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# 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 Hawaii's indigenous species, including threatened,  
5    endangered, candidate, or proposed species. The federal  
6    government, in conjunction with as many as fourteen other  
7    states, has developed successful conservation bank and  
8    conservation in-lieu fee mitigation programs. Conservation bank  
9    and conservation in-lieu fee mitigation programs would serve as  
10   mechanisms to enhance the recovery and survival of threatened  
11   and endangered species and enhance conservation efforts for  
12   candidate, proposed, and other indigenous species or their  
13   habitats.

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



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

3 (1) For past damages to indigenous species or their  
4 habitats; and

5 (2) For unavoidable impacts to threatened, endangered,  
6 candidate, or proposed species.

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

10 "PART . CONSERVATION BANK AND CONSERVATION IN-LIEU FEE  
11 MITIGATION PROGRAMS

12 §195D- Definitions. As used in this part:

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

16 "Compensation planning framework" means a plan used to  
17 select; secure, and implement threatened species, endangered  
18 species, candidate species, or proposed species mitigation  
19 activities.

20 "Conservation bank" means a type of compensatory mitigation  
21 where a site or sites established under a site protection



1 instrument is conserved and managed to provide ecological  
2 functions and services expressed as credits for threatened  
3 species, endangered species, candidate species, proposed  
4 species, or indigenous species.

5 "Conservation bank instrument" means an agreement  
6 establishing the conservation bank and describing the terms and  
7 conditions of operation, including provisions for the issuance  
8 of credits.

9 "Conservation in-lieu fee mitigation instrument" means the  
10 agreement for the establishment, operation, and use of a  
11 conservation in-lieu fee mitigation program.

12 "Conservation in-lieu fee mitigation program" means a type  
13 of compensatory mitigation where an incidental take licensee or  
14 person or entity required to provide mitigation pays a fee to  
15 the department- or nonprofit-approved sponsor to satisfy  
16 mitigation requirements in an approved habitat conservation  
17 plan, where the fee charged by a sponsor represents the expected  
18 cost of either:

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



1           (2) Enhancing the conservation of candidate species,  
2                   proposed species, or indigenous species or their  
3                   habitats.

4           "Credit" means a value based on defined units representing  
5 the accrual or attainment of ecological functions or services at  
6 the conservation bank or conservation in-lieu fee mitigation  
7 program and released as the conservation bank or conservation  
8 in-lieu fee mitigation program meets performance criteria.

9           "Qualified" means a person or an entity, including a  
10 government agency and nongovernmental organization, approved by  
11 the interagency review working group.

12           "Site protection instrument" means an interest in real  
13 property that protects a conservation bank or conservation  
14 in-lieu fee mitigation site in perpetuity, such as a  
15 conservation easement in favor of the department or  
16 nongovernmental organization, deed restriction, condition, or  
17 covenant.

18           "Sponsor" means a qualified person or entity responsible  
19 for establishing or operating a conservation bank or  
20 conservation in-lieu fee mitigation program.



1           §195D-       **Conservation banking and conservation in-lieu**  
2 **fee mitigation programs.** (a) The department may require a  
3 person or an entity to complete compensatory mitigation to  
4 offset environmental loss caused by past damages to indigenous  
5 species or their habitats.

6           (b) The department may operate or approve conservation  
7 bank and conservation in-lieu fee mitigation programs for the  
8 purpose of restoring, creating, enhancing, or preserving, or any  
9 combination thereof, threatened species, endangered species,  
10 candidate species, proposed species, or any indigenous species  
11 or their habitats where a person or an entity is required to  
12 provide compensatory mitigation either:

13           (1) For past damages to any indigenous species or their  
14 habitats where the use of conservation banking or  
15 conservation in-lieu fee mitigation is approved by the  
16 agency requiring mitigation; or

17           (2) To offset adverse impacts to a threatened species,  
18 endangered species, candidate species, or proposed  
19 species as part of an approved habitat conservation  
20 plan and incidental take license.



