

083978348

## SENATE BILL NO. 361

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 4, 2008)

(Patron Prior to Substitute—Senator Watkins)

A *BILL to amend and reenact § 62.1-44.15:23 of the Code of Virginia, relating to stream mitigation banks.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:23 of the Code of Virginia is amended and reenacted as follows:**

§ 62.1-44.15:23. Wetland and stream mitigation banks.

A. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the Board shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), as the impacted site or in an adjacent cataloging unit within the same river watershed or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this section; (2) the bank is ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site.

B. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority.

C. State agencies and localities are authorized to purchase credits from mitigation banks.

D. Any county with the county manager form of government may establish, operate, and sponsor single-user stream mitigation banks within its locality that have been approved and are operated in accordance with the requirements of subsection A, provided that such single-user banks shall only be considered for compensatory mitigation for the locality's projects. For purposes of this subsection, the term "locality's projects" means projects for which (i) the locality or any of its subdivisions or independent elected boards is the named permittee and (ii) there shall be no private third-party leasing, sale, granting, transfer, or use of the projects or credits.

E. Any locality with the county manager form of government may enter into agreements with private third parties to facilitate the creation of privately sponsored stream mitigation banks having service areas developed through the procedures of subsection A.

F. If after reasonable attempts, any locality with county manager form of government is unable to enter into agreements with private third parties to facilitate the creation of privately sponsored stream mitigation banks as provided for in subsection E, the locality may establish and operate stream mitigation banks that have been approved and are operated in accordance with the requirements of subsection A, and may sell credits at prevailing market rates for projects located within the locality for which federal or state law requires compensatory mitigation for adverse impacts to streams. However, if the locality begins selling credits from its stream mitigation bank and a private third-party bank, authorized and operated in accordance with subsection A, is established within the boundaries of the

60 *locality and begins selling credits, the locality shall immediately stop the sale of its remaining credits*  
61 *until such time as the credits from the private third-party bank are extinguished. If a stream mitigation*  
62 *bank is established under the provisions of this subsection, the locality shall not require as a condition*  
63 *of any plan of development or subdivision approval, the purchase of credits from the locality's stream*  
64 *mitigation bank.*

65 **2. That the provisions of this act shall expire on July 1, 2018.**