

SENATE BILL REPORT

SB 5273

As of January 26, 2005

Title: An act relating to the department of natural resources' authority to create a single pilot mitigation bank on state-owned aquatic lands.

Brief Description: Developing a single pilot mitigation bank on state-owned aquatic lands.

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

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/26/05.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Curt Gavigan (786-7437)

Background: The Department of Natural Resources (DNR) manages 2.4 million acres of state-owned aquatic lands, including estuaries, marine, and fresh water areas. DNR is generally authorized to manage state-owned aquatic lands for the benefit of the public. However, DNR's authority to manage the state's aquatic lands does not include the express authority to manage an aquatic lands mitigation banking program.

When a proposed project will impact wetlands and aquatic resources, the first step in the mitigation process is to avoid and minimize any impact. For unavoidable impacts, compensatory mitigation is undertaken to replace the loss of wetlands and aquatic resources on the project site, or elsewhere where environmentally preferable. One method of fulfilling compensatory mitigation requirements is through mitigation banking.

Mitigation banking allows habitat improvements to be done prior to environmental impacts. A mitigation banker proposes a site where habitat improvements will benefit the ecosystem. Regulators evaluate the proposal and establish its ecological value in terms of mitigation credits. The mitigation banker then improves the habitat on the selected site. Those required to mitigate for impacts to wetlands and aquatic resources can fulfill their obligations by purchasing mitigation credits from the bank. Once all credits have been purchased, the mitigation bank must be permanently protected.

Summary of Bill: DNR may enter into mitigation banking agreements with public or private entities to develop, implement, and manage a pilot mitigation bank located on state-owned aquatic lands. A banking agreement must set forth the business relationship between DNR and its partners. DNR and its partners must also develop a management plan for the mitigation bank that is approved through the state or federal regulatory processes. DNR must determine the economic value of the mitigation bank credits using appropriate appraisal techniques and sell such credits for no less than market value.

The aquatic lands compensatory mitigation endowment account is created in the custody of the state treasurer to generate funds for the long term management of the mitigation bank. Revenue from the sale of mitigation credits is deposited in the endowment account until the endowment is fully funded, as set forth in the management plan. The principal of the endowment account is irreducible. The aquatic lands compensatory mitigation management account is also created in the custody of the state treasurer. Disbursements from earnings on the endowment account, in an amount equal to mitigation bank site management costs, are deposited in the aquatic lands compensatory mitigation management account for the long term management of the mitigation bank site.

Revenue from the sale of mitigation credits in excess of the amount necessary to fund the endowment is deposited in the aquatic lands enhancement account after deductions for management costs and payments to towns.

By December 31, 2010, DNR must report to the Senate and House of Representatives on the status of the pilot mitigation bank.

Appropriation: None.

Fiscal Note: Requested on January 19, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: This bill will benefit the environment and state owned aquatic lands by allowing DNR to make improvements to aquatic lands that it could not undertake without this authority. This bill allow developers an additional option for fulfilling their mitigation requirements. This bill will allow more efficient mitigation by improving aquatic lands on a larger scale than is generally done for the mitigation of individual projects.

Testimony Against: None.

Who Testified: PRO: Peter Birch, Department of Fish and Wildlife; Lauren Driscoll, Department of Ecology; Jay Udelhoven, Department of Natural Resources; Eric Johnson, Washington Public Ports Association; Barb Aberle, Department of Transportation.