



HOUSE BILL 638: Capitalize on Wetland Mitigation

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2015-194

Date:

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SUMMARY: S.L. 2015-194 directs the Department of Environmental Quality ((DEQ) (formerly the Department of Environment and Natural Resources)) to work in cooperation with the Wildlife Resources Commission (WRC) to take various actions to facilitate increased wildlife habitats and hunting opportunities in compensatory mitigation activities. In addition, the act requires that DEQ inventory all land holdings of its Office of Land and Water Stewardship to determine how many of those holdings are potential wildlife habitats, issue a request for proposal to all parties interested in purchase of the land, and dispose of the land if certain criteria are met concerning maintenance of management measures and provision of recreational access.

This act became effective August 5, 2015.

BACKGROUND AND CURRENT LAW:

Federal and State law requires developers, which can include the State, the federal government, and local governments, as well as private developers, to avoid, minimize, or mitigate damage to wetlands. One of the measures available to developers is the payment of fees into public or private programs that offset the actions of the developers with projects that restore, create, enhance, or preserve natural resources similar to those that were lost. A developer may generally do this in one of two ways.

- The developer may buy credits from a compensatory mitigation bank that has already restored, created, enhanced, or preserved natural resources. There are a number of such approved banks operating in North Carolina.
- The developer may pay compensatory mitigation to public entities or private nonprofit conservation organizations. Under this type of arrangement, the fees are typically accumulated to establish consolidated mitigation projects. This is the system employed by the Division of Mitigation Services in DEQ, which operates programs for wetlands mitigation, among other things.

BILL ANALYSIS: The act directs DEQ to:

- Seek more net gains of aquatic resources through compensatory mitigation by increasing wetland establishment of diverse habitats, including emergent marsh habitat, shallow open water, and other forested and non-forested wetland habitats.
- Establish with the district engineer of the Wilmington District of the United States Army Corps of Engineers compensatory mitigation credit ratios that incentivize the creation or establishment of diverse wetland habitats to support waterfowl and other wildlife.

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- Work in cooperation with the WRC to ensure that all purchased mitigation lands or conservation easements on such lands maximize opportunities for public recreation, including hunting, and promote wildlife and biological diversity. DEQ and WRC must pursue the voluntary involvement of third-party groups to leverage resources and ensure that there is no additional cost to private mitigation bankers or the taxpayers in achieving these mitigation credits.
- Catalog an inventory of all land holdings of the Office of Land and Water Stewardship (Office), and determine how many of those holdings are potential wildlife habitats, either as currently held or with some modification. WRC must conduct a third-party review of this inventory.

The act provides that if private individuals, corporations, or other nongovernmental entities wish to purchase any of the inventory of land suitable for wildlife habitat, then the Office must issue a request for proposal to all interested respondents for the purchase of the land, and the State must accept a proposal and proceed to dispose of the land only if the Department determines that the proposal meets both of the following requirements:

- (1) The proposal provides for the maintenance in perpetuity of management measures listed in the original mitigation instrument or otherwise needed on an ongoing or periodic basis to maintain the functions of the mitigation site.
- (2) Where the functions of the mitigation site include provision of recreation or hunting opportunities to members of the general public, the proposal includes measures needed to continue that level of access.

DEQ is required to report to the Environmental Review Commission by March 1 of each year on its progress in complying with the provisions of the bill.

EFFECTIVE DATE: This act became effective August 5, 2015.