

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1250

Short Title: Wetlands Protection Act.

(Public)

Sponsors: Senators Barker; Daniel, Guy, Johnson of Wake, Marvin, Richardson, Sands, Shaw, Taft, Tally, and Winner.

Referred to: Rules and Operation of The Senate.

May 10, 1989

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A LEGISLATIVE STUDY COMMISSION ON
2 WETLANDS PROTECTION, TO ESTABLISH A TASK FORCE ON STATE
3 ASSUMPTION AND ADAPTATION OF FEDERAL WETLANDS LAW, AND
4 TO PROHIBIT THE DRAINAGE OF SWAMPS AND SALTWATER
5 MARSHLANDS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. The General Assembly finds and declares that North Carolina's
9 wetlands are a valuable and productive natural resource. Wetlands serve a number of
10 functions that are vital to the public health, safety, and welfare. Wetlands (i) protect the
11 drinking water supply by providing a natural filter for both surface water and
12 groundwater resources; (ii) trap nutrients, sediments, and other pollutants capable of
13 polluting downstream waters; (iii) reduce flood and storm damage, thereby preventing a
14 loss of life and property; (iv) provide shoreline stabilization; (v) provide essential
15 breeding, spawning, nesting, and wintering habitat for fish and wildlife, including many
16 species that are of commercial or recreational value; (vi) supplement surface water
17 supplies during drought by gradually releasing stored floodwaters and groundwater; and
18 (vii) serve as a source of timber production which, despite the physical problems
19 inherent in harvesting timber in wetlands, is of great economic value to the State.

20 The General Assembly further finds that wetlands protection is of vital
21 importance to maintenance of the State's public trust resources. Wetlands are under
22 increasing development pressures and, unless those pressures are controlled, the
23 resulting wetland losses will result in clear public harm. Some areas defined as

1 wetlands under federal law are of minimal ecological value, and should be developed to
2 promote economic growth in North Carolina. Some economic uses of privately owned
3 wetlands are compatible with maintenance of the wetlands ecosystem. No landowner
4 should have the use of his land restricted unless there is a clear showing of substantial
5 damage to the environment. In addition to necessary prohibitions or restrictions, the
6 State should provide economic incentives to landowners to encourage preservation of
7 wetland resources. The use of land for farming or other agricultural purposes should
8 not be restricted.

9 The General Assembly therefore finds that there is an immediate need to
10 study wetlands protection and to develop a legislative program for the management of
11 activities in wetlands. The goals of the wetlands protection program shall be to preserve
12 wetlands of significant ecological value from undesirable alteration; to protect and
13 manage wetlands so as to prevent any net loss of the ecologically valuable wetlands;
14 and to preserve private property rights in accordance with the North Carolina
15 Constitution and the Constitution of the United States. The long-term goal of the
16 program shall be to increase the number and enhance the quality of wetlands in the
17 State. To this end, the State shall expeditiously explore the assumption of the wetlands
18 permit jurisdiction of the United States Army Corps of Engineers pursuant to federal
19 law, and the adaptation of same to better meet the needs of the people and resources of
20 the State of North Carolina as provided herein.

21 Sec. 2. There is created a Task Force on State Assumption of Wetlands
22 Permitting to consist of five members to be appointed as follows: one to be appointed
23 by the Speaker of the House, one to be appointed by the President Pro Tempore of the
24 Senate, and three to be appointed by the Governor. The Governor shall designate one
25 member to serve as chairman. The Task Force shall study current wetlands law, and
26 environmental and economic conditions in the State as they relate to wetlands, and shall
27 obtain public comment on existing and desired wetlands regulation. After obtaining the
28 necessary background information, the Task Force shall negotiate with the United States
29 Environmental Protection Agency to establish the terms for a transfer of the federal
30 wetlands permitting program to an agency of the State within the following guidelines:
31 (i) the transfer shall not result in duplication of permitting programs; (ii)
32 environmentally significant wetlands shall receive adequate protection; (iii)
33 development shall be allowed in wetlands that can be developed without environmental
34 harm; (iv) private property rights shall be protected and a process shall be provided for
35 expeditious judicial review of decisions affecting private property in the county where
36 the property is located and that process shall include the right to trial by jury; (v)
37 exemptions for farming and forestry activities shall be developed. The Task Force shall
38 report the results of its negotiations to the Legislative Study Commission on Wetlands
39 Protection not later than March 1, 1990.

