

BY: Environment and Transportation Committee

AMENDMENTS TO HOUSE BILL 797
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “remove” and substitute “include”; in line 4, strike “from a certain process” and substitute “under certain circumstances”; in line 11, after “site;” insert “requiring certain standards and regulations adopted by the Department to ensure that the potential for on-site mitigation is considered under certain circumstances;”; in line 17, after “Department” insert “in a certain manner; requiring certain standards and regulations adopted by the Department to ensure that a certain service area meets certain requirements”; in the same line, strike “a certain term” and substitute “certain terms”; in line 19, strike “without” and substitute “with”; in line 21, strike “5-901(a)” and substitute “5-901 and 5-910”; and strike in their entirety lines 24 through 28, inclusive.

On page 2, strike in their entirety lines 1 through 5, inclusive; and strike in their entirety lines 14 through 21, inclusive.

AMENDMENT NO. 2

On page 3, after line 10, insert:

- “(b) (1) “Agricultural activity” means aquaculture and farming activities.
- (2) “Agricultural activity” includes:
- (i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products; and
- (ii) The grazing of livestock.

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(c) “Best management practices” means conservation practices or systems of practices and management measures that:

(1) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

(2) Minimize adverse impacts to the surface water and groundwater flow and circulation patterns, and to the chemical, physical, and biological characteristics of a nontidal wetland.

(d) “Compensation ratio” means the ratio of the area of wetland restored, created, or enhanced to the area of wetland for which mitigation is required.

(e) “Department” means the Department of the Environment.

(f) “Forestry activity” means planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity.

(G) “HYDROLOGIC UNIT” MEANS A DRAINAGE AREA WITHIN:

(1) A MULTILEVEL HIERARCHICAL DRAINAGE SYSTEM ESTABLISHED UNDER THE NATIONAL WATERSHED BOUNDARY DATASET AS PUBLISHED BY THE U.S. GEOLOGICAL SURVEY AND AS AMENDED, REVISED, OR REPLACED FROM TIME TO TIME; AND

(2) WHICH DRAINAGE BOUNDARIES ARE ESTABLISHED USING HYDROGRAPHIC AND TOPOGRAPHIC DATA TO DELINEATE AN AREA OF LAND UPSTREAM FROM A SPECIFIC POINT ON A RIVER, STREAM, OR A SIMILAR SURFACE WATER.

(H) “HYDROLOGIC UNIT CODE” MEANS A NUMERICAL IDENTIFIER THAT DESCRIBES A HYDROLOGIC UNIT’S PHYSICAL LOCATION AND POSITION WITHIN THE DRAINAGE SYSTEM HIERARCHY.

(I) “INSTRUMENT” MEANS THE FORMAL WRITTEN AGREEMENT BETWEEN MITIGATION BANK OWNERS AND THE DEPARTMENT THAT ESTABLISHES LIABILITY, PERFORMANCE STANDARDS, MANAGEMENT AND MONITORING REQUIREMENTS, AND THE TERMS OF BANK CREDIT APPROVAL.

(J) “INTERAGENCY REVIEW TEAM” MEANS AN INTERAGENCY GROUP OF FEDERAL, STATE, AND LOCAL AGENCIES THAT REVIEWS DOCUMENTATION FOR, AND ADVISES THE DEPARTMENT ON, THE ESTABLISHMENT OF PROPOSED MITIGATION BANKS AND THE DEVELOPMENT OF THE INSTRUMENT.

[(g)] (K) “Isolated nontidal wetland” means a nontidal wetland that is not hydrologically connected, through surface or subsurface flow, to streams, tidal or nontidal wetlands, or tidal waters.

[(h)] (L) “Mitigation banking” means wetland restoration, creation, or enhancement undertaken expressly for the purpose of providing compensation credits for wetland losses from future activities.

[(i)] (M) (1) “Nontidal wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(2) The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the “Federal Manual for

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Identifying and Delineating Jurisdictional Wetlands”, published in 1989 and as may be amended.

(3) “Nontidal wetlands” do not include tidal wetlands regulated under Title 16 of this article.

~~[(j)]~~ (N) (1) “Regulated activity” means any of the following activities in a nontidal wetland or within a 25 foot buffer of the nontidal wetland:

(i) The removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;

(ii) The changing of existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

(iii) The disturbance of the water level or water table by drainage, impoundment, or other means;

(iv) The dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

(v) The grading or removal of material that would alter existing topography; and

(vi) The destruction or removal of plant life that would alter the character of a nontidal wetland.

(2) “Regulated activity” does not include an agricultural activity or forestry activity as defined in this section.”;

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in lines 11 and 14, strike “(K)” and “(L)”, respectively, and substitute “(O)” and “(P)”, respectively; in line 23, strike the bracket; and in line 24, strike the bracket and substitute “WHERE IT MAY BE ENVIRONMENTALLY PREFERABLE”.

AMENDMENT NO. 3

On page 4, in line 29, strike “AND”.

On page 5, in line 3, after the bracket insert “THE POTENTIAL FOR ON-SITE MITIGATION IS CONSIDERED WHENEVER IT MAY BE ENVIRONMENTALLY PREFERABLE;

(4)”;

in line 4, strike “DETERMINED” and substitute “:

(I) DETERMINED”;

in the same line, after “DEPARTMENT” insert “IN COORDINATION WITH AN INTERAGENCY REVIEW TEAM; AND

(II) THAT ARE CONSISTENT WITH FEDERAL GUIDELINES;

AND

(5) FOR PURPOSES OF ITEM (4) THIS SUBSECTION, A SERVICE AREA:

(I) IS THE SAME 8 DIGIT HYDROLOGIC UNIT CODE WATERSHED IN WHICH THE MITIGATION BANK IS LOCATED; AND

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**(II) MAY BE EXPANDED TO INCLUDE OTHER 8 DIGIT
HYDROLOGIC UNIT CODE WATERSHEDS IF ENVIRONMENTALLY JUSTIFIED**".