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HOUSE BILL 2095

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By Representatives Taylor, Shea, Overstreet, Scott, Condotta, Haler, Buys, Rodne, Pike, and Magendanz

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1 AN ACT Relating to reducing the cost of transportation projects by  
2 linking state conservation investments with mitigation requirements;  
3 amending RCW 43.21C.060 and 47.01.305; reenacting and amending RCW  
4 90.74.010; adding a new section to chapter 90.74 RCW; adding a new  
5 section to chapter 77.55 RCW; adding a new section to chapter 76.09  
6 RCW; adding a new section to chapter 90.58 RCW; adding a new section to  
7 chapter 70.94 RCW; adding a new section to chapter 78.44 RCW; adding a  
8 new section to chapter 86.16 RCW; adding a new section to chapter  
9 36.70A RCW; and adding a new section to chapter 90.48 RCW.

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

11 **Sec. 1.** RCW 90.74.010 and 2012 c 62 s 3 are each reenacted and  
12 amended to read as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) "Compensatory mitigation" means the restoration, creation,  
16 enhancement, or preservation of uplands, wetlands, or other ((aquatic))  
17 resources for the purposes of compensating for unavoidable adverse  
18 impacts that remain after all appropriate and practicable avoidance and

1 minimization has been achieved. "Compensatory mitigation" includes  
2 mitigation that:

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

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

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

9 (2) "Family forest fish passage program" means the program  
10 administered by the recreation and conservation office created pursuant  
11 to RCW 76.09.410 that provides public cost assistance to small forest  
12 landowners associated with the road maintenance and abandonment  
13 processes.

14 (3) "Forestry riparian easement program" means the program  
15 established in RCW 76.13.120.

16 (4) "Infrastructure development" means an action that is critical  
17 for the maintenance or expansion of an existing infrastructure feature  
18 such as a highway, rail line, airport, marine terminal, utility  
19 corridor, harbor area, or hydroelectric facility and is consistent with  
20 an approved land use planning process. This planning process may  
21 include the growth management act, chapter 36.70A RCW, or the shoreline  
22 management act, chapter 90.58 RCW, in areas covered by those chapters.

23 (5) "Mitigation" means sequentially avoiding impacts, minimizing  
24 impacts, or compensating for remaining unavoidable impacts.

25 (6) "Mitigation plan" means a document or set of documents  
26 developed through joint discussions between a project proponent and  
27 environmental regulatory agencies that describe the unavoidable  
28 (~~wetland or aquatic~~) resource impacts of a proposed infrastructure  
29 development or noninfrastructure development and the proposed  
30 compensatory mitigation for those impacts.

31 (7) "Noninfrastructure development" means a development project  
32 that requires the completion of compensatory mitigation that does not  
33 meet the definition of "infrastructure development" and is consistent  
34 with an approved land use planning process. This planning process may  
35 include the growth management act, chapter 36.70A RCW, or the shoreline  
36 management act, chapter 90.58 RCW, in areas covered by those chapters.

37 (8) "Project proponent" means a public or private entity  
38 responsible for preparing a mitigation plan.

1 (9) "Riparian open space program" means the program created  
2 pursuant to RCW 76.09.040.

3 (10) "Watershed" means an area identified as a state of Washington  
4 water resource inventory area under WAC 173-500-040 as it exists on  
5 June 7, 2012.

6 (11) "Environmentally designated land" means land purchases or  
7 other acquisitions and investments that were paid for directly or  
8 indirectly by public funds and result in the creation, conservation, or  
9 enhancement of land, or any portion of land, that is open space, a  
10 park, forest land, fish or wildlife habitat, a conservation area or  
11 easement, a wetland, a critical area, or property that is unlikely to  
12 be paved or have permanent structures erected upon it.

13 NEW SECTION. Sec. 2. A new section is added to chapter 90.74 RCW  
14 to read as follows:

15 (1) State agencies and local governments may not, as part of any  
16 permitting process, require the department of transportation or a local  
17 government to purchase or otherwise acquire an interest in land as an  
18 environmental or compensatory mitigation requirement for a  
19 transportation project unless subsection (2) of this section does not  
20 apply.

21 (2)(a) Prior to agreeing with a permitting agency to purchase or  
22 otherwise acquire land as environmental or compensatory mitigation, the  
23 department of transportation or local project applicant must first  
24 determine if an existing environmentally designated land satisfies the  
25 mitigation requirements. If the department of transportation or local  
26 project applicant determines that an identified existing  
27 environmentally designated land provides substantially similar  
28 environmental benefit to the proposed mitigation requirement, then the  
29 permitting agency must accept the existing environmentally designated  
30 land investment as satisfaction for the mitigation requirement.

31 (b) The department of transportation may only use environmentally  
32 designated land for mitigation under this section if the land  
33 investment was paid in full or part by direct or indirect state  
34 funding. Local governments may only use environmentally designated  
35 land for mitigation under this section if the land investment was paid  
36 in full or part by direct or indirect local funding unless the

1 transportation project in question is being funded with state money, in  
2 which case the local government can also utilize state-funded  
3 environmentally designated land.

