

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 938

Short Title: Improve Wetlands Mitigation Programs. (Public)

Sponsors: Representative Lewis (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment.

April 15, 2013

A BILL TO BE ENTITLED

1 AN ACT TO (1) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
2 RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY
3 PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS
4 OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY
5 TO PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE
6 WATERSHED WHERE DEVELOPMENT WILL OCCUR, (2) DIRECT THE
7 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE
8 ENVIRONMENTAL MANAGEMENT COMMISSION TO REVIEW FEES CHARGED
9 BY THE ECOSYSTEM ENHANCEMENT PROGRAM; AND (3) DIRECT THE
10 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY
11 WHETHER THE STATE SHOULD ASSUME ADMINISTRATION OF THE SECTION
12 404 PERMITTING PROGRAM.
13

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.1.** No later than October 1, 2013, the Department of Environment and
16 Natural Resources and the Department of Transportation shall jointly petition the Wilmington
17 District of the United States Army Corps of Engineers (Wilmington District) to allow for
18 greater flexibility and opportunity to perform wetlands mitigation outside of the eight-digit
19 Hydrologic Unit Code (HUC) where development will occur. The Departments shall seek this
20 greater flexibility and opportunity for mitigation for both public and private development. The
21 Departments shall request that the Wilmington District review the flexibility and opportunities
22 for mitigation allowed by other Districts of the United States Army Corps of Engineers.

23 **SECTION 1.2.** The Departments shall jointly report on their progress in petitioning
24 the Wilmington District as required by Section 1.1 of this act to the Environmental Review
25 Commission no later than January 1, 2014.

26 **SECTION 2.1.** The Department of Environment and Natural Resources, including
27 the Ecosystem Enhancement Program and the Division of Water Quality, and the
28 Environmental Management Commission shall review the fee structures of the individual
29 programs administered by the Ecosystem Enhancement Program, including the fee structures of
30 the compensatory mitigation program, the riparian buffer protection program, and the nutrient
31 offset program. In their review, the Department and Commission shall examine ways that the
32 fee structures might be made more efficient and cost-effective while still maintaining adequate
33 protection of public health, the environment, and natural resources. The Department and
34 Commission shall specifically consider the requirements of G.S. 143-214.11(e) that:



1 (1) Compensatory mitigation payments shall be based on the ecological
2 functions and values of wetlands and streams permitted to be lost and on the
3 cost of restoring or creating wetlands and streams capable of performing the
4 same or similar functions, including directly related costs of wetland and
5 stream restoration planning, long-term monitoring, and maintenance of
6 restored areas.

7 (2) Compensatory mitigation payments for wetlands shall be calculated on a per
8 acre basis.

9 (3) Compensatory mitigation payments for streams shall be calculated on a per
10 linear foot basis

11 **SECTION 2.2.** The Department and Commission shall report on the results of the
12 review required by Section 2.1 of this act, including any anticipated changes to the fee
13 structures or recommendations, to the Environmental Review Commission no later than
14 January 1, 2014.

15 **SECTION 3.1.** The Department of Environment and Natural Resources shall study
16 whether the State should assume administration of the Section 404 permitting program under
17 the Federal Water Pollution Control Act for North Carolina from the United States Army Corps
18 of Engineers. In conducting this study, the Department shall consult with all necessary State
19 and federal agencies, including the United States Army Corps of Engineers and the United
20 State Environmental Protection Agency. The Department shall specifically study:

21 (1) The process and costs associated with applying for assumption of the 404
22 permitting program.

23 (2) Whether State assumption of the 404 permitting program would result in a
24 more efficient permitting process and reduced costs for permit applicants.

25 (3) Whether State assumption of the 404 permitting program would result in
26 incorporation of State goals into the permitting process and improved
27 protection of State wetland and stream resources.

28 (4) The extent of the jurisdiction the State would exercise under the 404
29 permitting program.

30 (5) State laws and practices that would need to be amended in order to assume
31 the 404 permitting program.

32 (6) The financial, human, technical, and other resources needed to assume and
33 implement the 404 permitting program.

34 (7) Any other issues the Department determines to be relevant to the study.

35 **SECTION 3.2.** The Department shall report the results of the study required by
36 Section 3.1 of this act, including any recommendations, to the Environmental Review
37 Commission no later than March 1, 2014.

38 **SECTION 4.** This act is effective when it becomes law.