
SENATE BILL 5875

State of Washington

54th Legislature

1995 Regular Session

By Senators Fraser and Fairley

Read first time 02/10/95. Referred to Committee on Ecology & Parks.

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

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND PURPOSE. The
5 legislature finds that wetlands compensatory mitigation banks may
6 provide an important alternative, allowing projects that impact
7 wetlands to be approved while ensuring that the state's goal of no
8 overall net loss of wetlands is maintained. The reform of wetland
9 regulatory programs in part requires greater coordination of agencies
10 with overlapping regulatory responsibilities, and a consistent
11 procedure and methods for using wetland bank "credits" as compensatory
12 mitigation for wetlands impacts, and will provide greater certainty to
13 project applicants and timely decisions on permit applications. While
14 compensatory mitigation is generally a lesser preferred alternative
15 than wetlands avoidance or impact restoration or minimization, for many
16 projects it may be the only available alternative. Compensatory
17 mitigation achieved through participation in larger wetlands creation
18 and restoration areas as part of mitigation "banks" generally provide
19 greater assurance of long-term viability of the created or restored

1 wetlands than smaller projects required as mitigation for an individual
2 development project.

3 For these reasons it is the purpose of this chapter to facilitate
4 the recognition by state and local wetland regulatory agencies of
5 wetlands mitigation banks for compensatory mitigation purposes, and to
6 encourage participation by federal agencies. Coordinated procedures
7 and methods for use of wetland banks in regulatory review of projects
8 is required of state and local agencies. However, the use of wetland
9 banks for satisfying compensatory mitigation requirements is to remain
10 entirely at the option of the project applicant, and nothing in this
11 chapter requires the use of a wetland bank by any project applicant.

12 NEW SECTION. **Sec. 2.** RECOGNIZED WETLAND MITIGATION BANKS. (1)
13 The director of the department of ecology may recognize a wetland
14 mitigation bank upon the application of the owner of the bank area
15 meeting the requirements of this section.

16 (2) To qualify as a recognized wetland mitigation bank, the
17 applicant must demonstrate that:

18 (a) The wetland area included in the bank has been artificially
19 created or is the restoration of degraded wetlands, and the biological
20 and hydrological function of the wetlands are typical of natural
21 wetlands of that type;

22 (b) The wetland area has not been created or restored as
23 compensatory mitigation for other wetland impacts;

24 (c) There is at least a twenty-year plan for the care and
25 maintenance of the area to ensure its long-term viability, including
26 provision for financing necessary repairs or restoration. The
27 department shall review this plan and the assurances of long-term
28 viability in light of the liability exclusion under section 5 of this
29 act;

30 (d) The wetland area is dedicated to wetland conservation purposes
31 in perpetuity by binding limitations on the title to the real property;
32 and

33 (e) Provision has been made for monitoring the wetland area's
34 functional performance and for periodically reporting this information
35 to the department.

36 (3) The department shall prepare a standard application form and
37 adopt criteria by which satisfaction of the requirements under
38 subsection (2) of this section will be determined. Prior to the

1 adoption of such criteria, the department shall consult with counties
2 and cities, and with federal agencies with wetland regulatory
3 jurisdiction, to ensure to the maximum extent that state, local, and
4 federal requirements for the recognition of wetland mitigation banks
5 are consistent.

6 (4) The recognition shall be renewed at least every two years upon
7 the department's review of the bank owner's compliance with the
8 criteria under subsection (2) of this section. The department may
9 require that the owner submit additional information to conduct this
10 review. The recognition may be withdrawn at any time the department
11 determines the bank is not meeting the criteria, but only following
12 notice to the owner and an opportunity to submit additional supporting
13 information.

14 (5) The wetlands mitigation bank created by the Washington
15 department of transportation through interagency memorandum of
16 agreement dated September 15, 1994, is hereby declared a recognized
17 wetland mitigation bank under this section.