4 (3) Only the minimum portion of the identified existing  
5 environmentally designated land parcel necessary to satisfy the  
6 environmental or compensatory mitigation is required to be documented  
7 and used for the project so that the acreage of the environmentally  
8 designated land parcel is fully used for as many projects as possible  
9 without using any portion of that property more than once. A parcel of  
10 environmentally designated land may be used for multiple mitigation  
11 uses if the parcel is restored or enhanced after its initial use under  
12 this section.

13 (4) When coordinating with federal permitting agencies, the  
14 department of transportation and local governments shall, whenever  
15 possible and consistent with this section, utilize existing  
16 environmentally designated lands for transportation project mitigation.

17 **Sec. 3.** RCW 43.21C.060 and 1983 c 117 s 3 are each amended to read  
18 as follows:

19 The policies and goals set forth in this chapter are supplementary  
20 to those set forth in existing authorizations of all branches of  
21 government of this state, including state agencies, municipal and  
22 public corporations, and counties. Any governmental action may be  
23 conditioned or denied pursuant to this chapter: PROVIDED, That such  
24 conditions or denials shall be based upon policies identified by the  
25 appropriate governmental authority and incorporated into regulations,  
26 plans, or codes which are formally designated by the agency (or  
27 appropriate legislative body, in the case of local government) as  
28 possible bases for the exercise of authority pursuant to this chapter.  
29 Such designation shall occur at the time specified by RCW 43.21C.120.  
30 Such action may be conditioned only to mitigate specific adverse  
31 environmental impacts which are identified in the environmental  
32 documents prepared under this chapter. These conditions shall be  
33 stated in writing by the decision maker. Mitigation measures shall be  
34 reasonable and capable of being accomplished and must be consistent  
35 with section 2 of this act. In order to deny a proposal under this  
36 chapter, an agency must find that: (1) The proposal would result in  
37 significant adverse impacts identified in a final or supplemental

1 environmental impact statement prepared under this chapter; and (2)  
2 reasonable mitigation measures are insufficient to mitigate the  
3 identified impact. Except for permits and variances issued pursuant to  
4 chapter 90.58 RCW, when such a governmental action, not requiring a  
5 legislative decision, is conditioned or denied by a nonelected official  
6 of a local governmental agency, the decision shall be appealable to the  
7 legislative authority of the acting local governmental agency unless  
8 that legislative authority formally eliminates such appeals. Such  
9 appeals shall be in accordance with procedures established for such  
10 appeals by the legislative authority of the acting local governmental  
11 agency.

12 **Sec. 4.** RCW 47.01.305 and 2009 c 471 s 1 are each amended to read  
13 as follows:

14 (1) For highway construction projects where the department  
15 considers agricultural lands of long-term commercial significance, as  
16 defined in RCW 36.70A.030, in reviewing and selecting sites to meet  
17 environmental mitigation requirements under the national environmental  
18 policy act (42 U.S.C. Sec. 4321 et seq.) and chapter 43.21C RCW, the  
19 department shall, to the greatest extent possible, consider using  
20 public land and the tools provided by section 2 of this act first.

21 (2) If public lands are not available that meet the required  
22 environmental mitigation needs, the department may use other sites  
23 while making every effort to avoid any net loss of agricultural lands  
24 that have a designation of long-term commercial significance.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55 RCW  
26 to read as follows:

27 This chapter may not be implemented in any way that frustrates the  
28 purpose of section 2 of this act.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.09 RCW  
30 to read as follows:

31 This chapter may not be implemented in any way that frustrates the  
32 purpose of section 2 of this act.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.58 RCW  
34 to read as follows:

1           This chapter may not be implemented in any way that frustrates the  
2 purpose of section 2 of this act.

3           NEW SECTION.   **Sec. 8.** A new section is added to chapter 70.94 RCW  
4 to read as follows:

5           This chapter may not be implemented in any way that frustrates the  
6 purpose of section 2 of this act.

7           NEW SECTION.   **Sec. 9.** A new section is added to chapter 78.44 RCW  
8 to read as follows:

9           This chapter may not be implemented in any way that frustrates the  
10 purpose of section 2 of this act.

11          NEW SECTION.   **Sec. 10.** A new section is added to chapter 86.16 RCW  
12 to read as follows:

13          This chapter may not be implemented in any way that frustrates the  
14 purpose of section 2 of this act.

15          NEW SECTION.   **Sec. 11.** A new section is added to chapter 36.70A  
16 RCW to read as follows:

17          This chapter may not be implemented in any way that frustrates the  
18 purpose of section 2 of this act.

19          NEW SECTION.   **Sec. 12.** A new section is added to chapter 90.48 RCW  
20 to read as follows:

21          This chapter may not be implemented in any way that frustrates the  
22 purpose of section 2 of this act.

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