

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5273**

Chapter 424, Laws of 1997

55th Legislature  
1997 Regular Session

COMPENSATORY MITIGATION FOR AQUATIC RESOURCES

EFFECTIVE DATE: 7/27/97

Passed by the Senate April 21, 1997  
YEAS 37 NAYS 7

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 8, 1997  
YEAS 94 NAYS 3

CLYDE BALLARD

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Approved May 19, 1997

GARY LOCKE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5273** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

\_\_\_\_\_  
**Secretary**

FILED

May 19, 1997 - 7:33 p.m.

**Secretary of State  
State of Washington**

---

**ENGROSSED SUBSTITUTE SENATE BILL 5273**

---

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE HOUSE

**State of Washington                      55th Legislature                      1997 Regular Session**

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

Read first time 02/14/97.

1            AN ACT Relating to compensatory mitigation; adding new sections to  
2 chapter 75.20 RCW; adding a new section to chapter 90.48 RCW; and  
3 adding a new chapter to Title 90 RCW.

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

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that:

6            (a) The state lacks a clear policy relating to the mitigation of  
7 wetlands and aquatic habitat for infrastructure development;

8            (b) Regulatory agencies have generally required project proponents  
9 to use compensatory mitigation only at the site of the project's  
10 impacts and to mitigate narrowly for the habitat or biological  
11 functions impacted by a project;

12            (c) This practice of considering traditional on-site, in-kind  
13 mitigation may provide fewer environmental benefits when compared to  
14 innovative mitigation proposals that provide benefits in advance of a  
15 project's planned impacts and that restore functions or habitat other  
16 than those impacted at a project site; and

17            (d) Regulatory decisions on development proposals that attempt to  
18 incorporate innovative mitigation measures take an unreasonably long

1 period of time and are subject to a great deal of uncertainty and  
2 additional expenses.

3 (2) The legislature therefore declares that it is the policy of the  
4 state to authorize innovative mitigation measures by requiring state  
5 regulatory agencies to consider mitigation proposals for infrastructure  
6 projects that are timed, designed, and located in a manner to provide  
7 equal or better biological functions and values compared to traditional  
8 on-site, in-kind mitigation proposals.

9 (3) It is the intent of the legislature to authorize local  
10 governments to accommodate the goals of this chapter. It is not the  
11 intent of the legislature to: (a) Restrict the ability of a project  
12 proponent to pursue project specific mitigation; or (b) create any new  
13 authority for regulating wetlands or aquatic habitat beyond what is  
14 specifically provided for in this chapter.

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

17 (1) "Mitigation" means sequentially avoiding impacts, minimizing  
18 impacts, or compensating for remaining unavoidable impacts.

19 (2) "Compensatory mitigation" means the restoration, creation,  
20 enhancement, or preservation of uplands, wetlands, or other aquatic  
21 resources for the purposes of compensating for unavoidable adverse  
22 impacts that remain after all appropriate and practicable avoidance and  
23 minimization has been achieved. "Compensatory mitigation" includes  
24 mitigation that:

25 (a) Occurs at the same time as, or in advance of, a project's  
26 planned environmental impacts;

27 (b) Is located in a site either on, near, or distant from the  
28 project's impacts; and

29 (c) Provides either the same or different biological functions and  
30 values as the functions and values impacted by the project.

31 (3) "Infrastructure development" means an action that is critical  
32 for the maintenance or expansion of an existing infrastructure feature  
33 such as a highway, rail line, airport, marine terminal, utility  
34 corridor, harbor area, or hydroelectric facility and is consistent with  
35 an approved land use planning process. This planning process may  
36 include the growth management act, chapter 36.70A RCW, or the shoreline  
37 management act, chapter 90.58 RCW, in areas covered by those chapters.

1 (4) "Mitigation plan" means a document or set of documents  
2 developed through joint discussions between a project proponent and  
3 environmental regulatory agencies that describe the unavoidable wetland  
4 or aquatic resource impacts of the proposed infrastructure development  
5 and the proposed compensatory mitigation for those impacts.

6 (5) "Project proponent" means a public or private entity  
7 responsible for preparing a mitigation plan.

