
**Agriculture & Natural Resources
Committee**

SSB 6173

Brief Description: Requiring storm water and wetland mitigation for public-use airports to be compatible with safe airport operations.

Sponsors: Senate Committee on Land Use & Planning (originally sponsored by Senators Haugen, Mulliken, Horn, Morton, Pflug and Kastama).

Brief Summary of Substitute Bill

- Requires the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW) to consider the compatibility of any permit condition or regulatory decision for infrastructure of public-use airports with the Federal Aviation Administration's aircraft and airport operational safety requirements.
- Prohibits the DOE and the DFW from requiring a municipal airport to engage in land uses that are incompatible with the FAA's recommended land use practices relating to aircraft and operational safety.
- Requires consistency of aquatic resources mitigation plans with the FAA's recommended land use practices related to compatibility with safe airport operations for any infrastructure development involving public-use airports.

Hearing Date: 2/27/04

Staff: Caroleen Dineen (786-7156).

Background:

The federal Clean Water Act (CWA) sets a national goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The CWA defines "pollutant" to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. The CWA requires states to adopt water quality standards, which specify the desired water quality to be achieved or maintained and require existing water quality to be protected from degradation.

Section 401 of the CWA requires applicants for a federal license or permit to provide the federal licensing or permitting agency a state certification that any discharge to navigable waters associated with the licensed or permitted activity will comply with state water quality standards

and CWA requirements. The state Department of Ecology (DOE) issues these water quality certifications for projects in Washington.

A combination of federal, state, and local laws govern storm water management in Washington. The water quality implications of storm water runoff are addressed in water quality and permitting requirements of the CWA. State water pollution control statutes also regulate water quality aspects of storm water management. Local governments have responsibility under federal and state law to manage storm water and authority under state law to construct and operate storm water management systems.

Wetland regulations also derive from federal, state, and local laws. Generally, proposals to drain, fill, or otherwise modify wetlands require a permit from the Army Corps of Engineers under Section 404 of the CWA. The DOE issues Section 401 certifications for any Section 404 permit. The DOE also has some permit authority to regulate wetlands under the Shoreline Management Act. Under the state Hydraulic Code, wetlands work that affects the bed or flow of state waters requires a hydraulic project approval for the protection of fish life from the Department of Fish and Wildlife (DFW). In addition, local governments are required by the state Growth Management Act to adopt regulations protecting critical areas, including wetlands, and have some permitting authority for wetlands under the state Shoreline Management Act.

When a landowner proposes a project for which an impact to a wetland is authorized, generally the landowner must compensate for the impact to the wetland. The nature and location of wetland mitigation are determined during the permit process. The state's aquatic resources mitigation law (Chapter 90.74 RCW) authorizes the DOE and the DFW to consider compensatory mitigation plans that may include off-site locations and different habitat types under certain circumstances. The state wetland mitigation banking law (Chapter 90.84 RCW) authorizes wetlands mitigation banking and directs the DOE to adopt rules regarding certification of banks meeting statutory requirements.

The Federal Aviation Administration's (FAA) Advisory Circular (AC) on "Hazardous Wildlife Attractants on or Near Airports" (FAA AC 150/5200-33, issued May 1, 1997), provides guidance on locating certain types of land uses with the potential to attract hazardous wildlife on or near public-use airports. This AC also addresses placement of new airport development projects related to aircraft movement in the vicinity of hazardous wildlife attractants.

Summary of Bill:

When making a permit or other regulatory decision regarding infrastructure needs of public-use airports, the DOE and the DFW must consider the compatibility of the permit condition or regulatory decision with the FAA's aircraft and airport operational safety requirements. The DOE and the DFW may not require an airport operating under the state's municipal airports statutes to engage in land uses that are incompatible with the FAA's recommended land use practices relating to aircraft and operational safety.

Mitigation plans for compensatory mitigation within a watershed must be consistent with the FAA's recommended land use practices related to compatibility with safe airport operations for any infrastructure development involving public-use airports. The mitigation needs of infrastructure development considered by the DOE and the DFW for public-use airports must include the need for compatibility with safe airport operations.

Legislative findings recognize dangers associated with wildlife use of open, unimproved land near public-use airports and the benefits of such tracts for safety and noise mitigation. Legislative findings also recognize a 2003 Memorandum of Agreement between the Federal Aviation Administration and several federal agencies regarding fatalities and damages associated with wildlife-aircraft collisions. In addition, legislative findings specify that storm water and wetland mitigation for new public-use airport development projects may increase the potential for wildlife-aircraft collisions. Legislative intent is specified to ensure compatibility of state agency storm water and wetland mitigation decisions relating to these projects with safe airport operations.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.