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SENATE BILL 6210

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State of Washington

54th Legislature

1996 Regular Session

By Senators Fraser, Swecker, Drew, Owen, Oke, Prentice, A. Anderson, Strannigan, Haugen, Bauer and Rasmussen

Read first time 01/09/96. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to habitat mitigation; adding new sections to  
2 chapter 90.48 RCW; and adding new sections to chapter 75.20 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW  
5 to read as follows:

6 The legislature finds that compensatory mitigation is a valuable  
7 tool for offsetting the habitat impacts of necessary development, and  
8 recognizes that mitigating the impacts of development actions on  
9 wetlands and other aquatic habitats is a central premise of federal and  
10 state habitat protection programs.

11 The legislature further finds that many public and private habitat  
12 mitigation efforts offer an important and timely opportunity to improve  
13 the state's aquatic resources, including fish habitat, riparian  
14 corridors, and wetlands. These mitigation efforts may include the  
15 protection, restoration, creation, enhancement, or preservation of  
16 wetlands and aquatic habitats.

17 Because of these findings, permitting and regulatory actions  
18 related to habitat that occur under this chapter shall allow advanced  
19 compensatory mitigation for development actions that are consistent

1 with the mitigation element of a development plan. Permitting and  
2 implementation of advanced compensatory mitigation actions for a  
3 development plan may occur prior to the permitting of the development  
4 plan or a portion thereof. The department must recognize that  
5 allowable mitigation boundaries are not narrowly limited to the project  
6 site. When equal or better habitat value may be attained elsewhere  
7 within the watershed or bay, the department must exercise its powers  
8 under this chapter in a manner that accounts for this habitat value,  
9 and must give equal consideration to mitigation efforts that address  
10 known habitat needs within the watershed or bay.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW  
12 to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout sections 1 and 3 of this act.

15 (1) "Mitigation" means sequentially avoiding impacts, minimizing  
16 impacts, and compensating for remaining unavoidable impacts.

17 (2) "Compensatory mitigation" means the protection, restoration,  
18 creation, enhancement, or preservation of wetlands or other aquatic  
19 habitats for the purpose of offsetting the adverse environmental  
20 impacts of a project to wetlands or other aquatic habitats.

21 (3) "Advance compensatory mitigation" means providing compensatory  
22 mitigation prior to impacting wetlands or aquatic habitats.

23 (4) "Development plan" means a joint discussion between a project  
24 proponent and environmental regulatory agencies that leads a document  
25 or set of documents that describe a plan of development and the  
26 compensatory mitigation that accompanies it. A development plan may  
27 be, but is not required to be, a part of a larger planning process  
28 including a local comprehensive land use plan, the state multimodal  
29 transportation plan, a bay-wide plan, or a watershed plan.

30 (5) "Watershed" means the water resource inventory areas defined by  
31 the state.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW  
33 to read as follows:

34 The legislature finds that mitigating for unavoidable impacts to  
35 wetlands, fish habitat, and other aquatic habitat is often more  
36 environmentally beneficial when it is planned prior to the project's  
37 environmental impacts. Permitting and regulatory actions related to

1 advance compensation of habitat should recognize that it is a valuable  
2 tool for development plans that may include both small and large  
3 projects. Advanced compensatory mitigation for development plans  
4 provides several benefits including:

5 (1) Advanced compensatory mitigation could reduce permit processing  
6 times for development plans, and could be more cost-effective than  
7 individual development projects;

8 (2) Advanced compensatory mitigation is typically implemented prior  
9 to development impacts, and therefore minimizes temporary losses of  
10 natural resource functions and reduces uncertainty over the success of  
11 the mitigation project;

12 (3) Advanced habitat compensatory mitigation provides additional  
13 opportunities for volunteer groups or other organizations that wish to  
14 contribute towards the goal of increasing the ecological health of  
15 watersheds and bays;

16 (4) The integrity of natural resource systems may be maintained  
17 most beneficially by large or connected parcels of habitat; and

18 (5) Financial, planning, and scientific resources not available to  
19 many project-specific mitigation proposals may be brought together in  
20 a manner that increases the potential for improving overall watershed  
21 function.

22 Public entities, and entities that implement the state multimodal  
23 transportation plan contained in chapter 47.06 RCW, are particularly  
24 likely to successfully use advance compensatory mitigation to benefit  
25 the overall natural resource values of a watershed or bay, because of  
26 their increased accountability, permanent nature, and long-range  
27 planning abilities.

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

30 Unless the context clearly requires otherwise, the definitions in  
31 this section apply throughout section 5 of this act.

32 (1) "Mitigation" means sequentially avoiding impacts, minimizing  
33 impacts, and compensating for remaining unavoidable impacts.

34 (2) "Compensatory mitigation" means the protection, restoration,  
35 creation, enhancement, or preservation of wetlands or other aquatic  
36 habitats for the purpose of offsetting the adverse environmental  
37 impacts of a project to wetlands or other aquatic habitats.

1 (3) "Advance compensatory mitigation" means providing compensatory  
2 mitigation prior to impacting wetlands or aquatic habitats.

3 (4) "Development plan" means a joint discussion between a project  
4 proponent and environmental regulatory agencies that leads a document  
5 or set of documents that describe a plan of development and the  
6 compensatory mitigation that accompanies it. A development plan may  
7 be, but is not required to be, a part of a larger planning process  
8 including a local comprehensive land use plan, the state multimodal  
9 transportation plan, a bay-wide plan, or a watershed plan.

10 (5) "Watershed" means the water resource inventory areas defined by  
11 the state.

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

14 In making decisions regarding the impacts of a proposed project on  
15 fish life, and in the determination of appropriate mitigation actions  
16 for hydraulic project approvals, the department must not limit the  
17 scope of mitigation options to areas within or on the project site, or  
18 to habitat types of the same type as contained on the project site.  
19 The department must give equal consideration to mitigation plans that  
20 improve or protect overall habitat for fish life within the watershed,  
21 estuary, or bay, and to consider mitigation and development plans that  
22 provide advance habitat compensation for future habitat impacts.

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