

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2339

Chapter 248, Laws of 1998

55th Legislature
1998 Regular Session

WETLANDS MITIGATION BANKING

EFFECTIVE DATE: 6/11/98

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

CLYDE BALLARD
**Speaker of the
House of Representatives**

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

BRAD OWEN
President of the Senate

Approved April 1, 1998

GARY LOCKE
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.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 1, 1998 - 2:47 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2339

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.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.