
HOUSE BILL 2320

State of Washington

58th Legislature

2004 Regular Session

By Representatives Linville, Schoesler, Sump, Grant and Rockefeller;
by request of Commissioner of Public Lands

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Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the department of natural resources' authority
2 for compensatory mitigation management on state-owned aquatic lands;
3 reenacting and amending RCW 43.79A.040; and adding a new chapter to
4 Title 79 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the existing
7 federal and state regulatory framework for wetland mitigation is an
8 important tool used to offset impacts to aquatic resources.

9 (2) The legislature further finds that national and state studies
10 have shown that additional measures are needed to ensure the long-term
11 success of compensatory mitigation sites. Because impacts to aquatic
12 resources often take place on state-owned aquatic lands, the department
13 should implement new strategies to ensure that individual compensatory
14 mitigation sites and mitigation bank sites on state-owned aquatic lands
15 are properly planned for and permanently protected.

16 (3) The legislature further finds that establishing mitigation
17 banks on state-owned aquatic lands and securing funding for permanent
18 management of compensatory mitigation sites and mitigation bank sites
19 will improve the environmental success of compensatory mitigation

1 through appropriate site selection, long-term management, and
2 consolidation of multiple small mitigation sites into larger,
3 comprehensive mitigation sites.

4 NEW SECTION. **Sec. 2.** (1) "Compensatory mitigation" means the
5 process of restoring, creating, enhancing, or preserving uplands,
6 wetlands, or other aquatic resources for the purposes of compensating
7 for unavoidable adverse impacts that remain after all appropriate and
8 practicable avoidance and minimization has been achieved.
9 "Compensatory mitigation" includes mitigation that:

10 (a) Occurs at the same time as, or in advance of, a project's
11 planned environmental impacts;

12 (b) Is located in a site either on, near, or distant from the
13 project's impacts; and

14 (c) Provides either the same or different biological functions and
15 values as the functions and values impacted by the project.

16 (2) "Compensatory mitigation site" means a geographic location
17 where compensatory mitigation takes place.

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

21 (4) "Department" means the department of natural resources.

22 (5) "In-lieu compensatory mitigation" means payment to a natural
23 resource management entity for the purpose of conducting compensatory
24 mitigation for project impacts.

25 (6) "Mitigation" means the sequential process of avoiding impacts,
26 minimizing impacts, and compensating for remaining unavoidable impacts.

27 (7) "Mitigation bank" is a public or private business venture that
28 restores, creates, enhances, or, in exceptional circumstances,
29 preserves natural resources for the purpose of providing compensatory
30 mitigation in advance of authorized impacts to similar resources.

31 (8) "Mitigation bank site" means a geographic location where a
32 mitigation bank undertakes restoration, creation, enhancement, and
33 preservation activities.

34 NEW SECTION. **Sec. 3.** The department may accept money, from public
35 or private entities, for the purpose of creating an endowment that
36 generates funds used for the long-term monitoring, maintenance, and

1 management of compensatory mitigation sites and mitigation bank sites,
2 as defined by the regulatory framework and the department, located on
3 state-owned aquatic lands. The amount of money necessary to establish
4 an endowment to cover the costs of long-term monitoring, maintenance,
5 and management must be determined prior to the department assuming
6 management responsibility for each site. The amount of money necessary
7 to establish an endowment is based on the specific conditions of the
8 compensatory mitigation site and the long-term management plan for the
9 site, as approved by state or federal regulators. These moneys must be
10 deposited into the aquatic lands compensatory mitigation endowment
11 account established in section 5 of this act.

12 NEW SECTION. **Sec. 4.** The department is authorized to sell
13 mitigation bank credits from a department mitigation bank on
14 state-owned aquatic lands, upon approval by appropriate federal or
15 state regulatory agencies, or both. The department shall sell the
16 credits for no less than market value. Market value for mitigation
17 bank credits sold by the department must be determined using current
18 market or appraisal techniques, as appropriate.

19 Revenue from the sale of mitigation bank credits generated by a
20 department mitigation bank on state-owned aquatic lands must be
21 deposited into the aquatic lands compensatory mitigation endowment
22 account established in section 5 of this act. All moneys received by
23 the department from the sale of mitigation bank credits from a
24 mitigation site on state-owned aquatic lands in excess of the long-term
25 management endowment for that site must be deposited according to RCW
26 79.90.245 and 79.64.040, and paid to towns according to RCW 79.92.110.

