Society; Lauren Driscoll, Washington State Department of Ecology; John Carleton, Washington State Department of Fish and Wildlife; Eric Johnson, Washington Public Ports Association; and Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 18 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Anderson, Chandler, Cody, Conway, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Ruderman and Schual-Berke.

Minority Report: Do not pass. Signed by 9 members: Representatives Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cox, Sump and Talcott.

Staff: Alicia Paatsch (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:

A third-party's participation in the compensatory mitigation program is voluntary. The Department of Natural Resources cannot condition the use of state-owned aquatic lands on participation in the compensatory mitigation program.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This proposal will authorize DNR to increase its cash receipts in three ways: receiving compensatory mitigation endowments, selling mitigation bank credits, and receiving in-lieu payments. There is also an amendment for this bill that will make this program voluntary. The DNR has been working with stakeholders in order to develop this bill and it has come a long way.

Testimony Against: None.

Persons Testifying: Jay Udelhoven, Department of Natural Resources; and Eric Johnson, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: None.