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**SUBSTITUTE SENATE BILL 6761**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Haugen, Swecker, Spanel, and Rasmussen)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to service areas for wetlands mitigation banks; and  
2 amending RCW 90.84.030 and 90.84.050.

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

4 **Sec. 1.** RCW 90.84.030 and 1998 c 248 s 4 are each amended to read  
5 as follows:

6 (1) Subject to the requirements of this chapter, the department,  
7 through a collaborative process, shall adopt rules for:

8 ~~((1))~~ (a) Certification, operation, and monitoring of wetlands  
9 mitigation banks. The rules shall include procedures to assure that:

10 ~~((a))~~ (i) Priority is given to banks providing for the  
11 restoration of degraded or former wetlands;

12 ~~((b))~~ (ii) Banks involving the creation and enhancement of  
13 wetlands are certified only where there are adequate assurances of  
14 success and that the bank will result in an overall environmental  
15 benefit; and

16 ~~((c))~~ (iii) Banks involving the preservation of wetlands or  
17 associated uplands are certified only when the preservation is in  
18 conjunction with the restoration, enhancement, or creation of a

1 wetland, or in other exceptional circumstances as determined by the  
2 department consistent with this chapter;

3 ~~((+2))~~ (b) Determination and release of credits from banks.  
4 Procedures regarding credits shall authorize the use and sale of  
5 credits to offset adverse impacts and the phased release of credits as  
6 different levels of the performance standards are met;

7 ~~((+3))~~ (c) Public involvement in the certification of banks, using  
8 existing statutory authority;

9 ~~((+4))~~ (d) Coordination of governmental agencies;

10 ~~((+5))~~ (e) Establishment of criteria for determining service areas  
11 for each bank in accordance with subsection (2) of this section;

12 ~~((+6))~~ (f) Performance standards; and

13 ~~((+7))~~ (g) Long-term management, financial assurances, and  
14 remediation for certified banks.

15 (2) The criteria for determining service areas under subsection  
16 (1)(e) of this section shall include:

17 (a) A requirement that restricts the maximum extent of the service  
18 area of a wetlands mitigation bank to the water resource inventory area  
19 (WRIA) as established under chapter 173-500 WAC in which the bank is  
20 located except in exceptional circumstances where a service area may  
21 include parts of an adjacent WRIA if it is ecologically defensible and  
22 appropriate;

23 (b) Definitions of exceptional circumstance for expansion of a  
24 service area beyond the immediate WRIA boundaries in which the bank is  
25 located; and

26 (c) Designation that the department and the appropriate city or  
27 county in which the bank is located have final approval for determining  
28 the service areas for a specific bank.

29 (3) Before adopting rules under this chapter, the department shall  
30 submit the proposed rules to the appropriate standing committees of the  
31 legislature. By January 30, 1999, the department shall submit a report  
32 to the appropriate standing committees of the legislature on its  
33 progress in developing rules under this chapter.

34 **Sec. 2.** RCW 90.84.050 and 1998 c 248 s 6 are each amended to read  
35 as follows:

36 (1) Prior to authorizing use of credits from a bank as a means of  
37 mitigation under a permit issued or approved by the department, the

1 department must assure that all appropriate and practicable steps have  
2 been undertaken to first avoid and then minimize adverse impacts to  
3 wetlands. In determining appropriate steps to avoid and minimize  
4 adverse impacts to wetlands, the department shall take into  
5 consideration the functions and values of the wetland, including fish  
6 habitat, groundwater quality, and protection of adjacent properties.

7 (2) The department may approve use of credits from a bank when:

8 ~~((1))~~ (a) The credits represent the creation, restoration, or  
9 enhancement of wetlands of like kind and in close proximity when  
10 estuarine wetlands are being mitigated;

11 ~~((2))~~ (b) There is no practicable opportunity for on-site  
12 compensation; or

13 ~~((3))~~ (c) Use of credits from a bank is environmentally  
14 preferable to on-site compensation.

15 (3) In addition, for linear public infrastructure projects, the  
16 department may approve the use of credits from a bank for impacts  
17 located outside of the designated service area of the bank as  
18 determined in RCW 90.84.030(1)(e) when at least seventy-five percent of  
19 the project impacts are located within the service area.

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