

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2339**

55th Legislature  
1998 Regular Session

Passed by the House March 12, 1998  
Yeas 94 Nays 4

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**Speaker of the  
House of Representatives**

Passed by the Senate March 12, 1998  
Yeas 35 Nays 12

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**President of the Senate**

Approved

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

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2339** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2339

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AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington                      55th Legislature                      1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Thompson, Mulliken, Pennington, Gardner, Romero, Chopp, Anderson, Boldt and Lantz)

Read first time 02/07/98. Referred to Committee on .

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

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

4            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that wetlands  
5 mitigation banks are an important tool for providing compensatory  
6 mitigation for unavoidable impacts to wetlands. The legislature  
7 further finds that the benefits of mitigation banks include: (a)  
8 Maintenance of the ecological functioning of a watershed by  
9 consolidating compensatory mitigation into a single large parcel rather  
10 than smaller individual parcels; (b) increased potential for the  
11 establishment and long-term management of successful mitigation by  
12 bringing together financial resources, planning, and scientific  
13 expertise not practicable for many project-specific mitigation  
14 proposals; (c) increased certainty over the success of mitigation and  
15 reduction of temporal losses of wetlands since mitigation banks are  
16 typically implemented and functioning in advance of project impacts;  
17 (d) potential enhanced protection and preservation of the state's  
18 highest value and highest functioning wetlands; (e) a reduction in  
19 permit processing times and increased opportunity for more cost-

1 effective compensatory mitigation for development projects; and (f) the  
2 ability to provide compensatory mitigation in an efficient,  
3 predictable, and economically and environmentally responsible manner.  
4 Therefore, the legislature declares that it is the policy of the state  
5 to authorize wetland mitigation banking.

6 (2) The purpose of this chapter is to support the establishment of  
7 mitigation banks by: (a) Authorizing state agencies and local  
8 governments, as well as private entities, to achieve the goals of this  
9 chapter; and (b) providing a predictable, efficient, regulatory  
10 framework, including timely review of mitigation bank proposals. The  
11 legislature intends that, in the development and adoption of rules for  
12 banks, the department establish and use a collaborative process  
13 involving interested public and private entities.

14 NEW SECTION. **Sec. 2.** This chapter does not create any new  
15 authority for regulating wetlands or wetlands banks beyond what is  
16 specifically provided for in this chapter. No authority is granted to  
17 the department under this chapter to adopt rules or guidance that apply  
18 to wetland projects other than banks under this chapter.

19 NEW SECTION. **Sec. 3.** The definitions in this section apply  
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Banking instrument" means the documentation of agency and bank  
22 sponsor concurrence on the objectives and administration of the bank  
23 that describes in detail the physical and legal characteristics of the  
24 bank, including the service area, and how the bank will be established  
25 and operated.

26 (2) "Bank sponsor" means any public or private entity responsible  
27 for establishing and, in most circumstances, operating a bank.

28 (3) "Credit" means a unit of trade representing the increase in the  
29 ecological value of the site, as measured by acreage, functions, and/or  
30 values, or by some other assessment method.

31 (4) "Department" means the department of ecology.

32 (5) "Wetlands mitigation bank" or "bank" means a site where  
33 wetlands are restored, created, enhanced, or in exceptional  
34 circumstances, preserved expressly for the purpose of providing  
35 compensatory mitigation in advance of authorized impacts to similar  
36 resources.

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

3 (7) "Practicable" means available and capable of being done after  
4 taking into consideration cost, existing technology, and logistics in  
5 light of overall project purposes.

6 (8) "Service area" means the designated geographic area in which a  
7 bank can reasonably be expected to provide appropriate compensation for  
8 unavoidable impacts to wetlands.

9 (9) "Unavoidable" means adverse impacts that remain after all  
10 appropriate and practicable avoidance and minimization have been  
11 achieved.

12 NEW SECTION. **Sec. 4.** Subject to the requirements of this chapter,  
13 the department, through a collaborative process, shall adopt rules for:

14 (1) Certification, operation, and monitoring of wetlands mitigation  
15 banks. The rules shall include procedures to assure that:

16 (a) Priority is given to banks providing for the restoration of  
17 degraded or former wetlands;

18 (b) Banks involving the creation and enhancement of wetlands are  
19 certified only where there are adequate assurances of success and that  
20 the bank will result in an overall environmental benefit; and

21 (c) Banks involving the preservation of wetlands or associated  
22 uplands are certified only when the preservation is in conjunction with  
23 the restoration, enhancement, or creation of a wetland, or in other  
24 exceptional circumstances as determined by the department consistent  
25 with this chapter;

26 (2) Determination and release of credits from banks. Procedures  
27 regarding credits shall authorize the use and sale of credits to offset  
28 adverse impacts and the phased release of credits as different levels  
29 of the performance standards are met;

30 (3) Public involvement in the certification of banks, using  
31 existing statutory authority;

32 (4) Coordination of governmental agencies;

33 (5) Establishment of criteria for determining service areas for  
34 each bank;

35 (6) Performance standards; and

36 (7) Long-term management, financial assurances, and remediation for  
37 certified banks.

1 Before adopting rules under this chapter, the department shall  
2 submit the proposed rules to the appropriate standing committees of the  
3 legislature. By January 30, 1999, the department shall submit a report  
4 to the appropriate standing committees of the legislature on its  
5 progress in developing rules under this chapter.

6 NEW SECTION. **Sec. 5.** (1) The department may certify only those  
7 banks that meet the requirements of this chapter. Certification shall  
8 be accomplished through a banking instrument. The local jurisdiction  
9 in which the bank is located shall be signatory to the banking  
10 instrument.

11 (2) State agencies and local governments may approve use of credits  
12 from a bank for any mitigation required under a permit issued or  
13 approved by that state agency or local government to compensate for the  
14 proposed impacts of a specific public or private project.

15 NEW SECTION. **Sec. 6.** Prior to authorizing use of credits from a  
16 bank as a means of mitigation under a permit issued or approved by the  
17 department, the department must assure that all appropriate and  
18 practicable steps have been undertaken to first avoid and then minimize  
19 adverse impacts to wetlands. In determining appropriate steps to avoid  
20 and minimize adverse impacts to wetlands, the department shall take  
21 into consideration the functions and values of the wetland, including  
22 fish habitat, ground water quality, and protection of adjacent  
23 properties. The department may approve use of credits from a bank  
24 when:

25 (1) The credits represent the creation, restoration, or enhancement  
26 of wetlands of like kind and in close proximity when estuarine wetlands  
27 are being mitigated;

28 (2) There is no practicable opportunity for on-site compensation;  
29 or

30 (3) Use of credits from a bank is environmentally preferable to on-  
31 site compensation.

32 NEW SECTION. **Sec. 7.** The interpretation of this chapter and rules  
33 adopted under this chapter must be consistent with applicable federal  
34 guidance for the establishment, use, and operation of wetlands  
35 mitigation banks as it existed on the effective date of this section,

1 or such subsequent date as may be provided by the department by rule,  
2 consistent with the purposes of this chapter.

3 NEW SECTION. **Sec. 8.** This chapter applies to public and private  
4 mitigation banks.

5 NEW SECTION. **Sec. 9.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 10.** The director of the department of ecology  
10 may take the necessary steps to ensure that this act is implemented on  
11 its effective date.

12 NEW SECTION. **Sec. 11.** If specific funding for the purposes of  
13 this act, referencing this act by bill or chapter number, is not  
14 provided by June 30, 1998, in the omnibus appropriations act, this act  
15 is null and void.

16 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act constitute  
17 a new chapter in Title 90 RCW.

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