
SENATE BILL 5273

State of Washington**55th Legislature****1997 Regular Session****By** Senators Morton, Fraser, Swecker, Prentice, Strannigan and Haugen

Read first time 01/21/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to compensatory mitigation; and adding a new
2 chapter to Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the state lacks
5 a central policy relating to the mitigation of habitat for necessary or
6 unavoidable development. This causes development proposals that rely
7 upon advanced compensatory mitigation or off-site mitigation to take an
8 unreasonably long period of time to develop and implement and to be
9 subject to a great deal of regulatory and permitting uncertainty.

10 The legislature further finds that mitigation for wetlands and
11 aquatic habitats can be most beneficial for the resource if it is
12 planned before the project's environmental impacts. Advanced
13 compensatory mitigation and off-site mitigation are approaches to
14 providing habitat compensation that offer benefits for natural
15 resources while reducing permitting delays and uncertainty. These
16 resource benefits result from early implementation of habitat
17 improvement actions and from increased flexibility to address habitat
18 from a landscape, watershed, or bay-wide perspective. This approach

1 also offers opportunities to increase biological functions by combining
2 or connecting habitats into blocks of larger size or complexity.

3 The purpose of this chapter is to encourage, as an option, advanced
4 compensatory mitigation and off-site mitigation where it is deemed
5 appropriate and beneficial for resources, and for accommodating
6 necessary or unavoidable development in sensitive habitat areas.
7 Public infrastructure projects, in particular, could benefit from this
8 type of option.

9 This chapter does not require the project proponent to use advanced
10 compensatory mitigation or off-site mitigation or changes a project
11 proponent's opportunity to pursue project-specific mitigation proposals
12 outside of the context of a development plan.

13 The legislature encourages local governments to accommodate the
14 goals of sections 1 through 3 of this act. It is the intent of the
15 legislature that each mitigation plan be consistent with plans adopted
16 under the growth management act, chapter 36.70A RCW, and the shoreline
17 management act, chapter 90.58 RCW, and local governments are encouraged
18 to incorporate the goals of this chapter into their development
19 regulations and critical area ordinances.

20 **NEW SECTION.** **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Advanced compensatory mitigation" means providing compensatory
23 mitigation in advance of known, unavoidable impacts of planned
24 development projects described in a development plan.

25 (2) "Compensatory mitigation" means the restoration, creation,
26 enhancement, or, in exceptional circumstances, preservation of uplands,
27 wetlands, or other aquatic resources for the purposes of compensating
28 for unavoidable adverse impacts that remain after all appropriate and
29 practicable avoidance and minimization has been achieved.

30 (3) "Development plan" means a plan developed through joint
31 discussions between a project proponent and environmental regulatory
32 agencies that leads to a document or set of documents that describes a
33 plan of development and the mitigation that accompanies the plan.

34 (4) "Mitigation" means sequentially avoiding impacts, minimizing
35 impacts, and compensating for remaining unavoidable impacts.

36 (5) "Mitigation plan" means an element of a development plan that
37 describes the unavoidable wetland or aquatic resource impacts of the
38 proposed development, and the proposed compensatory mitigation for

1 those impacts. It may include a memorandum of agreement with an agency
2 or agencies.

3 (6) "Plan proponent" means a public or private entity responsible
4 for preparing a development plan.

5 (7) "Watershed" means an area identified as a state of Washington
6 water resource inventory area under WAC 173-500-040 as it exists on the
7 effective date of this act.

8 **NEW SECTION.** **Sec. 3.** In order to implement a development plan,
9 plan proponents may propose habitat mitigation in areas away from the
10 proposed development and may propose advanced compensatory mitigation
11 and off-site mitigation. The departments of ecology and fish and
12 wildlife shall consider proposals that improve the overall habitat
13 value of the watershed and accommodate the habitat mitigation needs of
14 unavoidable or necessary development.

15 In making regulatory decisions relating to mitigation plans, the
16 departments of ecology and fish and wildlife may not limit the scope of
17 options proposed by the project proponent to areas on or near the
18 project site, or to habitat types of the same type as contained on the
19 project site. The departments of ecology and fish and wildlife shall
20 fully review and give due consideration to compensatory mitigation
21 proposals, including advanced compensatory mitigation proposals or off-
22 site mitigation proposals, that improve or protect overall habitat
23 within the watershed or bay, and provide equal or better resource
24 functions than those that will be lost as a result of the development
25 plan. The departments of ecology and fish and wildlife are not
26 required to grant approval to a mitigation proposal that the
27 departments find does not provide equal or better resource value within
28 the watershed or bay.

29 A mitigation plan must contain provisions that guarantee the long-
30 term viability of the created, restored, or enhanced habitat, including
31 assurances for protecting essential biological and hydrological
32 functions as defined in the mitigation plan. The mitigation plan may
33 include provisions for long-term monitoring of the mitigation site.

34 A development plan must be consistent with the local comprehensive
35 land use plan in counties planning under chapter 36.70A RCW, and must
36 be consistent with any applicable planning process in effect for the
37 development area.

1 **NEW SECTION.** **Sec. 4.** The legislature recognizes that many of the
2 aquatic areas of the state contain levels of pollution in the sediments
3 that require remediation through state and federal cleanup laws and
4 programs such as the state model toxics control act, chapter 70.105D
5 RCW, or the federal comprehensive environmental response, compensation
6 and liability act (42 U.S.C. Sec. 9601 *et seq.*). When cleanup actions
7 are undertaken in aquatic areas, the habitat function of the aquatic
8 area is substantially improved. For this reason it is the policy of
9 the state to not require habitat mitigation for sediment dredging or
10 capping actions that result in a cleaner aquatic environment.

11 **NEW SECTION.** **Sec. 5.** (1) In making regulatory decisions relating
12 to habitat mitigation, the department of ecology shall follow the
13 general policies of sections 1 through 4 of this act.

14 (2) If the department of ecology receives multiple requests for
15 review of mitigation plans, the department may schedule its review of
16 these proposals to conform to available budgetary resources. In order
17 to expedite this process if staffing resources are unavailable, the
18 department may develop an agreement that allows the project proponent
19 to fund a position or partial position within the department to review
20 the proposal.

21 (3) A person may appeal a department of ecology decision under this
22 chapter to the hydraulic appeals board.

23 **NEW SECTION.** **Sec. 6.** (1) In making regulatory decisions relating
24 to habitat mitigation, the department of fish and wildlife shall follow
25 the general policies of sections 1 through 4 of this act.

26 (2) If the department of fish and wildlife receives multiple
27 requests for review of mitigation plans, the department may schedule
28 its review of these proposals to conform to available budgetary
29 resources. In order to expedite the review process if staffing
30 resources are unavailable, the department may develop an agreement that
31 allows the project proponent to fund a position or partial position
32 within the department to review the proposal.

33 (3) A person may appeal a department of fish and wildlife decision
34 under this chapter to the hydraulic appeals board.

1 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 90 RCW.

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