
SENATE BILL 5273

State of Washington

59th Legislature

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By Senators Jacobsen, Oke, Rockefeller, Morton, Swecker and Doumit;
by request of Commissioner of Public Lands

Read first time 01/19/2005. Referred to Committee on Natural
Resources, Ocean & Recreation.

1 AN ACT Relating to the department of natural resources' authority
2 to create a single pilot mitigation bank on state-owned aquatic lands;
3 reenacting and amending RCW 43.79A.040; and adding a new chapter to
4 Title 79 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the existing
7 state and federal regulatory framework for wetland and aquatic resource
8 mitigation is an important tool used to offset impacts to aquatic
9 lands.

10 (2) The legislature further finds that because impacts to wetlands
11 and aquatic resources often affect state-owned aquatic lands, the
12 department should work within established state and federal regulatory
13 mitigation processes to develop a single pilot mitigation bank on
14 state-owned aquatic lands.

15 (3) The intent of this chapter is to establish the proprietary
16 mechanisms for the department to develop, implement, and manage a
17 single pilot mitigation bank on state-owned aquatic lands. Additional
18 authority will be needed if the department seeks to establish more than
19 one mitigation bank.

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

3 (1) "Compensatory mitigation" means the process of restoring,
4 creating, enhancing, or, in exceptional circumstances, preserving
5 wetlands, other aquatic resources, or uplands for the purposes of
6 compensating for the unavoidable adverse environmental impacts of a
7 project that remain after all appropriate and practicable avoidance and
8 minimization has been achieved.

9 (2) "Credit" means a unit of trade representing the increase in the
10 ecological value of a site due to improvements made to the habitat
11 conditions of the site, as measured by acreage, functions, or values,
12 or by some other regulatory approved assessment method.

13 (3) "Department" means the department of natural resources.

14 (4) "Mitigation" means the sequential process of avoiding impacts,
15 minimizing impacts, and compensating for the remaining unavoidable
16 impacts of a project.

17 (5) "Mitigation bank" means a site or sites where wetlands, aquatic
18 resources, or uplands are restored, created, enhanced, or in
19 exceptional circumstances, preserved expressly for the purpose of
20 providing compensatory mitigation in advance of authorized project
21 impacts to similar resources.

22 (6) "Mitigation banking agreement" means a legal agreement between
23 the department and a public or private entity under which the parties
24 to the agreement agree to jointly develop, implement, and manage a
25 single pilot mitigation bank that is located on state-owned aquatic
26 lands and is approved through state or federal regulatory mitigation
27 processes.

28 (7) "Mitigation banking partners" means public or private entities
29 with which the department has entered into a mitigation banking
30 agreement under section 3 of this act.

31 (8) "Project" means a physical construction project that develops
32 or redevelops land in a way that results in unavoidable adverse
33 environmental impacts that remain after all appropriate and practicable
34 avoidance and minimization has been achieved.

35 (9) "Site" means a mitigation bank site, or a site where
36 compensatory mitigation has or will occur.

1 NEW SECTION. **Sec. 3.** (1) The department may enter into mitigation
2 banking agreements with public or private entities to develop,
3 implement, and manage a single pilot mitigation bank that is located on
4 state-owned aquatic lands and is approved through state or federal
5 regulatory mitigation processes. A mitigation banking agreement must
6 establish the business relationship between the department and its
7 mitigation banking partner, clearly identifying the assets each entity
8 will contribute to the pilot mitigation bank project. The agreement is
9 not subject to the provisions of RCW 79.90.480 or 79.90.500.

10 (2) The department and its mitigation banking partners must develop
11 and adopt a management plan, for the pilot mitigation bank, that is
12 approved through state or federal regulatory mitigation processes and,
13 if applicable, by the city or county in which the aquatic lands are
14 located. The department must work cooperatively with other applicable
15 public agencies or private entities in the development of the
16 management plan, or in the establishment of specifications for the
17 plan. The department and its mitigation banking partners are
18 responsible for expenses incurred in the development of the management
19 plan. All management plans adopted under this section must include:

20 (a) Details for the creation, restoration, enhancement, or
21 preservation of the wetlands, other aquatic resources, or uplands on
22 the pilot mitigation bank site;

23 (b) Details of the long-term management actions that will occur on
24 the site, when the actions will occur, and where those actions will
25 occur within the site; and

26 (c) Details on the amount of funding necessary for the long-term
27 management endowment and details as to how the amount was calculated
28 under section 4 of this act.

29 (3) The service area for the pilot mitigation bank must be based on
30 the geographic and functional connectivity of the pilot mitigation bank
31 site with the impacting project sites, which must be determined and
32 approved through state or federal regulatory mitigation processes.

