

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H.B. 938  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30418-SB-21 (03/26)

Short Title: Improve Wetlands Mitigation Programs.

(Public)

Sponsors: Representative Lewis.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

- (1) Compensatory mitigation payments shall be based on the ecological functions and values of wetlands and streams permitted to be lost and on the



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1 cost of restoring or creating wetlands and streams capable of performing the  
2 same or similar functions, including directly related costs of wetland and  
3 stream restoration planning, long-term monitoring, and maintenance of  
4 restored areas.

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

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

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

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

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

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

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

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

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

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

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

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

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