1 (c) Conservation banks shall be established and operated  
2 under a conservation bank instrument on public or private lands,  
3 protected in perpetuity under a site protection instrument, and  
4 approved by the board; provided that:

5 (1) The endangered species recovery committee shall review  
6 and recommend to the department all conservation banks  
7 before transfer or sale of credits; and

8 (2) The conservation bank instrument shall include  
9 financial assurances for the performance and  
10 completion of conservation bank construction,  
11 management, monitoring, and any remedial action.  
12 Financial assurances shall include an endowment fund  
13 or other similar financial tools adequate to ensure  
14 long-term stewardship of the conservation bank.

15 (d) Conservation in-lieu fee mitigation programs shall be  
16 established and operated under a conservation in-lieu fee  
17 mitigation instrument with a compensation planning framework,  
18 protected in perpetuity under a site protection instrument, and  
19 approved by the board; provided that:

20 (1) The endangered species recovery committee shall review  
21 and recommend to the department all conservation



1 in-lieu fee mitigation programs before operation and  
2 transfer or sale of credits;

3 (2) Sponsors of conservation in-lieu fee mitigation  
4 programs shall only be qualified government agencies  
5 or nongovernmental organizations;

6 (3) The conservation in-lieu fee mitigation instrument  
7 shall include financial assurances for the performance  
8 and completion of conservation in-lieu fee mitigation  
9 program construction, management, monitoring, and any  
10 remedial action. Financial assurances shall include  
11 an endowment fund or other similar financial tools  
12 adequate to ensure long-term stewardship of the  
13 conservation in-lieu fee mitigation program; and

14 (4) The conservation in-lieu fee mitigation instrument  
15 shall include a schedule for implementing mitigation  
16 activities.

17 (e) Sponsors shall be responsible for performing all  
18 necessary work in accordance with the conservation bank  
19 instrument or conservation in-lieu fee mitigation program to  
20 establish, enhance, restore, monitor, and maintain threatened  
21 species, endangered species, candidate species, proposed



1 species, or indigenous species or their habitats. Sponsors may  
2 sell or transfer credits to persons required to provide  
3 compensatory mitigation pursuant to subsections (a) and (b).  
4 Upon sale or transfer of credits, the sponsor shall assume  
5 responsibility for all mitigation obligations from the entity  
6 who purchased or transferred credits to the sponsor.

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

- 10 (1) Its rulemaking process; and
- 11 (2) The approval, establishment, monitoring, and oversight  
12 of conservation bank and conservation in-lieu fee  
13 mitigation programs.

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

17 (h) This section shall not apply to aquatic life or their  
18 habitats.

19 (i) Conservation bank instruments and conservation in-lieu  
20 fee mitigation instruments shall identify:





- 1           (1) The geographic area encompassed by the conservation  
2           bank or conservation in-lieu fee mitigation program;
- 3           (2) The ecosystems, natural communities, or habitat types  
4           within the conservation bank or conservation in-lieu  
5           fee mitigation program;
- 6           (3) The endangered species, threatened species, proposed  
7           species, and candidate species known or reasonably  
8           expected to occur in the ecosystems, natural  
9           communities, or habitat types in the conservation bank  
10          or conservation in-lieu fee mitigation program;
- 11          (4) The measures for property protection;
- 12          (5) A provision requiring that an annual report by the  
13          sponsor be submitted to the department within ninety  
14          days of each fiscal year ending June 30;
- 15          (6) A resource management plan approved by the department;
- 16          (7) An agreement between the landowner and the sponsor or  
17          qualified entity for long-term stewardship after all  
18          mitigation credits are satisfied; and
- 19          (8) A system for assessing conservation bank credits or  
20          conservation in-lieu fee mitigation program credits.



1 (j) The endangered species recovery committee shall review  
2 on an annual basis and make recommendations for any necessary  
3 changes to approved conservation bank and conservation in-lieu  
4 fee mitigation programs.

5 **§195D- Conservation bank and conservation in-lieu fee**  
6 **mitigation programs; rules.** The department may adopt rules  
7 pursuant to chapter 91 necessary to implement this part."

8 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. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