33 (4) Consistent with state and federal regulatory mitigation
34 processes, state-owned aquatic lands utilized as the pilot mitigation
35 bank will not be available for other uses that will change the intent
36 of the site as a mitigation site or compromise the ecological functions
37 of the site.

1 (5)(a) The department may sell mitigation bank credits generated
2 from the pilot mitigation bank and receive revenues from the sale of
3 mitigation bank credits generated from the pilot mitigation bank that
4 have been sold by its mitigation banking partners.

5 (b) The department and its mitigation banking partners must
6 determine the economic value of the mitigation bank credits for the
7 pilot mitigation bank. The economic value of the mitigation bank
8 credits will not be subject to the provisions of RCW 79.90.480 or
9 79.90.500. The department and its mitigation banking partners must
10 sell the credits for no less than market value, as determined using
11 appropriate mitigation credit market appraisal techniques. The
12 economic value of the mitigation bank credits may include the costs
13 associated with the habitat improvements made to the site and the value
14 associated with the use of state-owned aquatic lands for the mitigation
15 bank.

16 (c) All moneys received by the department from the sale of
17 mitigation bank credits generated from the pilot mitigation bank, in
18 excess of a long-term management endowment created in section 4 of this
19 act and in excess of the revenues to mitigation banking partners, must
20 be deposited according to RCW 79.90.245 and 79.64.040, and paid to
21 towns according to RCW 79.92.110.

22 NEW SECTION. **Sec. 4.** (1) The department or its mitigation banking
23 partners will create an endowment for the purpose of generating funds
24 that are to be used for the long-term monitoring, maintenance, and
25 management of the pilot mitigation bank.

26 (2) The department or its mitigation banking partners will assume
27 long-term management responsibility for the pilot mitigation bank after
28 the amount of money necessary to establish the endowment that will
29 adequately cover the costs of long-term monitoring, maintenance, and
30 management is determined by the department, documented in the
31 management plan, and approved through state or federal regulatory
32 mitigation processes.

33 (3) The amount of money necessary to establish the endowment must
34 be based on the specific conditions of the pilot mitigation bank site
35 and the long-term management plan for the site, as approved through
36 state or federal regulatory mitigation processes.

1 (4)(a) If the department assumes the long-term management
2 responsibility for the pilot mitigation bank, the revenue from the sale
3 of mitigation bank credits generated to establish the endowment must be
4 deposited into the aquatic lands compensatory mitigation endowment
5 account established in section 5 of this act.

6 (b) The department must keep separate accounting records for moneys
7 received into the aquatic lands compensatory mitigation endowment
8 account from the sale of mitigation bank credits to ensure that funding
9 for long-term management is fully secured and expended as approved
10 through state or federal regulatory mitigation processes.

11 NEW SECTION. **Sec. 5.** (1) The aquatic lands compensatory
12 mitigation endowment account is created in the custody of the state
13 treasurer. All receipts from moneys received by the department for the
14 purpose of creating a long-term management endowment under section 4 of
15 this act must be deposited into the account.

16 (2) The moneys in the account must be invested for the benefit of
17 the pilot mitigation bank site that the department has agreed to manage
18 under this chapter.

19 (3) The account must be administered by the state investment board.
20 The principal of the account is irreducible. Disbursements from the
21 account in an amount equal to the site management costs for the pilot
22 mitigation bank, adjusted annually by the inflation rate, must be
23 deposited into the aquatic lands compensatory mitigation management
24 account, created in section 6 of this act, upon authorization of the
25 commissioner of public lands and the director of the state investment
26 board, provided the principal of the compensatory mitigation endowment
27 account is not reduced. Allocations to the state investment board
28 expense account under RCW 43.33A.160 may also be made from this
29 account.

30 NEW SECTION. **Sec. 6.** (1) The aquatic lands compensatory
31 mitigation management account is created in the custody of the state
32 treasurer. The account will receive revenues from the aquatic lands
33 compensatory mitigation endowment account as described in section 5 of
34 this act.

35 (2) The moneys in the account must be used solely by the department
36 for the purpose of performing long-term monitoring, maintenance, and

1 management of the pilot mitigation bank site that is located on state-
2 owned aquatic lands. Only the commissioner of public lands or the
3 commissioner's designee may authorize expenditures from the account.
4 The account is subject to allotment procedures under chapter 43.88 RCW,
5 but an appropriation is not required for expenditures.

