



# HOUSE BILL 632: Amend Mitigation Services Law.

2017-2018 General Assembly

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<b>Committee:</b>	House Environment. If favorable, re-refer to Transportation	<b>Date:</b>	April 20, 2017
<b>Introduced by:</b>	Reps. Torbett, Lewis, McGrady	<b>Prepared by:</b>	Jeff Hudson
<b>Analysis of:</b>	First Edition		Committee Counsel

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**OVERVIEW:** *House Bill 632 would make a number of changes to the State's compensatory mitigation laws*

### BACKGROUND AND CURRENT LAW:

Federal and State law requires developers, which includes the State and its agencies, such as the Department of Transportation (DOT), the federal government, and local governments, as well as private developers, to avoid, minimize, and mitigate damage to wetlands and streams. 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 pay compensatory mitigation to a public compensatory mitigation entity. 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 (DMS) in the Department of Environmental Quality (DEQ), which operates programs for wetlands and stream mitigation.
- The developer may buy credits from a private 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.

Under current law, the State and its agencies may choose whether to seek mitigation from DMS, a private compensatory mitigation bank, or perform the mitigation itself. Private developers and most local governments must seek mitigation from a private compensatory mitigation bank before they could seek mitigation from DMS, although they could also perform the mitigation themselves.

Fees for compensatory mitigation are established by the Environmental Management Commission (EMC) and are based on the ecological functions and values of wetlands and streams permitted to be lost and on the cost of restoring or creating wetlands and streams capable of performing the same or similar functions, including directly related costs of wetland and stream restoration planning, long term monitoring, and maintenance of restored areas.

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Legislative Analysis  
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# House Bill 632

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**BILL ANALYSIS:** *House Bill 632 would make the following changes to the State's compensatory mitigation laws:*

- Direct DMS to prioritize cost effective approaches to compliance with mitigation requirements that maximize the remaining productive uses of public and private lands.
- Allow direct transfers of conservation easements or interests in real property related to compensatory mitigation to a federal or State agency, a local government, or a private, nonprofit conservation organization, rather than have the transfer go through DMS as an intermediate step.
- Authorize the use of land within a riparian buffer to satisfy other development-related regulatory requirements.
- Direct DMS to focus its efforts on the preservation, enhancement, and restoration of ecological functions rather than spatial proximity of mitigation projects.
- Direct the EMC and DMS to review and revise the nutrient offset fee for the Jordan Lake Watershed to establish fees for the different sub-watersheds within the Jordan Lake Watershed that reflect the actual costs of performing the mitigation in the sub-watersheds.
- Direct DMS to calculate wetland mitigation fees by multiplying the relevant rates by the number of credits being purchased and calculate stream mitigation fees by multiplying the relevant rates by the number of whole credits being purchased and direct the EMC to amend its rules to be consistent with this section.
- Direct DOT to report annually to the Environmental Review Commission regarding implementation of the 2016 Memorandum of Understanding between DEQ and DOT establishing procedures for the provision of compensatory mitigation by DMS to offset impacts to waters and wetlands from the DOT's activities.
- Direct DMS to review and revise its bidding and contracting procedures for procurement of mitigation services as follows:
  - Bonding or other financial surety required for the construction of a mitigation project may reflect only the minimum amount necessary to secure State funds provided through a contract between DMS and a private mitigation provider.
  - Post-construction bonding periods and amounts must reflect the minimum length of time necessary to determine with a reasonable degree of certainty project success and the reasonably determined level of financial risk to the State from total or partial failure of the mitigation project.
- Direct the Department of Administration to develop an inventory of all State owned properties, determine which State owned properties would be appropriate for compensatory mitigation to satisfy the compensatory mitigation required of State agencies, and determine whether the stewardship and maintenance of certain State owned properties would be more efficiently and effectively administered by private nonprofit organizations such as conservation land trusts.

**EFFECTIVE DATE:** Except as otherwise provided, the bill would become effective when it becomes law.