

# HOUSE BILL REPORT

## HB 1298

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### As Reported By House Committee On:

Agriculture & Ecology

**Title:** An act relating to compensatory mitigation.

**Brief Description:** Regulating compensatory mitigation.

**Sponsors:** Representatives Chandler, Linville, Schoesler, Regala, Koster, Morris, Anderson and Pennington.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 1/29/97, 2/20/97 [DPS].

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

**Staff:** Rick Anderson (786-7114).

**Background:** Modification of wetlands and aquatic habitat is regulated at the state level by the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW).

The DOE issues a water quality certification for federally permitted activities that may result in a discharge to state water, or modification in wetland. The most common federal permit is one that is issued by the Army Corps of Engineers for activities in the nation's waters. The DOE also has some permit authority to regulate waterbodies and wetlands under the Shoreline Management Act.

The DFW issues Hydraulic Project Approval (HPA) permits to protect fish from impacts associated with work that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. Dredging or other work involving contaminated sediments typically requires an HPA permit.

As part of the permitting process, these agencies generally require mitigation to compensate for the impacts that will be caused by a development project. These agencies generally require that the compensatory mitigation occur at the site of the project's impacts.

**Summary of Substitute Bill:** Legislative findings are made relating to the benefits of allowing greater flexibility in designing compensatory mitigation proposals. Compensatory mitigation is broadly defined to provide flexibility in the location, timing, and design of the mitigation.

The DOE and DFW are required to consider compensatory mitigation that is proposed in a development plan. The development plan must be consistent with the local comprehensive land use plan and any other plans in effect for the area. The departments are not required to approve a compensatory mitigation proposal that does not provide equal or better resource values within a watershed or bay. The departments are required to consider six criteria to determine if a mitigation proposal offers equal or better biological functions when compared to site specific mitigation. Local governments may consider broadly defined compensatory mitigation proposals when making permitting decisions.

The departments may schedule review of compensatory mitigation proposals continued in a development plan to conform to available budgetary resources. Mitigation proposed as part of the development plan must contain provisions to guarantee the long-term viability of the proposed mitigation.

The DFW may not require mitigation for sediment dredging actions that are required by state or federal clean-up requirements or for dredging to maintain existing channels or berths.

**Substitute Bill Compared to Original Bill:** The original bill allows a project proponent to pay for agency review of a development plan, and changes a permit appeal procedure; the substitute deletes these provisions. The substitute bill adds the six criteria the agency is to consider when evaluating a mitigation proposal and expands the definition of "compensatory mitigation."

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** There is no central policy guiding agency mitigation requirements. There is no predictability or flexibility in agency mitigation requirements. The bill is

limited to projects pertaining to infrastructure development. Ports do a great deal of advanced planning and should be provided greater flexibility in designing mitigation proposals. Sediment dredging often improves the aquatic environment, and mitigation should not be required for certain dredging activities. The Port of Skagit County has done detailed environmental planning. Flexible mitigation would allow the port to improve biological functions of the area. Flexible mitigation should be tied to watershed planning to improve the availability of data. Flexible mitigation policies may make it difficult for regulatory agencies to make informed decisions to protect fish and wildlife. Long-term monitoring of mitigation should be required. The current mitigation approach is too costly and often doesn't protect the best resources.

**Testimony Against:** None.

**Testified:** Eric Johnson, Washington Public Ports Association (pro); Patsy Martin, Port of Skagit County (pro); Ron Schultz, National Audubon Society (comment); Maggie Coon, The Nature Conservancy (pro); John Killingsworth, Dakota Creek Industries (pro); Ted Bottiger, Washington Conservation Districts (pro w/amendments); Dan Dingfield (pro); Jerry Alb, Washington State Department of Transportation (pro); Ed Manary, Department of Fish and Wildlife (pro w/amendments); and Doug Levy, city of Everett (pro).