6 NEW SECTION. **Sec. 7.** The purchase and sale of mitigation bank
7 credits, generated by the single pilot mitigation bank authorized in
8 this chapter, are to be voluntarily agreed to by the department and
9 public or private third-party entities that are required to fulfill
10 regulatory compensatory mitigation obligations. Mitigation credits
11 made available through the pilot mitigation bank should be one of
12 several options for third parties to meet their regulatory compensatory
13 mitigation obligations. The department may not require a third party
14 to buy mitigation credits from the pilot mitigation bank as a condition
15 to use state-owned aquatic lands. If a third party agrees through the
16 regulatory mitigation process to purchase credits from the pilot
17 mitigation bank to fulfill its compensatory mitigation obligations for
18 impacts to state-owned aquatic lands, the third party must complete the
19 purchase prior to the department issuing a use authorization for the
20 impacting project.

21 NEW SECTION. **Sec. 8.** Nothing in this chapter affects the
22 authority of the department to exchange, sell, or transfer jurisdiction
23 of state-owned tidelands and shorelands or accept gifts of aquatic
24 lands under RCW 79.90.457, 79.90.580, or 79.90.475 except that state-
25 owned aquatic lands used for the pilot mitigation bank will not be
26 transferred out of state ownership and control.

27 NEW SECTION. **Sec. 9.** By December 31, 2010, the department must
28 provide a report to the appropriate committees of the senate and house
29 of representatives that provides the status of the pilot mitigation
30 bank in regards to regulatory certification, management plan
31 development, service area determination, credit determination,
32 valuation, and sale, and endowment fund creation and expenditure.

33 **Sec. 10.** RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are
34 each reenacted and amended to read as follows:

1 (1) Money in the treasurer's trust fund may be deposited, invested,
2 and reinvested by the state treasurer in accordance with RCW 43.84.080
3 in the same manner and to the same extent as if the money were in the
4 state treasury.

5 (2) All income received from investment of the treasurer's trust
6 fund shall be set aside in an account in the treasury trust fund to be
7 known as the investment income account.

8 (3) The investment income account may be utilized for the payment
9 of purchased banking services on behalf of treasurer's trust funds
10 including, but not limited to, depository, safekeeping, and
11 disbursement functions for the state treasurer or affected state
12 agencies. The investment income account is subject in all respects to
13 chapter 43.88 RCW, but no appropriation is required for payments to
14 financial institutions. Payments shall occur prior to distribution of
15 earnings set forth in subsection (4) of this section.

16 (4)(a) Monthly, the state treasurer shall distribute the earnings
17 credited to the investment income account to the state general fund
18 except under (b) and (c) of this subsection.

19 (b) The following accounts and funds shall receive their
20 proportionate share of earnings based upon each account's or fund's
21 average daily balance for the period: The Washington promise
22 scholarship account, the college savings program account, the
23 Washington advanced college tuition payment program account, the
24 agricultural local fund, the American Indian scholarship endowment
25 fund, the students with dependents grant account, the basic health plan
26 self-insurance reserve account, the contract harvesting revolving
27 account, the Washington state combined fund drive account, the
28 Washington international exchange scholarship endowment fund, the
29 developmental disabilities endowment trust fund, the energy account,
30 the fair fund, the fruit and vegetable inspection account, the future
31 teachers conditional scholarship account, the game farm alternative
32 account, the grain inspection revolving fund, the juvenile
33 accountability incentive account, the law enforcement officers' and
34 fire fighters' plan 2 expense fund, the local tourism promotion
35 account, the produce railcar pool account, the rural rehabilitation
36 account, the stadium and exhibition center account, the youth athletic
37 facility account, the self-insurance revolving fund, the sulfur dioxide
38 abatement account, the children's trust fund, the Washington horse

1 racing commission Washington bred owners' bonus fund account, the
2 Washington horse racing commission class C purse fund account, (~~and~~)
3 the Washington horse racing commission operating account (earnings from
4 the Washington horse racing commission operating account must be
5 credited to the Washington horse racing commission class C purse fund
6 account), the aquatic lands compensatory mitigation endowment account,
7 and the aquatic lands compensatory mitigation management account.
8 However, the earnings to be distributed shall first be reduced by the
9 allocation to the state treasurer's service fund pursuant to RCW
10 43.08.190.

11 (c) The following accounts and funds shall receive eighty percent
12 of their proportionate share of earnings based upon each account's or
13 fund's average daily balance for the period: The advanced right of way
14 revolving fund, the advanced environmental mitigation revolving
15 account, the city and county advance right-of-way revolving fund, the
16 federal narcotics asset forfeitures account, the high occupancy vehicle
17 account, the local rail service assistance account, and the
18 miscellaneous transportation programs account.

19 (5) In conformance with Article II, section 37 of the state
20 Constitution, no trust accounts or funds shall be allocated earnings
21 without the specific affirmative directive of this section.

22 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act constitute
23 a new chapter in Title 79 RCW.

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