40 Sec. 3. There is created a Legislative Study Commission on Wetlands
41 Protection. The Commission shall study the necessary elements of a statewide wetlands
42 protection program and shall develop recommendations for legislation to establish a
43 wetlands protection program that will be adequate to preserve wetlands of significant
44 ecological value from unnecessary or undesirable alteration; to protect and manage

1 wetlands so as to prevent any net loss of the ecological function of wetlands; to develop
2 a program of economic incentives to encourage wetlands conservation; and to allow
3 State assumption and adaptation of the federal permitting program under Section 404 of
4 the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of
5 1977 (33 USC §1344). In developing its recommendations, the Commission shall
6 study: (i) classification and regulation of wetlands based on their relative resource
7 values, value to the ecosystems and value for economic development; (ii) development
8 of exemptions for agriculture, forestry, and mining activities; (iii) mitigation of wetland
9 losses and creation of a mitigation bank to accept donations of property and payments in
10 lieu of actual mitigation; (iv) positive and negative impacts on wetlands of activities
11 including, but not limited to, drainage, excavation, filling, development, and wildlife
12 habitat improvements; and (v) definition and identification of different types of
13 wetlands.

14 Sec. 4. The Legislative Study Commission on Wetlands Protection shall
15 consist of 15 members. The President Pro Tempore of the Senate shall appoint five
16 members: three senators, one commercial fisherman, and one local elected official. The
17 Speaker of the House shall appoint five members: three Representatives, one member
18 associated with the homebuilding industry, and one local elected official. The Governor
19 shall appoint five members: one representative of the mining industry, one
20 representative of agriculture, one representative of an environmental organization, one
21 representative of forestry, and one representative of the Department of Natural
22 Resources and Community Development. The President Pro Tempore of the Senate and
23 the Speaker of the House shall each designate a cochairman from the membership of the
24 committee. Appointments shall be made no later than August 1, 1989, and members
25 shall serve until the termination of the Commission.

26 Sec. 5. Chapter 113 of the General Statutes is amended by adding a new
27 section to read:

28 **"§ 113-265.2. Draining of swamps or saltwater marshlands.**

29 It shall be unlawful for any corporation owning more than 5,000 acres of forested
30 wetlands to drain any swamp or saltwater marshland. Violation of this section shall be a
31 misdemeanor, and each day that a violation continues shall constitute a separate
32 offense."

33 Sec. 6. There is appropriated from the General Fund to the Department of
34 Natural Resources and Community Development the sum of \$12,500 for the 1989-90
35 fiscal year and the sum of \$12,500 for the 1990-91 fiscal year to be allocated as follows:

- 36 (1) The sum of \$7,500 for the 1989-90 fiscal year and the sum of \$7,500
37 for the 1990-91 fiscal year to fund the Legislative Study Commission
38 on Wetlands Protection created in Section 3 of this act.
- 39 (2) The sum of \$5,000 for the 1989-90 fiscal year and the sum of \$5,000
40 for the 1990-91 fiscal year to fund the Task Force on State Assumption
41 of Wetlands Permitting created in Section 2 of this act.

42 Sec. 7. The Commission may file a report with the 1989 General Assembly,
43 1990 Regular Session. Otherwise, the Commission shall file a report with the General

1 Assembly not later than March 1, 1991. The Commission shall terminate upon the
2 filing of its report.

3 Sec. 8. Section 6 of this act shall become effective upon ratification and shall
4 expire on July 1, 1991. The remaining sections of this act shall become effective on
5 July 1, 1989.