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HOUSE BILL 2339

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State of Washington

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By Representatives Thompson, Mulliken, Pennington, Gardner, Romero, Chopp, Anderson, Boldt and Lantz

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

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

4 NEW SECTION. **Sec. 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 benefits of mitigation banks include: (1)  
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; (2) increased potential for  
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; (3) 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 (4) potential enhanced protection and preservation of the state's  
18 highest value and highest functioning wetlands; (5) a reduction in  
19 permit processing times and increased opportunity for more cost-

1 effective compensatory mitigation for development projects; and (6) the  
2 ability to provide compensatory mitigation in an efficient,  
3 predictable, and economically and environmentally responsible manner.

4 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.

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

9 (1) "Credit" means a unit of trade representing the increase in the  
10 ecological value of the wetland, as measured by acreage, functions,  
11 and/or values.

12 (2) "Department" means the department of ecology.

13 (3) "Wetlands mitigation bank" or "bank" means a site where  
14 wetlands are restored, created, enhanced, or in exceptional  
15 circumstances, preserved expressly for the purpose of providing  
16 compensatory mitigation in advance of authorized impacts to similar  
17 resources.

18 (4) "Mitigation" means sequentially avoiding impacts, minimizing  
19 impacts, and compensating for remaining unavoidable impacts.

20 (5) "Practicable" means available and capable of being done after  
21 taking into consideration cost, existing technology, and logistics in  
22 light of overall project purposes.

23 (6) "Service area" means the designated geographic area in which  
24 the department determines a bank can reasonably be expected to provide  
25 appropriate compensation for unavoidable impacts to wetlands.

26 (7) "Unavoidable" means adverse impacts that remain after all  
27 appropriate and practicable avoidance and minimization has been  
28 achieved.

29 (8) "Watershed" means an area identified as a state of Washington  
30 water resource inventory area under WAC 173-500-040 as it exists on the  
31 effective date of this section.

32 NEW SECTION. **Sec. 3.** (1) Subject to the requirements of this  
33 chapter, the department, in consultation with state and federal  
34 agencies, shall adopt rules:

35 (a) For the certification, operation, and monitoring of mitigation  
36 banks;

37 (b) For the determination and release of credits from banks;

- 1 (c) For public involvement in the certification of banks;
- 2 (d) To ensure coordination with governmental agencies; and
- 3 (e) To otherwise carry out the provisions of this chapter.

4 (2) The department may certify only those banks that meet the  
5 requirements of this chapter.

6 (3) State agencies may approve use of a bank for any compensatory  
7 mitigation of a wetland impact required under a permit issued or  
8 approved by the agency.

9 (4) The department shall authorize use of a particular mitigation  
10 bank on a project-specific basis and shall determine the number and  
11 availability of credits to compensate for the proposed impacts of a  
12 specific project.

13 (5) The department shall assure that for any bank certified,  
14 adequate provisions are made for long-term management, monitoring,  
15 financial assurances, and rededication.

16 (6) This chapter applies to public and private mitigation banks.

17 NEW SECTION. **Sec. 4.** The department may approve use of a bank  
18 when there is no practicable opportunity for on-site compensation, or  
19 when use of a bank is environmentally preferable to on-site  
20 compensation. The department must assure that all appropriate and  
21 practicable steps have been undertaken to first avoid and then minimize  
22 adverse impacts to wetlands, before approving use of a mitigation bank  
23 as a means of mitigation.

24 NEW SECTION. **Sec. 5.** The department shall give priority to  
25 mitigation banks providing for restoration of degraded or former  
26 wetlands, and shall adopt rules to assure that banks involving creation  
27 and enhancement of wetlands are certified only where there are adequate  
28 assurances of success and that the bank will result in an overall  
29 environmental benefit. The department may certify banks involving the  
30 preservation of wetlands or associated uplands when the preservation is  
31 in conjunction with restoration, enhancement, or creation of a wetland  
32 or in other exceptional circumstances as determined by the department  
33 consistent with the purposes of this chapter.

34 NEW SECTION. **Sec. 6.** The department shall establish the number of  
35 credits and schedule of release of credits for each certified bank.  
36 Credit shall be based on the acreage and wetland type of the bank, or

1 by use of a specific assessment method adopted by the department. A  
2 credit that has been released may be sold or used to offset adverse  
3 impacts under a permit issued or approved by the department. The  
4 department may allow a portion of the credits to be released before all  
5 of the performance criteria have been met.

6 NEW SECTION. **Sec. 7.** The department shall establish a service  
7 area for each bank. The service area shall be the same watershed as  
8 the mitigation bank unless the department determines that it is  
9 practicable and environmentally desirable to exceed this limitation or  
10 necessary to restrict the service area to a smaller size to replace  
11 certain functions. The department may designate more inclusive service  
12 areas for banks whose primary purpose is to compensate for linear  
13 projects that typically involve numerous small impacts in several  
14 different watersheds.

15 NEW SECTION. **Sec. 8.** Rules adopted under this chapter must be  
16 consistent with applicable federal guidance for the establishment, use,  
17 and operation of wetlands mitigation banks as it existed on the  
18 effective date of this section, or such subsequent date as may be  
19 provided by the department by rule, consistent with the purposes of  
20 this chapter.

21 NEW SECTION. **Sec. 9.** The requirements of this chapter shall not  
22 affect the use or sale of credits from any bank that is operating on  
23 the effective date of this section.

24 NEW SECTION. **Sec. 10.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
29 constitute a new chapter in Title 90 RCW.

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