

HOUSE BILL REPORT

HB 1492

As Reported by House Committee On:

Natural Resources, Ecology & Parks
Appropriations

Title: An act relating to the department of natural resources' authority to create a single pilot mitigation bank on state-owned aquatic lands.

Brief Description: Developing a single pilot mitigation bank on state-owned aquatic lands.

Sponsors: Representatives Williams, B. Sullivan, Eickmeyer and Orcutt; by request of Commissioner of Public Lands.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/1/05, 2/8/05 [DPS];
Appropriations: 2/23/05, 2/24/05 [DP2S(w/o sub NREP)].

Brief Summary of Second Substitute Bill

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

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt, Dickerson, Eickmeyer, Hunt, Orcutt and Williams.

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.

Wetlands mitigation banks are authorized under the Department of Ecology. Credits from wetlands mitigation banks may be used by state agencies and local governments to compensate for the proposed impacts of a specific public or private project on wetlands. Credits from wetlands mitigation banks may only be used if all appropriate and practicable steps have been made to minimize environmental impacts, there is no opportunity for on-site compensation, and the credits represent the creation, restoration, or enhancement of wetlands in close proximity.

Summary of Substitute Bill:

Mitigation banking authority

The DNR is given the authority to conduct a mitigation bank pilot project. Under the pilot project, the DNR could enter into a mitigation banking agreement with other public or private entities to develop and manage a single mitigation bank located on state-owned aquatic lands. Once developed, the aquatic lands where the bank is located would not be available for other uses that compromise the ecological functions of the bank site.

As a requirement for operating the mitigation bank, the DNR, along with its mitigation banking partners, must develop a management plan for the pilot bank. The management plan must be approved through either the state or federal regulatory mitigation process, in addition to the applicable city or county where the bank is located, and include details on the long-term management goals and the costs associated with management of the bank site. Expenses for the development of the management plan are the responsibility of the DNR and its partners.

The DNR is prohibited from requiring a third party to buy mitigation bank credits as a condition for leasing other aquatic lands. All participation in the banking pilot must be voluntarily agreed to by both the DNR, the banking partner, and the third-party purchasing the mitigation credits.

Mitigation bank endowment

An endowment must be created for the pilot mitigation bank by either the DNR or its banking partner. The endowment's purpose is to generate funds for the long-term monitoring, maintenance, and management of the pilot bank. The amount of money necessary for the endowment must be established by the DNR, documented in the management plan, and approved through the regulatory process. This amount must be based on the specific conditions of the bank site and the terms of the long-term management plan. Long-term management responsibility will not be assumed by the DNR until the money necessary to create the endowment has been determined.

The selling of mitigation bank credits

Once the pilot mitigation bank is established, the DNR may sell and receive revenue from mitigation bank credits. The economic value of the mitigation credits are to be determined jointly by the DNR and its partners, and may include both the costs associated with making the necessary habitat improvements and value of the actual use of the state-owned aquatic lands. Mitigation credits are not allowed to be sold at less than market value.

Mitigation bank accounting

Two new non-appropriated accounts are created: the Aquatic Lands Compensatory Mitigation Endowment Account (endowment account) and the Aquatic Lands Compensatory Mitigation Management Account (management account). The endowment account is managed by the State Investment Board, and receives all money received by the DNR for the purposes of establishing a long-term endowment.

The principal in the endowment account is irreducible, and revenues from investments must be dispersed into the management account in amounts equal to the costs for managing the pilot site. The management account is then used to fund the department's long-term monitoring, maintenance, and management of the pilot site.

Revenue from the sale of mitigation bank credits are deposited in differing proportions into the Aquatic Lands Enhancement Account and the Resource Management Cost Account, or distributed to certain local governments.

Legislative reports

The DNR is required to submit a report to the Legislature in 2010 regarding the status of the pilot project. The report must detail regulatory certification, management plan development, service area determination, credit determination, valuation, sales, and information on the status of the endowment account.

Substitute Bill Compared to Original Bill:

The substitute bill provides a technical amendment to allow the newly created funds to maintain the interest earned, requires the management plan for the bank to identify the ecological and recreational functions the bank site will enhance or protect, and require the DNR to consult with affected tribes when appropriate.

Appropriation: None.

Fiscal Note: Requested on 1/25/05.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for Section 10, retaining interest on the aquatic lands compensatory mitigation endowment account and the aquatic lands compensatory mitigation management account, which takes effect July 1, 2005.

Testimony For: This bill is a win-win with multiple benefits. The environment is benefitted by restoring damaged aquatic lands that otherwise the state would not be able to afford to address and the development community will have another option for mitigation.

Wetlands are critical habitat for birds and other wildlife species. Many estuarine wetlands have disappeared, and mitigation has often failed. This bill gives mitigation another chance. The intent is to locate the site on aquatic lands in Puget Sound, which is an environment where the current 17 sites proposed by the Department of Ecology are not located.

The single bank format allows the DNR's management to be more efficient and effective. Previous proposals were broader in scope, but this version has been worked with stakeholders to alleviate the concerns of the broader approach. Mitigation for deep water construction has never been tried before, so a pilot project is the right approach.

Testimony Against: None.

Persons Testifying: Representative Williams, prime sponsor; Heath Packard, Audubon; Jay Udelhoven, Department of Natural Resources; Eric Johnson, Washington Public Ports Association; and Peter Birch, Department of Fish and Wildlife.

(With concerns) Dawn Vyvyan, Puyallup Tribe of Indians.

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 Natural Resources, Ecology & Parks. Signed by 25 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Minority Report: Do not pass. Signed by 1 member: Representative Clements.

Staff: Alicia Paatsch (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

The second substitute bill makes a technical correction to allow the new funds to keep earned interest.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The Department of Natural Resources will use existing staff to implement this bill and mitigation bank partners will provide the funding needed to restore habitat. The Department of Ecology's mitigation program shifts costs from the state to a banking partner for upland restoration and wetlands. This bill would expand mitigation to aquatic lands.

Testimony Against: None.

Persons Testifying: Jay Udelhoven, Department of Natural Resources; and Lauren Driscoll, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.