

# SENATE BILL REPORT

## SB 6173

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As Reported By Senate Committee On:  
Land Use & Planning, February 5, 2004

**Title:** An act relating to requiring storm water and wetland mitigation for public-use airports to be compatible with safe airport operations.

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

**Sponsors:** Senators Haugen, Mulliken, Horn, Morton, Pflug and Kastama.

**Brief History:**

**Committee Activity:** Land Use & Planning: 1/29/04, 2/5/04 [DPS].

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### SENATE COMMITTEE ON LAND USE & PLANNING

**Majority Report:** That Substitute Senate Bill No. 6173 be substituted therefor, and the substitute bill do pass.

Signed by Senators Mulliken, Chair; Kline, Morton, Murray and T. Sheldon.

**Staff:** Andrea McNamara (786-7483)

**Background:** When a landowner proposes a development project that would affect storm water run-off or existing wetlands, the permitting process may involve a variety of local, state and federal regulations. When an impact to a wetland is authorized, generally the landowner must compensate or mitigate for the impact to the wetland.

Generally, most projects involving storm water or wetlands impacts require a Section 401 certification from the state Department of Ecology that the project meets state water quality standards in order to obtain a permit from the Army Corp of Engineers under Section 404 of the federal Clean Water Act. Additionally, projects that affect the bed or flow of state waters require a Hydraulic Project Approval for the protection of fish life from the state Department of Fish and Wildlife (DF&W).

The nature and location of the wetland mitigation are determined as part of the permitting process. Under the state's current aquatic resources mitigation law, Ecology and the DF&W have been given the flexibility to consider compensatory mitigation plans that are not limited to areas on or near the project site, or to habitat types of the same type as contained on the project site.

The FAA Advisory Circular (AC) on "Hazardous Wildlife Attractants on or Near Airports" provides guidance on locating land uses that may potentially attract hazardous wildlife onto or in the vicinity of public-use airports. The AC provides examples of land uses that have been deemed incompatible, including certain waste disposal operations, wastewater treatment

facilities, artificial marshes, wastewater discharge and sludge disposal, and wetland mitigation that provides habitat for hazardous wildlife, particularly waterfowl.

**Summary of Substitute Bill:** Legislative findings and conclusions are made regarding the causes and consequences of aircraft-wildlife strikes and the need for storm water and wetland mitigation projects to be compatible with safe airport operations.

Storm water and wetland mitigation plans for public-use airport infrastructure development and improvement projects must be consistent with the Federal Aviation Administration's recommended land use practices related to compatibility with safe airport operations. The departments of Ecology and Fish and Wildlife are prohibited from requiring a municipality to implement any storm water or wetland mitigation plan or any land use practice that is incompatible with safe airport operations.

**Substitute Bill Compared to Original Bill:** The substitute adds additional findings about the prevalence and consequences of aircraft-wildlife strikes. It also clarifies the Legislature's intent that regulatory decisions by the Departments of Ecology and Fish and Wildlife related to storm water and wetlands work at public-use airports should, to the maximum extent allowable under federal and state law, be compatible with safe airport operations. It deletes the provision in the municipal airport chapter and adds another new provision in the aquatic resources mitigation chapter prohibiting Ecology and Fish and Wildlife from requiring any uses that are incompatible with the FAA's recommendations relating to safe airport operations.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill will promote safer travel in Washington, because the risk of bird strikes is a major safety issue for all airports. These changes will help address the policy disconnect between different agencies with competing missions by clarifying that safety must be the highest priority.

**Testimony Against:** It's necessary to balance the need for safe air travel with the need for safe water. Airport run-off is a serious issue that must be addressed through existing environmental laws and procedures. This bill could lead to land use practices that are incompatible with federal and state environmental requirements.

**Testified:** Jerry Kilpatrick, Washington Airport Management Association and Yakima Air Terminal (pro); John Sibold, WDOT Aviation (pro); John Hergesheimer, Port of Bellingham (pro); Wendell Johnson, Reid Middleton (pro); Eric Johnson, WA Public Ports Assoc. (pro); Becky Stanley, Sierra Club volunteer (con); Dave Peeler, WA Dept. of Ecology (neutral); Bruce Wishart, People for Puget Sound (con); Jim Comrada, Sierra Club volunteer (con).