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

11 NEW SECTION. **Sec. 3.** (1) Project proponents may use a mitigation  
12 plan to propose compensatory mitigation within a watershed. A  
13 mitigation plan shall:

14 (a) Contain provisions that guarantee the long-term viability of  
15 the created, restored, enhanced, or preserved habitat, including  
16 assurances for protecting any essential biological functions and values  
17 defined in the mitigation plan;

18 (b) Contain provisions for long-term monitoring of any created,  
19 restored, or enhanced mitigation site; and

20 (c) Be consistent with the local comprehensive land use plan and  
21 any other applicable planning process in effect for the development  
22 area, such as an adopted subbasin or watershed plan.

23 (2) The departments of ecology and fish and wildlife may not limit  
24 the scope of options in a mitigation plan to areas on or near the  
25 project site, or to habitat types of the same type as contained on the  
26 project site. The departments of ecology and fish and wildlife shall  
27 fully review and give due consideration to compensatory mitigation  
28 proposals that improve the overall biological functions and values of  
29 the watershed or bay and accommodate the mitigation needs of  
30 infrastructure development.

31 The departments of ecology and fish and wildlife are not required  
32 to grant approval to a mitigation plan that the departments find does  
33 not provide equal or better biological functions and values within the  
34 watershed or bay.

35 (3) When making a permit or other regulatory decision under the  
36 guidance of this chapter, the departments of ecology and fish and  
37 wildlife shall consider whether the mitigation plan provides equal or  
38 better biological functions and values, compared to the existing

1 conditions, for the target resources or species identified in the  
2 mitigation plan. This consideration shall be based upon the following  
3 factors:

4 (a) The relative value of the mitigation for the target resources,  
5 in terms of the quality and quantity of biological functions and values  
6 provided;

7 (b) The compatibility of the proposal with the intent of broader  
8 resource management and habitat management objectives and plans, such  
9 as existing resource management plans, watershed plans, critical areas  
10 ordinances, and shoreline master programs;

11 (c) The ability of the mitigation to address scarce functions or  
12 values within a watershed;

13 (d) The benefits of the proposal to broader watershed landscape,  
14 including the benefits of connecting various habitat units or providing  
15 population-limiting habitats or functions for target species;

16 (e) The benefits of early implementation of habitat mitigation for  
17 projects that provide compensatory mitigation in advance of the  
18 project's planned impacts; and

19 (f) The significance of any negative impacts to nontarget species  
20 or resources.

21 (4) A mitigation plan may be approved through a memorandum of  
22 agreement between the project proponent and either the department of  
23 ecology or the department of fish and wildlife, or both.

24 NEW SECTION. **Sec. 4.** (1) In making regulatory decisions relating  
25 to wetland or aquatic resource mitigation, the departments of ecology  
26 and fish and wildlife shall, at the request of the project proponent,  
27 follow the guidance of sections 1 through 3 of this act.

28 (2) If the department of ecology or the department of fish and  
29 wildlife receives multiple requests for review of mitigation plans,  
30 each department may schedule its review of these proposals to conform  
31 to available budgetary resources.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 75.20 RCW  
33 to read as follows:

34 The department shall not require mitigation for sediment dredging  
35 or capping actions that result in a cleaner aquatic environment and  
36 equal or better habitat functions and values, if the actions are taken  
37 under a state or federal cleanup action.

1 This chapter shall not be construed to require habitat mitigation  
2 for navigation and maintenance dredging of existing channels and  
3 berthing areas.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 75.20 RCW  
5 to read as follows:

6 When reviewing a mitigation plan under RCW 75.20.100 or RCW  
7 75.20.103, the department shall, at the request of the project  
8 proponent, follow the guidance contained in sections 1 through 4 of  
9 this act.

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.48 RCW  
11 to read as follows:

12 When exercising its powers under RCW 90.48.260, the department  
13 shall, at the request of the project proponent, follow the guidance  
14 contained in sections 1 through 4 of this act.

15 NEW SECTION. **Sec. 8.** Sections 1 through 4 of this act constitute  
16 a new chapter in Title 90 RCW.

Passed the Senate April 21, 1997.

Passed the House April 8, 1997.

Approved by the Governor May 19, 1997.

Filed in Office of Secretary of State May 19, 1997.