
Transportation Committee

HB 2986

Brief Description: Authorizing habitat mitigation banks.

Sponsors: Representatives Ericksen, Anderson, Holmquist, Schindler, Morell and Mielke.

Brief Summary of Bill

- Authorizes development and use of wildlife and fish habitat banking to compensate for the loss of habitat.

Hearing Date: 2/26/02

Staff: Gene Baxstrom (786-7303).

Background:

A number of federal, state, and local laws govern fish and wildlife habitat. Often, proposals which diminish or otherwise modify fish or wildlife habitat require mitigation through either on-site mitigation or the provision of compensatory habitat.

Under the Growth Management Act, the Clean Water Act, and the hydraulics code, cities and counties must adopt regulations protecting critical areas, including waters of the state. Most cities and counties require permits for activities affecting stormwater run-off and in some cases can collect fees.

When a landowner proposes a project for which an impact to a habitat is authorized, generally the landowner must compensate for the impact to the habitat. Mitigation banking is one form of compensation for a habitat impact.

Typically, a habitat mitigation "banker" develops, preserves, restores, enhances, or creates a fish, wildlife or fish and wildlife compensatory mitigation in advance of authorized Units of the banked habitat are then calculated as a certain number of "credits" based on the function or value of the habitat in the bank. If approved by regulatory agencies, these credits can be withdrawn to offset habitat impacts, or "debits" at a development site. Habitat banking is contrasted with project-specific replacement, where the project sponsor does specific restoration or other mitigation to replace a particular habitat.

In 1998 a process was authorized at the Department of Ecology for wetland mitigation through the banking of wetlands.

Summary of Bill:

Wildlife and fish habitat mitigation banking is specifically authorized. A state agency or local government may approve use of credits from a bank for mitigation required under a permit issued or approved by the agency or local government. A mitigation bank is a site where habitats are restored, created, enhanced, or in exceptional circumstances, preserved, to provide compensatory mitigation in advance of authorized impacts to similar resources. The provisions apply to both public and private banks.

The Department of Ecology (DOE) may certify banks meeting specified requirements. Certification is accomplished through a banking instrument. The local jurisdiction in which the bank is located must also sign the banking instrument.

Before the DOE authorizes the use of credits from a bank to mitigate, the DOE must assure that all appropriate and practicable steps have been undertaken to first avoid and then minimize adverse impacts to habitat. In determining appropriate steps to avoid and minimize impacts, the DOE must take into consideration the functions and values of the habitat, including fish habitat, wildlife habitat and water quality. The DOE may approve use of credits from a bank when: (1) the credits represent the creation, restoration, or enhancement of wetlands of like kind and in close proximity when estuarine wetlands are being mitigated; or (2) the use of a bank is environmentally preferable to on-site compensation. For transportation projects of statewide significance permit applications that require mitigation for impacts on a habitat conservation area, the department and the permitting agency shall authorize use of credits from a certificated bank for the applicant public agency that will provide appropriate compensatory mitigation.

Using a collaborative process, the DOE must adopt rules addressing:

- certification, operation, and monitoring of banks. Priority is to be given to banks restoring former habitat areas. Banks involving creation and enhancement of habitat areas may be certified only where there are adequate assurances of success and where the bank will result in an overall environmental benefit. Banks involving the preservation of wetlands or associated uplands may be certified only in limited circumstances.
- determination and release of credits from banks. The credit procedures must authorize the use and sale of credits to offset adverse impacts and the phased release of credits as different levels of the performance standards have been met.
- public involvement in the certification of banks, using existing statutory authority.
- coordination of governmental agencies.
- establishment of criteria for determining service areas for each bank. The service area is the geographic area in which a bank can reasonably be expected to provide appropriate compensation for wetland impacts.
- performance standards.
- long-term management, financial assurances, and remediation for certified banks.

The DOE must submit a report to the appropriate standing committees of the Legislature

before January 30, 2002, on its progress in developing rules. Before adopting any rules, the DOE must submit the proposed rules to the appropriate legislative standing committees.

The interpretation of these provisions and the rules must be consistent with applicable federal guidance.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.