
A BILL FOR AN ACT

RELATING TO CONSERVATION MITIGATION PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that terrestrial
2 conservation bank and conservation in-lieu fee mitigation
3 programs restore, create, enhance, or preserve terrestrial
4 habitats for threatened, endangered, candidate, proposed, or
5 indigenous species. The federal government, in conjunction with
6 as many as fourteen other states, has developed successful
7 conservation bank and conservation in-lieu fee mitigation
8 programs. Conservation bank and conservation in-lieu fee
9 mitigation programs would serve as mechanisms to enhance the
10 recovery and survival of threatened and endangered species and
11 enhance conservation efforts for candidate, proposed, or
12 indigenous species and their habitats.

13 The purpose of this Act is to authorize the department of
14 land and natural resources to operate and approve conservation
15 bank and conservation in-lieu fee mitigation programs where a
16 person or entity is required to provide compensatory mitigation



1 as part of an approved habitat conservation plan and incidental
2 take license:

- 3 (1) For unavoidable impacts to threatened, endangered,
- 4 candidate, or proposed species;
- 5 (2) Prospectively for damages to indigenous species and
- 6 their habitats; and
- 7 (3) For past damages to threatened, endangered, candidate,
- 8 proposed, or indigenous species and their habitats.

9 SECTION 2. Chapter 195D, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 **"PART . CONSERVATION BANK AND CONSERVATION IN-LIEU FEE**
13 **MITIGATION PROGRAMS**

14 **§195D- Definitions.** As used in this part:

15 "Compensatory mitigation" means actions taken to fulfill,
16 in whole or in part, mitigation requirements under state or
17 federal law or a court mandate.

18 "Conservation bank" means a type of compensatory mitigation
19 where a site or sites established under a site protection
20 instrument is conserved and managed to provide ecological
21 functions and services expressed as credits for threatened,



1 endangered, candidate, proposed, or indigenous species.

2 "Conservation bank instrument" means an agreement
3 establishing the conservation bank and describing the terms and
4 conditions of operation.

5 "Conservation in-lieu fee mitigation program" means a type
6 of compensatory mitigation where an incidental take licensee or
7 person or entity required to provide mitigation pays a fee to
8 the department- or nonprofit-approved sponsor to satisfy
9 mitigation requirements in an approved habitat conservation
10 plan, where the fee charged by a sponsor represents the expected
11 cost of either:

12 (1) Increasing the likelihood that a threatened or
13 endangered species will survive and recover as a
14 result of the incidental take licensee's project; or

15 (2) Enhancing the conservation of candidate, proposed, or
16 indigenous species and their habitats.

17 "Credit" means a value based on defined units representing
18 the accrual or attainment of ecological functions or services at
19 the conservation bank and released as the conservation bank
20 meets performance criteria.



1 "Site protection instrument" means an interest in real
2 property that protects a conservation bank or conservation in-
3 lieu fee mitigation site in perpetuity, such as a conservation
4 easement, deed restriction, condition, or covenant.

5 "Sponsor" means a qualified person or entity responsible
6 for establishing or operating a conservation bank or
7 conservation in-lieu fee mitigation.

8 **§195D- Conservation banking and conservation in-lieu**
9 **fee mitigation programs.** (a) The department may require a
10 person or entity to complete compensatory mitigation to offset
11 environmental loss caused by prospective or past damages to
12 threatened, endangered, candidate, proposed, or indigenous
13 species and their habitats.

14 (b) The department may operate or approve conservation
15 bank and conservation in-lieu fee mitigation programs for the
16 purpose of restoring, creating, enhancing, or preserving, or any
17 combination thereof threatened, endangered, candidate, proposed,
18 or indigenous species and their habitats where a person or
19 entity is required to provide compensatory mitigation either:

20 (1) For prospective damages to indigenous species and
21 their habitats where the use of conservation banking



1 or conservation in-lieu fee mitigation is approved by
2 the agency requiring mitigation;

3 (2) For past damages to threatened, endangered, candidate,
4 proposed, or indigenous species and their habitats
5 where the use of conservation banking or conservation
6 in-lieu fee mitigation is approved by the agency
7 requiring mitigation; or

8 (3) As off-site mitigation to offset adverse impacts to a
9 threatened, endangered, candidate, or proposed species
10 as part of an approved habitat conservation plan and
11 incidental take license.

12 (c) Conservation banks shall be established and operated
13 under a conservation bank instrument on public or private lands,
14 protected in perpetuity under a site protection instrument, and
15 approved by the board. The endangered species recovery
16 committee shall review and recommend to the department all
17 conservation banks before the transfer or sale of credits.

18 (d) Conservation in-lieu fee mitigation programs shall be
19 established and operated under a legal contract, protected in
20 perpetuity under a site protection instrument, and approved by
21 the board. The endangered species recovery committee shall



1 review and recommend to the department all conservation in-lieu
2 fee mitigation programs before the transfer or sale of credits.

3 (e) Sponsors may sell or transfer credits to persons
4 required to provide compensatory mitigation pursuant to
5 subsections (a) and (b).

6 (f) The department may collect fees or payment for costs
7 incurred, including but not limited to costs incurred by the
8 department during:

9 (1) Its rulemaking process; and

10 (2) The approval, establishment, monitoring, and oversight
11 of conservation bank and conservation in-lieu fee
12 mitigation programs.

13 (g) The department shall work cooperatively with federal
14 agencies in concurrently processing mitigation requirements
15 pursuant to federal law.

16 (h) This section shall not apply to aquatic species and
17 their habitats.

18 **§195D- Conservation bank and conservation in-lieu fee**
19 **mitigation programs; rules.** The department may adopt rules
20 pursuant to chapter 91 necessary to implement this part."



1 SECTION 3. This Act shall take effect on July 1, 3000.



Report Title:

Conservation Banks; Conservation In-lieu Fee Mitigation

Description:

Authorizes the Department of Land and Natural Resources to operate and approve conservation bank and conservation in-lieu fee mitigation programs. Effective 7/1/3000. (HD1)

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