

# SENATE BILL REPORT

## ESSB 6210

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As Passed Senate, February 13, 1996

**Title:** An act relating to habitat mitigation.

**Brief Description:** Allowing for advanced mitigation for unavoidable impacts to wetlands.

**Sponsors:** Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Swecker, Drew, Owen, Oke, Prentice, A. Anderson, Strannigan, Haugen, Bauer and Rasmussen).

**Brief History:**

**Committee Activity:** Ecology & Parks: 1/11/96, 2/2/96 [DPS].  
Passed Senate, 2/13/96, 49-0.

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### SENATE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** That Substitute Senate Bill No. 6210 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; Hochstatter, McAuliffe, Spanel and Swecker.

**Staff:** Kari Guy (786-7437)

**Background:** Modification of wetlands and aquatic habitat is regulated at the state level by the Department of Ecology and the Department of Fish and Wildlife. The Department of Ecology provides a water quality certification for any federally permitted activities that may result in a discharge to state water, including modification of some wetlands. The most common federal permit is that issued by the Army Corps of Engineers for activities in the nation's waters, as provided in the federal Clean Water Act. The Department of Ecology may condition the federal permit to meet appropriate state laws, including the Water Resources Act and the Hydraulic Code.

The State Hydraulic Code is intended to protect fish and fish life from impacts associated with construction or other work that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. The Department of Fish and Wildlife issues a Hydraulic Project Approval (HPA) for the projects described above. The HPA may be conditioned or denied for the protection of fish life. The Department of Fish and Wildlife typically requires that impacts to fish life be mitigated on the project site and with a similar habitat type.

Both the Department of Ecology and the Department of Fish and Wildlife regulatory programs have a hierarchy of preferred mitigation alternatives, beginning with avoidance; impact minimization; restoration; and finally, compensation for wetlands or aquatic habitat impacts by creating other wetlands or habitat.

Mitigation for impacts to wetlands or fish habitat is determined as a condition of a project permit, and is generally implemented after the project is developed on a project-by-project basis. It has been suggested that combining required mitigation for a number of projects and implementing mitigation in advance of project impacts may allow better overall habitat protection.

**Summary of Bill:** Legislative findings are made regarding the value of advanced compensatory mitigation in providing certainty to project applicants, reducing permit times, and providing better overall habitat protection than individual mitigation projects.

Advanced compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetland or aquatic resources in advance of known impacts of development projects described in a development plan. A development plan is any plan developed through joint discussions between a project proponent and environmental regulatory agencies that describes a plan of development and the mitigation that accompanies it. The development plan must be consistent with the local comprehensive land use plan, and any other plans in effect for the area.

The Department of Ecology and Department of Fish and Wildlife must consider advanced compensatory mitigation for development plans. Implementation of the advanced compensatory mitigation may take place prior to permitting for individual projects. The departments may schedule review of advanced compensatory mitigation proposals to conform to available budgetary resources.

The Department of Ecology and Department of Fish and Wildlife also must give equal consideration to advanced compensatory mitigation off the project site, and of a different habitat type than that contained on the project site. The departments are not required to approve advanced compensatory mitigation that does not provide equal or better resource values within the watershed or bay.

Criteria for advanced compensatory mitigation projects include the protection of the mitigation area in perpetuity, a guarantee of long-term viability, and provisions for monitoring and maintenance.

Any decision by the Department of Ecology or the Department of Fish and Wildlife regarding advanced compensatory mitigation may be appealed to the Pollution Control Hearings Board.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The bill will allow developers to consolidate mitigation for a number of planned projects. This can provide more viable wetland or aquatic resource mitigation than a number of smaller projects. Advanced mitigation can also concentrate wetland or aquatic resource mitigation where it will be the most beneficial for the watershed.

**Testimony Against:** The bill is too vague. Both Department of Ecology and Department of Fish and Wildlife currently have the authority to allow off-site and out-of-kind mitigation; it is unclear why the bill is needed. The bill could require the Department of Fish and Wildlife to trade one irreplaceable habitat type for another.

**Testified:** Eric Johnson, WA Public Ports Assn. (pro); Patsy Martin, Port of Skagit County (pro); David Stelfeins, Dept. of Transportation (pro); Ron Shultz, National Audubon Society; Jeff Parsons, People For Puget Sound; Dave Williams, Assoc. of WA Cities; Ric Abbett, Trout Unlimited (pro).