

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 28.2-1301 and 28.2-1308 of the Code of Virginia, relating to Marine*
 3 *Resources Commission; powers and duties; wetlands.*

4 [H 521]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 28.2-1301 and 28.2-1308 of the Code of Virginia are amended and reenacted as follows:**8 **§ 28.2-1301. Powers and duties of the Commission.**

9 A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall
 10 be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this
 11 chapter. The Commission shall manage any wetlands it receives so as to maximize their ecological value as
 12 provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

13 B. The Commission shall preserve and prevent the despoliation and destruction of wetlands while
 14 accommodating necessary economic development in a manner consistent with wetlands preservation and any
 15 standards set by the Commonwealth in addition to those identified in § 28.2-1308 to ensure protection of
 16 shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including guidelines and
 17 minimum standards promulgated by the Commission pursuant to subsection C.

18 C. In order to perform its duties under this section and to assist counties, cities, and towns in regulating
 19 wetlands, the Commission shall promulgate and periodically update (i) guidelines that scientifically evaluate
 20 vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types
 21 and (ii) minimum standards for protection and conservation of wetlands *to achieve no net loss of existing*
 22 *wetland acreage and functions*. The Virginia Institute of Marine Science shall provide advice and assistance
 23 to the Commission in developing these guidelines and minimum standards by evaluating wetlands by type
 24 and continuously maintaining and updating an inventory of vegetated wetlands.

25 D. In developing guidelines, standards, or regulations under this chapter the Commission shall consult
 26 with all affected state agencies. Consistent with other legal rights, consideration shall be given to the unique
 27 character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland
 28 wildlife, waterfowl, finfish, shellfish and flora; serve as a valuable protective barrier against floods, tidal
 29 storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and
 30 pollutants; and are important for recreational and aesthetic enjoyment of the people and for the promotion of
 31 tourism, navigation and commerce.

32 **§ 28.2-1308. Standards for use and development of wetlands; utilization of guidelines.**

33 A. For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River
 34 Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River
 35 Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin,
 36 Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

37 B. The following standards shall apply to the use and development of wetlands and shall be considered in
 38 the determination of whether any permit required by this chapter should be granted or denied:

39 1. *Permits shall contain requirements for compensating impacts on wetlands sufficient to achieve no net*
 40 *loss of existing wetland acreage and functions;*

41 2. Wetlands of primary ecological significance shall not be altered so that the ecological systems in the
 42 wetlands are unreasonably disturbed; and

43 ~~2.~~ 3. Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in
 44 wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed
 45 before July 1, 1972, in nonvegetated wetlands which have been irreversibly disturbed prior to January 1,
 46 1983, and in areas of Tidewater Virginia outside of wetlands.

47 C. The provisions of guidelines and minimum standards promulgated by the Commission pursuant to
 48 § 28.2-1301 shall be considered in applying the standards listed in subsection B.

49 D. When any activity authorized by a permit issued pursuant to this chapter is conditioned upon
 50 compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part
 51 of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank,
 52 including any banks owned by the permit applicant, that has been approved and is operating in accordance
 53 with applicable federal and state guidance, laws, or regulations for the establishment, use and operation of
 54 mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit
 55 boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized
 56 and depicted or described in the bank's approved mitigation banking instrument, as the impacted site, or in an

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57 adjacent subbasin within the same river watershed, as the impacted site, or it meets all the conditions found in
58 clauses (a) through (d) and either clause (e) or (f); (ii) the bank is ecologically preferable to practicable on-
59 site and off-site individual mitigation options, as defined by federal wetland regulations; and (iii) the banking
60 instrument, if approved after July 1, 1996, has been approved by a process that included public review and
61 comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river
62 watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant
63 demonstrates to the satisfaction of the Commission that (a) the impacts will occur as a result of a Virginia
64 Department of Transportation linear project or as the result of a locality project for a locality whose
65 jurisdiction encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation
66 alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there
67 is no significant harm to water quality or fish and wildlife resources within the river watershed of the
68 impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the
69 Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins
70 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated
71 in-kind within those subbasins as close as possible to the impacted site. After July 1, 2002, the provisions of
72 clause (f) shall apply only to impacts within subdivisions of the listed subbasins where overlapping
73 watersheds exist, as determined by the Department of Environmental Quality, provided the Department has
74 made such a determination by that date. For the purposes of this subsection, the hydrologic unit boundaries of
75 the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the
76 Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided
77 by the bank sponsor.

78 E. Where an agreed-upon permit condition requires the contribution of in-lieu fees to offset permitted
79 wetland losses, the wetlands board shall credit the applicant for any in-lieu fee payments made to the Virginia
80 Aquatic Resources Trust Fund or another dedicated wetlands restoration fund with reference to the same
81 activity.

82 F. Notwithstanding any provision of this section restricting the location of the source of credits, an
83 applicant may be permitted to purchase or use credits from a tidal wetland mitigation bank located in an
84 adjacent river watershed when such bank contains the same plant community type and salinity regime as the
85 impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to
86 tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107,
87 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type
88 and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted
89 wetland.

90 **2. That the Secretary of Natural and Historic Resources (the Secretary) shall convene a stakeholder**
91 **work group to address mitigation requirements for tidal nonvegetated wetlands. The stakeholder work**
92 **group shall include mitigation banking representatives, local government representatives, including**
93 **wetlands board members, planning district commissions, the Virginia Association of Counties, the**
94 **Chesapeake Bay Foundation, the Virginia Maritime Association, the Department of Environmental**
95 **Quality, the Habitat Management Division of the Marine Resources Commission, and any other**
96 **stakeholders deemed necessary by the Secretary. The stakeholder work group shall address the need to**
97 **provide mitigation of tidal nonvegetated wetlands that ensures no net loss of wetland acreage and**
98 **functions, considering a range of mitigation alternatives, including mitigation banks, in-lieu fee**
99 **programs, permittee-responsible mitigation, or other approaches. In addressing such options, the**
100 **stakeholder work group shall consider (i) the water quality, habitat, and ecological functions of each**
101 **mitigation technique; (ii) the cost and practicability of mitigation options; (iii) the necessity, flexibility,**
102 **and effectiveness of in-lieu fee, permittee-responsible, and out-of-kind mitigation; and (iv) other**
103 **considerations deemed necessary by the Secretary. The stakeholder work group shall submit a report**
104 **of its findings and recommendations to the Chairs of the House Committee on Agriculture, Chesapeake**
105 **and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural**
106 **Resources no later than July 1, 2027.**