
ENGROSSED SUBSTITUTE SENATE BILL 6210

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Swecker, Drew, Owen, Oke, Prentice, A. Anderson, Strannigan, Haugen, Bauer and Rasmussen)

Read first time 02/02/96.

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

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

4 NEW SECTION. **Sec. 1.** The legislature finds that mitigation for
5 unavoidable impacts to wetlands and aquatic resources is often more
6 environmentally beneficial when it is implemented prior to the
7 project's environmental impacts. Providing compensatory mitigation in
8 advance of project impacts could provide greater certainty to project
9 applicants, reduce permit processing times, and could be more cost-
10 effective than mitigation for individual development projects.
11 Advanced compensatory mitigation achieved through the restoration,
12 creation, enhancement, or in exceptional circumstances, preservation of
13 wetlands or aquatic resources also may provide greater assurance of
14 long-term viability of the wetlands or aquatic resources than smaller
15 projects required as mitigation for an individual development permit,
16 and may provide better overall resource protection and enhancement.

17 For these reasons it is the purpose of this chapter to allow
18 advanced compensatory mitigation for unavoidable impacts to wetlands
19 and aquatic resources, and provide optional procedures that may be used

1 by private or public entities to accomplish advanced compensatory
2 mitigation. Nothing in this chapter may be construed to require the
3 development of advanced compensatory mitigation.

4 NEW SECTION. **Sec. 2.** Unless the context requires otherwise, the
5 definitions in this section apply throughout this chapter:

6 (1) "Advanced compensatory mitigation" means providing compensatory
7 mitigation in advance of known, unavoidable impacts of planned
8 development projects described in a development plan.

9 (2) "Compensatory mitigation" means the restoration, creation,
10 enhancement, or in exceptional circumstances, preservation of wetlands
11 or other aquatic resources for the purposes of compensating for
12 unavoidable adverse impacts that remain after all appropriate and
13 practicable avoidance and minimization has been achieved.

14 (3) "Development plan" means a plan developed through joint
15 discussions between a project proponent and environmental regulatory
16 agencies that leads to a document or set of documents that describes a
17 plan of development and the mitigation that accompanies it. A
18 development plan must be consistent with the local comprehensive land
19 use plan in counties planning under chapter 36.70A RCW, and must be
20 consistent with any larger planning process in effect for the
21 development area, such as the state multimodal transportation plan, a
22 watershed plan, or a bay-wide plan.

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

25 (5) "Mitigation plan" means an element of a development plan that
26 describes the unavoidable wetland or aquatic resource impacts of the
27 proposed development, and the proposed compensatory mitigation for
28 those impacts.

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

31 (7) "Watershed" means those areas identified as state of Washington
32 water resource inventory areas under WAC 173-500-040.

33 NEW SECTION. **Sec. 3.** (1) A plan proponent may propose mitigation
34 plans that provide advanced compensatory mitigation to implement a
35 development plan.

36 (2) In permitting and regulating actions implementing a development
37 plan that impacts wetlands and aquatic resources, the departments of

1 ecology and fish and wildlife must consider mitigation plans that
2 provide advanced compensatory mitigation. Permitting and
3 implementation of advanced compensatory mitigation for a development
4 plan may occur prior to the permitting of individual development
5 projects that implement the development plan. If multiple requests for
6 review of advanced compensatory mitigation proposals are received, the
7 departments of ecology and fish and wildlife may schedule review to
8 conform to available budgetary resources.

9 (3) In making regulatory decisions relating to mitigation plans
10 that provide advanced compensatory mitigation, the departments of
11 ecology and fish and wildlife must not limit the scope of options
12 proposed by the project proponent to areas on or near the project site,
13 or to habitat types of the same type as contained on the project site.
14 The departments of ecology and fish and wildlife must give equal
15 consideration to advanced compensatory mitigation proposals that
16 improve or protect overall habitat within the watershed or bay, and
17 provide equal or better resource values than those that will be lost as
18 a result of implementation of the development plan. The departments of
19 ecology and fish and wildlife are not required to grant approval to an
20 advanced compensatory mitigation proposal that the departments find
21 does not provide equal or better resource values within the watershed
22 or bay.

23 (4) The plan proponent must demonstrate that the proposed advanced
24 compensatory mitigation meets the following minimum criteria:

25 (a) The wetland or aquatic resource area is or will be dedicated in
26 perpetuity to wetland or aquatic resource conservation purposes with
27 mechanisms that bind the use of the property, except that (i) a lesser
28 period of time may be considered where public property lease or use
29 requirements would prohibit permanent dedication; and (ii) minor
30 modifications to the wetland or aquatic resource area may be made where
31 the parties to the mitigation plan agree that the modification is for
32 a high priority public necessity for which there are no reasonable
33 alternatives, and that adverse impacts to the functions and values of
34 the advanced compensatory mitigation area will be fully mitigated;

35 (b) There is a plan to guarantee the long-term viability of the
36 advanced compensatory mitigation, including assurances for protecting
37 essential biological and hydrological functions and values as defined
38 in the mitigation plan, and assurances for financial responsibility,

1 which for private entities may include posting of bonds or other
2 financial mechanisms; and

3 (c) Provisions have been made to ensure long-term monitoring of the
4 wetland or aquatic resource area's functional performance and for
5 periodically reporting this information to the department of ecology,
6 appropriate local governments, and appropriate other parties.

7 (5) Any decision by the department of fish and wildlife or the
8 department of ecology regarding an advanced compensatory mitigation
9 proposal may be appealed to the pollution control hearings board
10 pursuant to RCW 43.21B.110.

11 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act shall
12 constitute a new chapter in Title 90 RCW.

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