27 NEW SECTION. **Sec. 5.** The aquatic lands compensatory mitigation
28 endowment account is created in the custody of the state treasurer.
29 All receipts from moneys received by the department for the purpose of
30 creating long-term management endowments must be deposited into the
31 account. Expenditures from the account may be used only for the sole
32 purpose of generating revenues for conducting the long-term monitoring,
33 maintenance, and management of compensatory mitigation sites and
34 mitigation bank sites on state-owned aquatic lands. The moneys in the
35 account must be pooled and invested for the benefit of all compensatory
36 mitigation sites and mitigation bank sites that have been established

1 under this chapter. The account must be administered by the state
2 investment board. The principal of the account is irreducible.
3 Disbursements of the interest and investment earnings, less the
4 allocations to the state investment board expense account under RCW
5 43.33A.160, from the account must be made to the aquatic lands
6 compensatory mitigation management account, created in section 6 of
7 this act, upon authorization of the commissioner of public lands, and
8 the director of the state investment board. The account is subject to
9 allotment procedures under chapter 43.88 RCW, but an appropriation is
10 not required for expenditures.

11 NEW SECTION. **Sec. 6.** The aquatic lands compensatory mitigation
12 management account is created in the custody of the state treasurer.
13 All receipts from interest and investment earnings from the aquatic
14 lands compensatory mitigation endowment account created in section 5 of
15 this act and in-lieu compensation payments for completing compensatory
16 mitigation projects on state-owned aquatic lands must be deposited into
17 the account. Expenditures from the account may be used solely by the
18 department for the purpose of developing in-lieu compensatory
19 mitigation and performing long-term monitoring, maintenance, and
20 management of compensatory mitigation sites and mitigation bank sites
21 on state-owned aquatic lands. The moneys in the account shall be
22 pooled and expended for the benefit of all compensatory mitigation
23 sites and mitigation bank sites established under this chapter. Only
24 the commissioner of public lands or the commissioner's designee may
25 authorize expenditures from the account. The account is subject to
26 allotment procedures under chapter 43.88 RCW, but an appropriation is
27 not required for expenditures.

28 **Sec. 7.** RCW 43.79A.040 and 2003 c 403 s 9, 2003 c 313 s 10, 2003
29 c 191 s 7, 2003 c 148 s 15, 2003 c 92 s 8, and 2003 c 19 s 12 are each
30 reenacted and amended to read as follows:

31 (1) Money in the treasurer's trust fund may be deposited, invested,
32 and reinvested by the state treasurer in accordance with RCW 43.84.080
33 in the same manner and to the same extent as if the money were in the
34 state treasury.

35 (2) All income received from investment of the treasurer's trust

1 fund shall be set aside in an account in the treasury trust fund to be
2 known as the investment income account.

3 (3) The investment income account may be utilized for the payment
4 of purchased banking services on behalf of treasurer's trust funds
5 including, but not limited to, depository, safekeeping, and
6 disbursement functions for the state treasurer or affected state
7 agencies. The investment income account is subject in all respects to
8 chapter 43.88 RCW, but no appropriation is required for payments to
9 financial institutions. Payments shall occur prior to distribution of
10 earnings set forth in subsection (4) of this section.

11 (4)(a) Monthly, the state treasurer shall distribute the earnings
12 credited to the investment income account to the state general fund
13 except under (b) and (c) of this subsection.

14 (b) The following accounts and funds shall receive their
15 proportionate share of earnings based upon each account's or fund's
16 average daily balance for the period: The Washington promise
17 scholarship account, the college savings program account, the
18 Washington advanced college tuition payment program account, the
19 agricultural local fund, the American Indian scholarship endowment
20 fund, the students with dependents grant account, the basic health plan
21 self-insurance reserve account, the contract harvesting revolving
22 account, the Washington state combined fund drive account, the
23 Washington international exchange scholarship endowment fund, the
24 developmental disabilities endowment trust fund, the energy account,
25 the fair fund, the fruit and vegetable inspection account, the game
26 farm alternative account, the grain inspection revolving fund, the
27 juvenile accountability incentive account, the law enforcement
28 officers' and fire fighters' plan 2 expense fund, the local tourism
29 promotion account, the produce railcar pool account, the rural
30 rehabilitation account, the stadium and exhibition center account, the
31 youth athletic facility account, the self-insurance revolving fund, the
32 sulfur dioxide abatement account, the children's trust fund, and the
33 (~~investing in innovation~~) aquatic lands compensatory mitigation
34 management account. However, the earnings to be distributed shall
35 first be reduced by the allocation to the state treasurer's service
36 fund pursuant to RCW 43.08.190.

37 (c) The following accounts and funds shall receive eighty percent
38 of their proportionate share of earnings based upon each account's or

1 fund's average daily balance for the period: The advanced right of way
2 revolving fund, the advanced environmental mitigation revolving
3 account, the city and county advance right-of-way revolving fund, the
4 federal narcotics asset forfeitures account, the high occupancy vehicle
5 account, the local rail service assistance account, and the
6 miscellaneous transportation programs account.

7 (5) In conformance with Article II, section 37 of the state
8 Constitution, no trust accounts or funds shall be allocated earnings
9 without the specific affirmative directive of this section.

10 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute
11 a new chapter in Title 79 RCW.

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