
ENGROSSED SUBSTITUTE SENATE BILL 5875

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser and Fairley)

Read first time 03/01/95.

1 AN ACT Relating to wetlands mitigation banks; adding a new chapter
2 to Title 90 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND PURPOSE. The
5 legislature finds that wetlands compensatory mitigation banks may
6 provide an important alternative, allowing projects that impact
7 wetlands to be approved while ensuring that mitigation for such impacts
8 are achieved. The reform of wetland regulatory programs in part
9 requires greater coordination of agencies with overlapping regulatory
10 responsibilities, and consistent procedures and methods for using
11 wetland bank "credits" as compensatory mitigation for wetlands impacts
12 are needed. This will provide greater certainty to project applicants
13 and timely decisions on permit applications. Compensatory mitigation
14 achieved through participation in larger wetlands creation and
15 restoration areas as part of mitigation "banks" generally provide
16 greater assurance of long-term viability of the created or restored
17 wetlands than smaller projects required as mitigation for an individual
18 development project. Public entities, because of their increased
19 accountability, permanent nature, and long-range planning abilities,

1 are particularly likely to successfully use compensatory mitigation to
2 benefit overall wetlands values while planning for necessary public
3 facilities.

4 For these reasons it is the purpose of this chapter to provide an
5 optional procedure for governmental entities operating a wetland
6 mitigation bank or proposing to do so, by which the entity may request
7 the development of an interagency agreement among wetland regulatory
8 agencies. The agreement would provide coordinated procedures and
9 methods for use of such a wetland mitigation bank in regulatory review
10 of public projects by the regulatory agencies entering the interagency
11 agreement.

12 NEW SECTION. **Sec. 2.** INTERAGENCY AGREEMENTS. (1) Beginning
13 January 1, 1996, at the request of a governmental entity operating or
14 proposing to operate a wetland compensatory mitigation bank, the
15 department of ecology shall initiate discussions for the purpose of
16 developing an interagency agreement among regulatory agencies
17 consistent with this chapter.

18 (2) Prior to initiating discussions under subsection (1) of this
19 section, the entity shall demonstrate that the bank or proposed bank
20 meets the following minimum criteria:

21 (a) The wetland area included or proposed to be included in the
22 bank has been or will be artificially created, or is or will be the
23 restoration of degraded wetlands, and the biological and hydrological
24 function of the wetlands are or will be typical of natural wetlands of
25 that type;

26 (b) There is at least a twenty-year plan for the care and
27 maintenance of the area to ensure its long-term viability, including
28 provision for financing necessary repairs or restoration;

29 (c) The wetland area is or will be dedicated to wetland
30 conservation purposes in perpetuity by binding limitations on the title
31 to the real property; and

32 (d) Provision has been made for monitoring the wetland area's
33 functional performance and for periodically reporting this information
34 to the department of ecology.

35 (3) Upon receiving the request the department of ecology shall
36 initiate discussions with the following government agencies, with the
37 objective of entering an interagency agreement for review of project

1 proposals that include proposals to use the bank as wetlands
2 compensatory mitigation:

3 (a) The general purpose local government within which the bank area
4 lies;

5 (b) Other general purpose local governments with jurisdiction over
6 areas within seventy-five miles of the bank area that contain
7 substantial wetland areas for which compensatory mitigation in future
8 projects by public agencies may be proposed;

9 (c) Other state agencies with wetland regulatory jurisdiction; and

10 (d) The appropriate regional offices of federal agencies with
11 wetland regulatory jurisdiction, including at a minimum the United
12 States environmental protection agency and the United States army corps
13 of engineers.

14 (4) The department of ecology and other agencies involved in the
15 discussions should address the following in the interagency agreement:

16 (a) Methods for uniformly measuring the credits and debits to
17 wetland bank areas as part of a project's compensatory mitigation,
18 including how and when such credits and debits are created;

19 (b) Methods for consistent delineation of wetland boundaries and
20 measurement of wetland functional values, provided that no agency shall
21 develop or implement a wetland program that uses a delineation process
22 which is more stringent than that adopted by the United States army
23 corps of engineers;

24 (c) Uniform guidelines for acreage ratios and other methods to
25 compensate for the uncertainty of long-term success in the artificial
26 creation and restoration of wetlands;

27 (d) Guidelines for required proximity of the bank area to serve as
28 compensatory mitigation to the project site where wetlands impacts will
29 occur; and

30 (e) Procedures to achieve integrated review by multiple regulatory
31 agencies of projects proposing the use of bank credits as compensatory
32 mitigation.

33 (5) The state agencies and local governments included in the
34 discussions shall use their best efforts to enter an interagency
35 agreement within one year of the initiation of discussions. The
36 department of ecology shall solicit the participation of appropriate
37 federal agencies with wetland regulatory jurisdiction.

1 (6) The agreement shall not limit a project applicant's choice of
2 compensatory mitigation alternatives to the use of a bank addressed in
3 the agreement.

4 NEW SECTION. **Sec. 3.** NOT AFFECT EXISTING BANKS. Nothing in this
5 chapter shall affect wetland mitigation banks in existence on the
6 effective date of this act or affect any project approved and
7 satisfying compensatory mitigation requirements through the use of such
8 a bank. The wetlands mitigation bank created by the Washington
9 department of transportation through interagency memorandum of
10 agreement dated September 15, 1994, is declared a recognized
11 interagency agreement under section 2 of this act.

12 NEW SECTION. **Sec. 4.** PROGRESS REPORT. The department of ecology
13 shall provide a report to the appropriate standing committees of the
14 legislature by December 1st of each even-numbered year that includes:

15 (1) A description of publicly operated wetland banks for which an
16 interagency agreement under section 2 of this act was requested;

17 (2) A description of other mitigation banks in operation within the
18 state;

19 (3) A description of the interagency agreements entered under
20 section 3 of this act;

21 (4) A description of the projects for which wetland bank credits
22 were used for compensatory purposes, including a description of the
23 wetland impacts for which compensation was required; and

24 (5) Recommendations for administrative, budgetary, and legislative
25 changes necessary to make the wetland bank provisions of this chapter
26 operate more effectively, and recommendations to expand this pilot
27 program to compensatory mitigation banks that are privately owned or
28 operated.

29 NEW SECTION. **Sec. 5.** CODIFICATION DIRECTION. Sections 1 through
30 4 of this act shall constitute a new chapter in Title 90 RCW.

31 NEW SECTION. **Sec. 6.** CAPTIONS NOT LAW. Captions as used in this
32 act constitute no part of the law.

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