

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 866

Short Title: Wetlands Protection and Restoration Act. (Public)

Sponsors: Senators Batch, Smith, and Grafstein (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 6, 2024

A BILL TO BE ENTITLED

AN ACT TO PROTECT AND RESTORE WETLANDS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. FUNDING

SECTION 1.(a) Establishment and Purpose of Fund. – The sum of fifteen million dollars (\$15,000,000) in recurring funds for the 2024-2025 fiscal year is appropriated from the General Fund to the Department of Environmental Quality. Funds appropriated by this section shall be used by the Department to establish the Wetlands Restoration and Protection Fund (Fund) as a special fund in the Department. The Fund consists of appropriations by the General Assembly as well as contributions and grants from public or private sources. The purpose of the Fund is to provide financial support for (i) wetland restoration projects, (ii) acquisition of conservation easements, (iii) public awareness campaigns to educate citizens about the importance of wetlands and the need for their protection and opportunities for volunteer wetlands protection and restoration projects, through the Department's Office of Environmental Education and Public Affairs, and (iv) enforcement of wetland protection laws as amended by Section 2 of this act to restore protection of certain wetlands in the State that were removed from federal protection under the Clean Water Act by the United States Supreme Court ruling in Sackett v. EPA, 598 U.S. 651 (2023).

SECTION 1.(b) Reservation of Funds for Monitoring and Research. – Five million dollars (\$5,000,000) of the funds appropriated by subsection (a) of this section is designated for wetland monitoring and research initiatives. The Department, in collaboration with relevant stakeholders and research institutions, will conduct comprehensive monitoring and research to assess the health and ecological value of wetlands throughout the State.

SECTION 1.(c) Report. – The Department shall submit a report no later than September 1, 2025, and annually thereafter to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division on the projects and activities funded by this act during the prior fiscal year. The Department shall include in its initial report and may include in subsequent reports recommendations regarding further legislative changes needed to provide comprehensive protection for isolated wetlands at the State level in response to the Sackett decision. The reports shall also include, at a minimum, the following:

- (1) The beginning and ending balance of the Fund for the fiscal year.
- (2) A listing of funding recipients, and the amount provided to each recipient.
- (3) An overview of the use of funds by funding recipients, including a description of projects constructed or planning milestones achieved.



- 1 (4) The findings of the monitoring and research efforts funded under subsection
2 (b) of this section and how they have informed wetland conservation strategies
3 and regulatory decisions by the Department.
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5 PART II. PROTECTION OF ISOLATED WETLANDS

6 SECTION 2.(a) Section 54 of S.L. 2014-120 is repealed.

7 SECTION 2.(b) Section 4.18 of S.L. 2015-286 is repealed.

8 SECTION 2.(c) G.S. 143-212 reads as rewritten:

9 "§ 143-212. Definitions.

10 Unless a different meaning is required by the context, the following definitions apply to this
11 Article and Articles 21A and 21B of this Chapter:

12 ...

13 (3a) "Isolated wetlands" means (i) wetlands confirmed to be isolated by the United
14 States Army Corps of Engineers prior to June 22, 2020, and (ii) wetlands
15 described as isolated in the North Carolina Wetland Assessment User Manual
16 prepared by the North Carolina Wetland Functional Assessment Team,
17 version 4.1, October 2010. The term "isolated wetland" does not include an
18 isolated man-made ditch or pond constructed for stormwater management
19 purposes or any other man-made isolated pond.

20 ...

21 (6) "Waters" means any stream, river, brook, swamp, lake, sound, tidal estuary,
22 bay, creek, reservoir, ~~waterway,~~ waterway, wetland, or other body or
23 accumulation of water, whether surface or underground, public or private, or
24 natural or artificial, that is contained in, flows through, or borders upon any
25 portion of this State, including any portion of the Atlantic Ocean over which
26 the State has jurisdiction.

27 (7) "Wetland" means waters that are areas that are inundated or saturated by an
28 accumulation of surface or groundwater at a frequency and duration sufficient
29 to support, and that under normal circumstances do support, a prevalence of
30 vegetation typically adapted for life in saturated soil conditions. Wetlands do
31 not include prior converted cropland as defined in the National Food Security
32 Act Manual, Fifth Edition. Wetlands classified as waters of the State are
33 limited to (i) waters of the United States as defined by 33 C.F.R. § 328.3 and
34 40 C.F.R. § 230.3 and (ii) isolated wetlands."
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36 PART III. EFFECTIVE DATE

37 SECTION 3. Section 1 of this act becomes effective July 1, 2024. The remainder of
38 this act is effective when it becomes law.