
SUBSTITUTE SENATE BILL 6691

State of Washington

60th Legislature

2008 Regular Session

By Senate Water, Energy & Telecommunications (originally sponsored by Senator Sheldon)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to a pilot program establishing marine habitat
2 mitigation banks in a certain area; adding a new chapter to Title 90
3 RCW; providing an effective date; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that marine
6 habitat mitigation banks are an important tool for providing
7 compensatory mitigation and conservation for unavoidable impacts to
8 marine habitat. The legislature further finds that the benefits of
9 marine habitat mitigation banks include:

10 (a) Maintenance of the ecological functioning of marine habitat by
11 consolidating compensatory mitigation, habitat preservation, and
12 conservation into a single large parcel rather than smaller individual
13 parcels;

14 (b) Potential development of a landscape ecology plan that would
15 facilitate the use of smaller individual parcels that could be
16 connected through functional transportation corridors;

17 (c) Increased potential for the establishment and long-term
18 management of successful mitigation and conservation by bringing

1 together financial resources, planning, and scientific expertise not
2 practicable for many project-specific mitigation and conservation
3 proposals;

4 (d) Increased certainty over the success of mitigation and
5 conservation and the reduction of temporal losses of marine habitat
6 since mitigation and conservation banks are typically implemented and
7 functioning in advance of project impacts;

8 (e) Potential enhanced protection and preservation of the state's
9 highest value and highest functioning marine habitat;

10 (f) A reduction in permit processing times and increased
11 opportunity for more cost-effective compensatory mitigation and
12 conservation for development projects; and

13 (g) The ability to provide compensatory mitigation and conservation
14 in an efficient, predictable, and economically and environmentally
15 responsible manner.

16 (2) Therefore, the legislature finds that the establishment of
17 marine habitat mitigation banks in select areas will help document the
18 benefits to the state of marine habitat mitigation banks.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Bank sponsor" means any public or private entity responsible
22 for establishing and, in most circumstances, operating a bank.

23 (2) "Banking instrument" means the documentation of agency and bank
24 sponsor concurrence on the objectives and administration of the bank
25 that describes in detail the physical and legal characteristics of the
26 bank, including the service area, and how the bank will be established
27 and operated.

28 (3) "Credit" means a unit of trade representing the increase in the
29 ecological value of the site, as measured by acreage, functions, or
30 values, or by some other assessment method.

31 (4) "Department" means the department of ecology.

32 (5) "Marine habitat mitigation bank" or "bank" means a site where
33 marine habitat is restored, enhanced, or, in exceptional circumstances,
34 preserved expressly for the purpose of providing compensatory
35 mitigation in advance of authorized impacts to similar resources.

36 (6) "Mitigation" means sequentially avoiding impacts, minimizing
37 impacts, and compensating for remaining unavoidable impacts.

1 (7) "Pilot program" means a program established under this chapter
2 to establish a marine habitat mitigation bank in the service area to
3 document the potential uses of a marine habitat mitigation bank.

4 (8) "Practicable" means available and capable of being done after
5 taking into consideration cost, existing technology, and logistics in
6 light of overall project purposes.

7 (9) "Service area" means a Puget Sound county in which southern
8 Puget Sound and southern Hood Canal are both located.

9 (10) "Unavoidable" means adverse impacts that remain after all
10 appropriate and practicable avoidance and minimization have been
11 achieved.

12 NEW SECTION. **Sec. 3.** The department shall establish a pilot
13 program to establish a marine habitat mitigation bank on privately
14 owned land in the service area. Further, the department shall,
15 together with county legislative authorities and affected tribes,
16 approve a bank sponsor in the service area. The department shall
17 certify the bank using procedures consistent with chapter 90.84 RCW and
18 any rules adopted under that chapter. The department, in consultation
19 with other appropriate agencies and interests, shall develop
20 substantive standards for a pilot marine habitat mitigation bank to
21 implement the intent of section 1 of this act.

22 NEW SECTION. **Sec. 4.** Prior to authorizing use of credits from a
23 bank as a means of mitigation under a permit issued or approved by the
24 department, the department must ensure that all appropriate and
25 practicable steps have been undertaken to first avoid and then minimize
26 adverse impacts to marine habitat. In determining appropriate steps to
27 avoid and minimize adverse impacts to marine habitat, the department
28 shall take into consideration the functions and values of the marine
29 land, including fish habitat and protection of adjacent properties.
30 The department may approve the use of credits from a bank when:

31 (1) The credits represent the restoration or enhancement of marine
32 habitat of like kind and in close proximity when marine habitat are
33 being mitigated;

34 (2) There is no practicable opportunity for on-site compensation;
35 or

1 (3) Use of credits from a bank is environmentally preferable to on-
2 site compensation.

3 NEW SECTION. **Sec. 5.** The department, in consultation with the
4 bank sponsor approved under this chapter, shall submit a report to the
5 appropriate standing committees of the legislature by June 30, 2010.
6 The report must include:

7 (1) A description of the marine habitat mitigation banks in
8 operation in the service area;

9 (2) A description of the projects for which the credits were used
10 for compensatory purposes, including a description of the marine
11 habitat impacts for which compensation was required; and

12 (3) Recommendations for any changes necessary to make the marine
13 habitat mitigation bank provisions of this chapter operate more
14 effectively and to possibly expand this pilot program for the
15 establishment of banks outside the service area.

16 NEW SECTION. **Sec. 6.** A bank certified under section 3 of this act
17 may continue to operate under chapter 90.84 RCW.

18 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act expire June
19 30, 2011.

20 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2008.

21 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
22 a new chapter in Title 90 RCW.

--- END ---