18 NEW SECTION. **Sec. 3.** RECOGNITION BY REGULATORY AGENCIES. (1) By
19 January 1, 1996, the department shall develop a model protocol for use
20 by state and local wetland regulatory agencies in considering the use
21 of wetland mitigation banks when considering compensatory mitigation
22 alternatives in permit applications. The protocol shall include:

23 (a) Methods for uniformly measuring the credits and debits to
24 wetland bank areas as part of a project's compensatory mitigation,
25 including how and when such credits and debits are created;

26 (b) Methods for consistent delineation of wetland boundaries and
27 measurement of wetland functional values;

28 (c) Uniform guidelines for acreage ratios and other methods to
29 compensate for the uncertainty of long-term success in the artificial
30 creation and restoration of wetlands;

31 (d) Guidelines for required proximity of the bank area to serve as
32 compensatory mitigation to the project site where wetlands impacts will
33 occur; and

34 (e) Procedures to achieve integrated review by multiple regulatory
35 agencies of projects proposing the use of bank credits as compensatory
36 mitigation.

37 (2) Upon the recognition of a wetland mitigation bank, the
38 department shall initiate discussions with the following government

1 agencies and local governments, with the objective of entering an
2 interagency agreement for review of proposals to use the bank as
3 wetlands compensatory mitigation:

4 (a) The general purpose local government within which the bank area
5 lies;

6 (b) Other general purpose local governments with jurisdiction over
7 areas within seventy-five miles of the bank area that contain
8 substantial wetland areas for which compensatory mitigation in future
9 projects may be proposed;

10 (c) Other state agencies with wetland regulatory jurisdiction; and

11 (d) The appropriate regional offices of federal agencies with
12 wetland regulatory jurisdiction, including at a minimum the United
13 States environmental protection agency and the United States army corps
14 of engineers.

15 (3) The state agencies and local governments included in the
16 discussions shall use their best efforts to enter an interagency and
17 interlocal agreement to establish uniform procedures for the
18 consideration of wetland bank credits in project proposals including
19 compensatory mitigation. A goal shall be established of completing an
20 agreement among all participating agencies within twelve months after
21 recognition of the wetland bank. The agreement need not be bank-
22 specific but may address all wetland banks in existence within the area
23 of the agreement. The agreement shall incorporate to the maximum
24 extent the model protocol provisions developed under subsection (1) of
25 this section. The department shall be the lead state and local agency
26 in negotiating with appropriate federal agencies to seek their
27 participation in the agreement. The department may modify or waive
28 provisions of the protocol for the purpose of obtaining federal
29 participation in the unified procedures under the agreement.

30 (4) The agreement shall not limit a project applicant's choice of
31 compensatory mitigation alternatives to use of a recognized wetland
32 mitigation bank. However, the agreement shall include provisions for
33 expedited review of proposals for compensatory mitigation that would
34 employ credits from a recognized bank.

35 NEW SECTION. **Sec. 4.** NOT AFFECT EXISTING BANKS. Nothing in this
36 chapter shall affect wetland mitigation banks in existence on the date
37 of this chapter or affect any project approved and satisfying
38 compensatory mitigation requirements through the use of such a bank.

1 However, any such bank owner may apply for recognition under section 2
2 of this act, and the department shall make available information to
3 bank owners on the provisions of this chapter.

4 NEW SECTION. **Sec. 5.** PROJECT PROPONENT NOT LIABLE FOR RECOGNIZED
5 WETLAND BANK OPERATION. A state agency or local government approving
6 a project that impacts wetlands on the basis of obtaining compensatory
7 mitigation from a wetland mitigation bank recognized under section 2 of
8 this act shall not condition the approval on any liability of the
9 project proponent for the future functioning or maintenance of the
10 bank's wetland areas.

11 NEW SECTION. **Sec. 6.** PROGRESS REPORT. The department shall
12 provide a report to the appropriate standing committees of the
13 legislature by December 1 of each even-numbered year that includes:

14 (1) A description of wetland banks recognized under section 2 of
15 this act and the functional condition of the wetland areas in the
16 banks;

17 (2) A description of other banks in operation within the state;

18 (3) A description of the interagency agreements entered under
19 section 3 of this act;

20 (4) A description of the projects for which wetland bank credits
21 were used for compensatory purposes, including a description of the
22 wetland impacts for which compensation was required; and

23 (5) Recommendations for administrative, budgetary, and legislative
24 changes necessary to make the wetland bank provisions of this chapter
25 operate more effectively.

26 NEW SECTION. **Sec. 7.** CODIFICATION DIRECTIONS. Sections 1 through
27 6 of this act shall constitute a new chapter in Title 90 RCW.

28 NEW SECTION. **Sec. 8.** CAPTIONS NOT LAW. Captions as used in this
29 act constitute no part of the law.

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