

SENATE BILL REPORT

SB 6691

As Reported By Senate Committee On:
Water, Energy & Telecommunications, February 08, 2008

Title: An act relating to a pilot program establishing marine habitat mitigation banks in a certain area.

Brief Description: Establishing a marine habitat mitigation bank pilot program.

Sponsors: Senator Sheldon.

Brief History:

Committee Activity: Water, Energy & Telecommunications: 2/06/08, 2/08/08 [DPS-WM].

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6691 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Hatfield, Holmquist, Morton, Oemig, Pridemore and Regala.

Staff: Karen Epps (786-7424)

Background: When a proposed project will impact wetlands, the first step in the mitigation process is to avoid and minimize any impact. For unavoidable impacts, compensatory mitigation is undertaken to replace the loss of wetlands on the project site, or elsewhere where environmentally preferable. One method of fulfilling compensatory mitigation requirements is through mitigation banking.

Mitigation banking allows habitat improvements to be done prior to environmental impacts. A mitigation banker proposes a site where habitat improvements will benefit the ecosystem. The proposal is evaluated to establish its ecological value in terms of mitigation credits. The mitigation banker then improves the habitat on the selected site. Those required to mitigate for impacts to wetlands and aquatic resources can fulfill their obligations by purchasing mitigation credits from the bank. Once all credits have been purchased, the mitigation bank must be permanently protected.

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

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compensation, and the credits represent the creation, restoration, or enhancement of wetlands in close proximity.

Summary of Bill (Recommended Substitute): The Department of Ecology (Ecology) must establish a pilot program for the creation of marine habitat mitigation banks on privately owned land in the service area. "Service area" is defined as a Puget Sound county in which southern Puget Sound and southern Hood Canal are both located. Any marine habitat mitigation bank wishing to operate a bank must be certified by Ecology pursuant to the wetlands mitigation bank statutes. Ecology, in consultation with other appropriate agencies and interests, must develop substantive standards for a pilot marine habitat mitigation bank.

As with wetlands mitigation banks, credits from marine habitat 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 marine habitat in close proximity.

By June 30, 2010, Ecology, together with the bank sponsor, must report to the Senate and House of Representatives on the status of the pilot marine habitat mitigation banks, including:

- a description of the marine habitat mitigation banks in the service area;
- a description of the projects for which credits were used; and
- recommendations for any changes necessary to make the marine habitat mitigation bank provisions operate more effectively and the possibility of expanding marine habitat mitigation banks to areas outside the service area.

The provisions expire on June 30, 2011, but any bank certified as a marine habitat mitigation bank pursuant to the provisions may continue to operate under the wetlands mitigation banking statutes.

EFFECT OF CHANGES MADE BY WATER, ENERGY & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): Requires that any marine habitat mitigation bank operating under this pilot program be on privately owned land. Requires Ecology, in consultation with other appropriate agencies and interests, to develop substantive standards for a pilot marine habitat mitigation bank.

Appropriation: None.

Fiscal Note: Requested on January 27, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: July 1, 2008.

Staff Summary of Public Testimony on Original Bill: PRO: This bill represents a strong partnership between the Squaxin Island Tribe, Simpson Timber Co., and city of Shelton to address both fish habitat and the industrial waterfront in Shelton. This bill represents the best attempt to allow Simpson to move forward with repairs and improvements and accomplish significant environmental benefits. This bill creates an innovative private market partnership for conservation. The pilot program in this bill will protect shorelines while helping resource industries remain viable, enabling the industry to continue providing ecological benefits.

OTHER: The concept of extending wetlands mitigation banking to marine lands is intriguing. Certification of wetlands banks was rigorous and this will need to be addressed for marine habitat mitigation banks. Other key agencies will need to be involved, including Department of Natural Resources, Department of Fish and Wildlife, and federal agencies. The bill does not specifically address whether only private lands are included or if public lands will also be included. It is important to consider how the bank will be managed in the long term, including considering responsibilities and financing for long term management.

Persons Testifying: PRO: John Konovsky, Squaxin Island Tribe; Martin Flynn, Cascade Land Conservancy; Dan Coyne, Simpson; Rich Doenges, Department of Natural Resources.

OTHER: Lauren Driscoll, Department of Ecology.