

2 E2SHB 2339 - S COMM AMD

3 By Committee on Agriculture & Environment

4 NOT ADOPTED 3/12/98

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. (1) The legislature finds that wetlands  
8 mitigation banks are an important tool for providing compensatory  
9 mitigation for unavoidable impacts to wetlands. The legislature  
10 further finds that the benefits of mitigation banks include: (a)  
11 Maintenance of the ecological functioning of a watershed by  
12 consolidating compensatory mitigation into a single large parcel rather  
13 than smaller individual parcels; (b) increased potential for the  
14 establishment and long-term management of successful mitigation by  
15 bringing together financial resources, planning, and scientific  
16 expertise not practicable for many project-specific mitigation  
17 proposals; (c) increased certainty over the success of mitigation and  
18 reduction of temporal losses of wetlands since mitigation banks are  
19 typically implemented and functioning in advance of project impacts;  
20 (d) potential enhanced protection and preservation of the state's  
21 highest value and highest functioning wetlands; (e) a reduction in  
22 permit processing times and increased opportunity for more cost-  
23 effective compensatory mitigation for development projects; and (f) the  
24 ability to provide compensatory mitigation in an efficient,  
25 predictable, and economically and environmentally responsible manner.  
26 Therefore, the legislature declares that it is the policy of the state  
27 to authorize wetland mitigation banking.

28 (2) The purpose of this chapter is to support the establishment of  
29 mitigation banks by: (a) Authorizing state agencies and local  
30 governments, as well as private entities, to achieve the goals of this  
31 chapter; and (b) providing a predictable, efficient, regulatory  
32 framework, including timely review of mitigation bank proposals. The  
33 legislature intends that, in the development and adoption of rules for  
34 banks, the department establish and use a collaborative process  
35 involving interested public and private entities.

1        NEW SECTION.    **Sec. 2.**    This chapter does not create any new  
2 authority for regulating wetlands or wetlands banks beyond what is  
3 specifically provided for in this chapter. No authority is granted to  
4 the department under this chapter to adopt rules or guidance that apply  
5 to wetland projects other than banks under this chapter.

6        NEW SECTION.    **Sec. 3.**    The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8        (1) "Banking instrument" means the documentation of agency and bank  
9 sponsor concurrence on the objectives and administration of the bank  
10 that describes in detail the physical and legal characteristics of the  
11 bank, including the service area, and how the bank will be established  
12 and operated.

13        (2) "Bank sponsor" means any public or private entity responsible  
14 for establishing and, in most circumstances, operating a bank.

15        (3) "Credit" means a unit of trade representing the increase in the  
16 ecological value of the site, as measured by acreage, functions, and/or  
17 values, or by some other assessment method.

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

19        (5) "Wetlands mitigation bank" or "bank" means a site where  
20 wetlands are restored, created, enhanced, or in exceptional  
21 circumstances, preserved expressly for the purpose of providing  
22 compensatory mitigation in advance of authorized impacts to similar  
23 resources.

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

26        (7) "Practicable" means available and capable of being done after  
27 taking into consideration cost, existing technology, the functions and  
28 values of the wetland, including fish habitat, ground water quality,  
29 and protection of adjacent properties, and logistics in light of  
30 overall project purposes.

31        (8) "Service area" means the designated geographic area in which a  
32 bank can reasonably be expected to provide appropriate compensation for  
33 unavoidable impacts to wetlands.

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

1        NEW SECTION.    **Sec. 4.**    Subject to the requirements of this chapter,  
2 the department, through a collaborative process, shall adopt rules for:

3        (1) Certification, operation, and monitoring of wetlands mitigation  
4 banks. The rules shall include procedures to assure that:

5        (a) Priority is given to banks providing for the restoration of  
6 degraded or former wetlands;

7        (b) Banks involving the creation and enhancement of wetlands are  
8 certified only where there are adequate assurances of success and that  
9 the bank will result in an overall environmental benefit; and

10       (c) Banks involving the preservation of wetlands or associated  
11 uplands are certified only when the preservation is in conjunction with  
12 the restoration, enhancement, or creation of a wetland, or in other  
13 exceptional circumstances as determined by the department consistent  
14 with this chapter;

15       (2) Determination and release of credits from banks. Procedures  
16 regarding credits shall authorize the use and sale of credits to offset  
17 adverse impacts and the phased release of credits as different levels  
18 of the performance standards are met;

19       (3) Public involvement in the certification of banks, using  
20 existing statutory authority;

21       (4) Coordination of governmental agencies;

22       (5) Establishment of criteria for determining service areas for  
23 each bank;

24       (6) Performance standards; and

25       (7) Long-term management, financial assurances, and remediation for  
26 certified banks.

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

32       NEW SECTION.    **Sec. 5.**    (1) The department may certify only those  
33 banks that meet the requirements of this chapter. Certification shall  
34 be accomplished through a banking instrument. The local jurisdiction  
35 in which the bank is located shall be signatory to the banking  
36 instrument.

37       (2) State agencies and local governments may approve use of credits  
38 from a bank for any mitigation required under a permit issued or

1 approved by that state agency or local government to compensate for the  
2 proposed impacts of a specific public or private project.

3 NEW SECTION. **Sec. 6.** Prior to authorizing use of credits from a  
4 bank as a means of mitigation under a permit issued or approved by the  
5 department, the department must assure that all appropriate and  
6 practicable steps have been undertaken to first avoid and then minimize  
7 adverse impacts to wetlands. The department may approve use of credits  
8 from a bank when:

9 (1) The credits represent the creation or restoration of wetlands  
10 of like kind and in close proximity to the wetlands being mitigated;

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

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

15 NEW SECTION. **Sec. 7.** The interpretation of this chapter and rules  
16 adopted under this chapter must be consistent with applicable federal  
17 guidance for the establishment, use, and operation of wetlands  
18 mitigation banks as it existed on the effective date of this section,  
19 or such subsequent date as may be provided by the department by rule,  
20 consistent with the purposes of this chapter.

21 NEW SECTION. **Sec. 8.** This chapter applies to public and private  
22 mitigation banks.

23 NEW SECTION. **Sec. 9.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 10.** The director of the department of ecology  
28 may take the necessary steps to ensure that this act is implemented on  
29 its effective date.

30 NEW SECTION. **Sec. 11.** If specific funding for the purposes of  
31 this act, referencing this act by bill or chapter number, is not  
32 provided by June 30, 1998, in the omnibus appropriations act, this act  
33 is null and void.

