

SENATE BILL REPORT

SB 5875

As Reported By Senate Committee On:
Ecology & Parks, March 1, 1995

Title: An act relating to wetlands mitigation banks.

Brief Description: Regulating wetlands mitigation banks.

Sponsors: Senators Fraser and Fairley.

Brief History:

Committee Activity: Ecology & Parks: 2/21/95, 3/1/95 [DPS].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 5875 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; C. Anderson, Vice Chair; McAuliffe, Spanel and Swecker.

Staff: Gary Wilburn (786-7453)

Background: It is estimated that over half of Washington's wetlands have been lost to human development since statehood, although there is great regional variation in these losses. Some coastal and Puget Sound estuarine systems have lost nearly all their original wetlands, while many areas in Eastern Washington have experienced an increase in wetlands from irrigation systems.

The loss of wetlands in the state and nationally have led to enactment of regulatory programs to protect remaining wetlands. These regulatory programs in Washington are administered under a variety of laws and by agencies at the local, state and federal level. Most wetland regulatory laws are administered with a "hierarchy" of preferred alternatives, beginning with impact avoidance, then impact minimization, restoration, and, finally, "compensation" for wetlands impacts by creating or restoring other wetlands. These laws are also generally administered under a "no net loss" goal.

While the "compensation" alternative is generally the least preferred, in many high growth areas with limited land availability such a compensatory approach may be the only alternative available that would allow a project to go forward. Wetlands have been created and other degraded wetlands restored in a variety of settings as "compensatory" mitigation, and the long-term prospects for such wetlands are improving as knowledge is gained with each compensatory project effort.

It has been suggested that wetland mitigation "banks" may provide a useful compensatory tool, by which project proponents may obtain "credits" for wetlands creation or restoration as compensation for wetlands impacts to be caused by their project. The monetary payment

or other contribution by project proponents to the wetland bank owner provides a source of financing for further wetlands creation and for long-term monitoring and maintenance of the wetlands in the bank. Such wetlands may thus have a greater likelihood of long-term viability than smaller, isolated wetlands created as compensation for individual projects.

The Washington Department of Transportation recently entered an interagency memorandum of agreement with several state and federal wetland regulatory agencies, creating a wetland bank to provide greater flexibility in obtaining transportation project approvals where wetlands impacts will occur. King County is also developing a bank system available initially for county public works agencies, and other local jurisdictions and private landowners are exploring the potential of creating or restoring wetlands to serve as a "bank" for mitigation requirements.

Summary of Substitute Bill: Legislative findings are made regarding the benefits of wetlands mitigation banking to wetland protection and in providing additional alternatives to allow projects to be approved which involve wetlands impacts.

A government entity operating or proposing to operate a wetland mitigation bank may request that the Department of Ecology initiate discussions with other state agencies and local governments with wetland regulatory jurisdiction in the area regarding entering an interagency agreement to consider credits from the bank in the review of permit applications proposing the use of such credits. The requesting entity must demonstrate that the bank satisfy certain minimum criteria: the wetlands functions achieved by the bank area; that there is a long-term plan for maintenance of bank wetlands; the land is dedicated to wetlands conservation in the property title; and that provision for monitoring is made.

The agencies must use their best efforts to enter an agreement within one year. Agreements should address: (1) methods for uniform consideration of bank credits and debits among wetland regulatory agencies; (2) consistent methods of wetland boundary delineation and measurement of functional values; (3) uniform guidelines for acreage ratios, other methods to compensate for uncertainties, and required proximity of the bank to wetland impacts in projects; and (4) procedures for integrated review by multiple regulatory agencies. The department must seek federal agency participation in the interagency agreement.

Existing wetlands banks are not affected. The Washington Department of Transportation wetlands mitigation bank is expressly recognized. A biennial progress report on the program is provided by Ecology to the Legislature.

Substitute Bill Compared to Original Bill: The program is limited to publicly operated wetland mitigation banks. Recognition of the bank is not required to initiate interagency agreement discussions. The model protocol provisions in the original bill are deleted, but regulatory agencies consider these issues in the interagency agreement. The provision in the original bill on the nonliability of project permittees for the future success of wetlands in the bank is deleted.

Appropriation: None.

Fiscal Note: Requested on February 17, 1995.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill provides a needed program to encourage pilot bank efforts and require consistent consideration of such banks by wetland regulatory agencies.

Testimony Against: The bill should be limited to public agencies operating wetland banks, and "no net loss" goal reference in findings is not in statute at this time.

Testified: Naki Stevens, People for Puget Sound; Tom Mark, Department of Ecology (pro); Dick DuCharme, BIAW (con); Eric Johnson, Ports Association (pro).