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SECOND SUBSTITUTE HOUSE BILL 2339

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State of Washington

55th Legislature

1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Thompson, Mulliken, Pennington, Gardner, Romero, Chopp, Anderson, Boldt and Lantz)

Read first time 02/07/98. Referred to Committee on .

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

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that wetlands  
5 mitigation banks are an important tool for providing compensatory  
6 mitigation for unavoidable impacts to wetlands. The legislature  
7 further finds that the benefits of mitigation banks include: (a)  
8 Maintenance of the ecological functioning of a watershed by  
9 consolidating compensatory mitigation into a single large parcel rather  
10 than smaller individual parcels; (b) increased potential for the  
11 establishment and long-term management of successful mitigation by  
12 bringing together financial resources, planning, and scientific  
13 expertise not practicable for many project-specific mitigation  
14 proposals; (c) increased certainty over the success of mitigation and  
15 reduction of temporal losses of wetlands since mitigation banks are  
16 typically implemented and functioning in advance of project impacts;  
17 (d) potential enhanced protection and preservation of the state's  
18 highest value and highest functioning wetlands; (e) a reduction in  
19 permit processing times and increased opportunity for more cost-

1 effective compensatory mitigation for development projects; and (f) the  
2 ability to provide compensatory mitigation in an efficient,  
3 predictable, and economically and environmentally responsible manner.

4 (2) The purpose of this chapter is to support the establishment of  
5 mitigation banks by providing a predictable, efficient, regulatory  
6 framework, including timely review of mitigation bank proposals. It is  
7 not the intent of the legislature to create any new authority for  
8 regulating wetlands or wetlands banks beyond what is specifically  
9 provided for in this chapter. The legislature intends that, in the  
10 development and adoption of rules for banks, the department establish  
11 and use a collaborative process involving interested public and private  
12 entities.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Banking instrument" means the documentation of agency and bank  
16 sponsor concurrence on the objectives and administration of the bank  
17 that describes in detail the physical and legal characteristics of the  
18 bank and how the bank will be established and operated.

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

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

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

25 (5) "Wetlands mitigation bank" or "bank" means a site where  
26 wetlands are restored, created, enhanced, or in exceptional  
27 circumstances, preserved expressly for the purpose of providing  
28 compensatory mitigation in advance of authorized impacts to similar  
29 resources.

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

32 (7) "Practicable" means available and capable of being done after  
33 taking into consideration cost, existing technology, and logistics in  
34 light of overall project purposes.

35 (8) "Service area" means the county in which the bank is located,  
36 except the department may approve use of a bank for a wetland impact  
37 outside the county if the impact is within twenty miles of the bank and

1 the county legislative authority in which the bank is located approves  
2 use of the bank for the impact.

3 (9) "Unavoidable" means adverse impacts that remain after all  
4 appropriate and practicable avoidance and minimization have been  
5 achieved.

6 NEW SECTION. **Sec. 3.** Subject to the requirements of this chapter,  
7 the department, through a collaborative process, shall adopt rules for:

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

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

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

15 (c) Banks involving the preservation of wetlands or associated  
16 uplands are certified only when the preservation is in conjunction with  
17 the restoration, enhancement, or creation of a wetland, or in other  
18 exceptional circumstances as determined by the department consistent  
19 with this chapter;

20 (2) Determination and release of credits from banks. Procedures  
21 regarding credits shall authorize the use and sale of credits to offset  
22 adverse impacts and the release of credits before all of the  
23 performance standards have been met;

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

26 (4) Coordination of governmental agencies;

27 (5) Performance standards; and

28 (6) Long-term management, financial assurances, and remediation for  
29 certified banks.

30 Before adopting rules under this section, the department shall  
31 submit the rules to the appropriate standing committees of the  
32 legislature.

33 NEW SECTION. **Sec. 4.** (1) The department may certify only those  
34 banks that meet the requirements of this chapter. Certification shall  
35 be accomplished through a banking instrument.

1 (2) State agencies may approve use of a bank for any compensatory  
2 mitigation of a wetland impact required under a permit issued or  
3 approved by that state agency.

4 (3) This chapter applies to public and private mitigation banks.

5 NEW SECTION. **Sec. 5.** The department shall approve use of a  
6 particular mitigation bank to satisfy mitigation required under a  
7 permit issued or approved by the department on a project-specific basis  
8 and shall determine the number of credits to compensate for the  
9 proposed impacts of a specific project. Prior to authorizing use of a  
10 bank as a means of mitigation, the department must assure that all  
11 appropriate and practicable steps have been undertaken to first avoid  
12 and then minimize adverse impacts to wetlands. The department may  
13 approve use of a bank when there is no practicable opportunity for on-  
14 site compensation, or when use of a bank is environmentally preferable  
15 to on-site compensation.

16 NEW SECTION. **Sec. 6.** The interpretation of this chapter and rules  
17 adopted under this chapter must be consistent with applicable federal  
18 guidance for the establishment, use, and operation of wetlands  
19 mitigation banks as it existed on the effective date of this section,  
20 or such subsequent date as may be provided by the department by rule,  
21 consistent with the purposes of this chapter.

22 NEW SECTION. **Sec. 7.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 8.** The director of the department of ecology  
27 may take the necessary steps to ensure that this act is implemented on  
28 its effective date.

29 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute  
30 a new chapter in Title 90 RCW.

31 NEW SECTION. **Sec. 10.** If specific funding for the purposes of  
32 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 1998, in the omnibus appropriations act, this act  
2 is null and void.

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