
HOUSE BILL 2269

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Taylor, Overstreet, Shea, DeBolt, and Scott

Read first time 01/15/14. Referred to Committee on Environment.

1 AN ACT Relating to reducing the cost of infrastructure 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 a state agency or a local government to
17 purchase or otherwise acquire an interest in land as an environmental
18 or compensatory mitigation requirement for a public infrastructure
19 project unless subsection (2) of this section does not apply.

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

30 (b) The applicant state agency may only use environmentally
31 designated land for mitigation under this section if the land
32 investment was paid in full or part by direct or indirect state
33 funding. Local governments may only use environmentally designated
34 land for mitigation under this section if the land investment was paid
35 in full or part by direct or indirect local funding unless the
36 infrastructure project in question is being funded with state money, in

1 which case the local government can also utilize state-funded
2 environmentally designated land.

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

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.58 RCW
33 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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