

FINAL BILL REPORT

ESSB 5273

C 424 L 97

Synopsis as Enacted

Brief Description: Regulating compensatory mitigation.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Fraser, Swecker, Prentice, Strannigan and Haugen).

Senate Committee on Agriculture & Environment

House Committee on Agriculture & Ecology

Background: Development impacts to wetlands and aquatic resources are regulated at the state level by the Department of Ecology and the Department of Fish and Wildlife.

The Department of Ecology issues a water quality certification for any federally-permitted activity that may result in a discharge to state water. Modification of wetlands or aquatic resources will typically require a Clean Water Act 404 Permit from the Army Corps of Engineers. The Department of Ecology may condition the federal permit to meet applicable state laws.

The Department of Fish and Wildlife issues a Hydraulic Project Approval (HPA) for any project that will use or change the natural flow of any waters of the state. In accordance with the State Hydraulic Code, the HPA may be conditioned or denied for the protection of fish life. The Department of Fish and Wildlife typically requires that impacts to wetlands or aquatic resources be mitigated on the project site and with a similar habitat type.

Cleanup of aquatic resources under state or federal hazardous waste cleanup laws may include dredging or capping of contaminated sediments. Currently, agencies may require mitigation for any activities with impacts to aquatic resources.

Concern exists that the process for review of wetland and aquatic resource mitigation is unpredictable and time consuming. It has been suggested that a process of advanced mitigation planning that would allow off-site mitigation would provide greater predictability in the permitting process and improve habitat protection.

Summary: Compensatory mitigation is defined to include mitigation that occurs in advance of a project's planned environmental impacts, either on or off the project site, and that may provide different biological functions from the functions impacted by the project.

A project proponent may propose a mitigation plan for infrastructure development. The mitigation plan must include provisions guaranteeing the long-term viability of the mitigation site, and provisions for long-term monitoring of the mitigation site. The mitigation plan must be consistent with the local comprehensive land use plan and any other applicable planning process.

The Department of Ecology and the Department of Fish and Wildlife must review and give due consideration to mitigation plans that improve the overall biological functions of the watershed and accommodate infrastructure development. Consideration must be based on a number of factors, including the relative value of the mitigation for the target resources, the compatibility of the proposal with broader resource management plans, and the benefits of the proposal for the entire watershed. The departments are not required to grant approval to any plan that does not provide equal or better biological functions and values within the watershed or bay. The departments may schedule review of mitigation plans to conform to available budgetary resources.

The Department of Fish and Wildlife may not require mitigation for sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions.

Votes on Final Passage:

Senate	39	9	
House	94	3	(House amended)
Senate	37	7	(Senate concurred)

Effective: July 27, 1997