

# **HOUSE . . . . . No. 4276**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 6, 2018.

The committee on Environment, Natural Resources and Agriculture to whom was referred the petition (accompanied by bill, House, No. 2152) of William M. Straus and Keiko M. Orrall relative to the establishment of a cranberry wetland mitigation banking program for the purposes of off-site mitigation of public or private projects subject to the wetlands protection act, reports recommending that the accompanying bill (House, No. 4276) ought to pass.

For the committee,

SMITTY PIGNATELLI.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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An Act relative to a cranberry wetland mitigation bank.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 1. (a) Notwithstanding any general or special law to the contrary,  
2 the executive office of energy and environmental affairs shall establish a cranberry wetlands  
3 mitigation banking pilot program. The purpose of the program is to provide off-site mitigation  
4 for public and private projects to comply with orders of conditions or variances issued in  
5 accordance with the Wetlands Protection Act under section 40 of chapter 131 of the General  
6 Laws and related regulations under 310 CMR 10.00.

7           The off-site mitigation of wetlands under the program shall be located on approved  
8 cranberry bog lands considered in agricultural use under said regulations.

9           (b) All project sites that require mitigation and bog lands used for off-site mitigation  
10 under the program shall be located in the South Coastal, Taunton, or Buzzards Bay regional  
11 watersheds that lie within the respective counties of Bristol and Plymouth.

12           (c) The use of bog land for off-site mitigation shall require the approval of the  
13 executive office of energy and environmental affairs. Such approved bog land may include the

14 100 foot wide buffer zone land area around the bog; provided, the use of buffer zone land for off-  
15 site mitigation shall exclude any part of the area: (i) not owned by the bog landowner, (ii) within  
16 a 100 feet of another bog of the landowner that is in agricultural use under said regulations and  
17 not approved or proposed for off-site mitigation, or (iii) necessary for current and future uses,  
18 including access roads and other improvements.

19 Bog land used for off-site mitigation may also include any increase of the bog area  
20 under a predetermined plan to renovate and expand the existing wetland.

21 No approval shall take effect, unless the bog landowner and the secretary of energy  
22 and environmental affairs confirm by written agreement to the use of the specific bog land for  
23 off-site mitigation, allowable bank credits, and any other terms and conditions required by this  
24 section or by a rule adopted under the subsection (g).

25 (d) For approval of bog land for off-site mitigation, the landowner shall be required to  
26 grant a permanent conservation restriction or easement of such land to a qualified government  
27 entity or non-profit organization that commonly holds conservation restrictions in the  
28 commonwealth. Any restriction granted by a landowner shall be conditional, to take effect upon  
29 the first use or trade of one or more bank credits from the mitigation bank for such bog land. The  
30 terms of the restriction or easement shall be subject to approval by the secretary of energy and  
31 environmental affairs; provided however, such terms shall include a prohibition on the  
32 agricultural use of the land. The terms of the conservation restriction or easement shall be part of  
33 the agreement between the landowner and secretary under the prior subsection.

34           A landowner may grant a conservation restriction or easement to a qualified  
35 government entity or non-profit organization that acts as a bank agent for the mitigation bank for  
36 the owner's bog land, or approves the land for off-site mitigation.

37           (e) The establishment of a mitigation site shall also be subject to the approval of the  
38 local conservation commission having jurisdiction.

39           (f) Bank credits from a mitigation bank shall be available only in exceptional  
40 circumstances and after full consideration of all regulatory requirements to avoid, minimize and  
41 mitigate a public or private project's impacts on-site, to the fullest extent, are not practicable or  
42 less beneficial environmentally as determined by the local conservation commission having  
43 jurisdiction of the project. A local conservation commission may send a project to a mitigation  
44 bank that meets the requirements of the program, provided the landowner of the project consents  
45 in writing.

46           (g) Within 150 days after the effective date of this act, the executive office of energy  
47 and environmental affairs shall adopt written rules for the administration and procedures of the  
48 program, to include without limitation, uniform policies for the approval of bog lands as  
49 mitigation sites, the method to determine the value of bank credits, and the qualifications and  
50 requirements of banker agents of mitigation banks. As necessary, the executive office of energy  
51 and environmental affairs may upon 60 days advance public notice, amend or repeal such rules.  
52 The adoption, amendment or repeal of program rules shall not be subject to the provisions of  
53 section 2 through 9, inclusive, of chapter 30A of the General Laws. Such rules in effect shall  
54 comply with any applicable federal laws and regulations for wetland banking. The executive  
55 office of energy and environmental affairs shall post on its public website all program rules.

56 For the purposes limited to the program, the executive office of energy and  
57 environmental affairs may establish rules that (i) preempt municipal wetland protection by-laws  
58 or ordinances, and (ii) waive the requirement that bog mitigation sites be approved by local  
59 conservation commissions, notwithstanding the provisions of subsection (e).

60 (h) There shall be established an advisory committee to make recommendations to the  
61 executive office of energy and environmental affairs on establishing uniform administrative  
62 procedures, rules and policies for the program. The committee's recommendations shall include,  
63 without limitation, advice on policies related to the approval of off-site mitigation bog lands,  
64 operation and administration of mitigation banks, and bank credit valuations of land. The  
65 committee shall consist of the following 7 members: the secretary of energy and environmental  
66 affairs, or his designee, who shall serve as chairman; the commissioner of the department of  
67 agricultural resources, or his designee; the commissioner of the department of environmental  
68 protection, or his designee; the commissioner the department of fish and game, or his designee;  
69 and 3 members to be appointed by the secretary of energy and environmental affairs, 1 of whom  
70 shall be a member of a municipal conservation commission; 1 of whom shall be a representative  
71 of an association of cranberry growers in the commonwealth, and 1 of whom shall be a cranberry  
72 grower with bog lands in Bristol or Plymouth county. The appointment of committee members  
73 shall be for the term of the advisory committee. Any person appointed to fill a vacancy on the  
74 committee shall be appointed in a like manner; and shall serve for only the unexpired term of the  
75 member who vacated. Appointments to the committee shall be made within 60 days after the  
76 effective date of this act. The term of the advisory committee shall expire 2 years from the  
77 effective date of this act.

78 (i) Within 30 days after the adoption of the rules as provided in subsection (f), the  
79 executive office of energy and environmental affairs shall issue a request for proposals for the  
80 selection of a contractor with knowledge of state and federal wetland protection laws and  
81 regulations, cranberry agriculture and said regional watersheds, to serve as the initial bank agent  
82 of a combined bog land mitigation bank and to assist with the administration and monitoring of  
83 the program. The term of the initial bank agent shall be for a period of not less than 1 year.

84 Within 90 days of issuing the request for proposals, the executive office of energy and  
85 environmental affairs shall select the initial bank agent. The request for proposals and selection  
86 of the initial bank agent shall not be subject to the provisions of chapter 30B of the General  
87 Laws.

88 The executive office of energy and environmental affairs and the initial bank agent,  
89 shall develop an agreement for the use and transfer of bank credits from the combined bank. The  
90 agreement shall be subject to the review and approval of the inspector general.

91 Compensation for the services of the initial bank agent may be paid from  
92 administrative fees collected from landowners of bog mitigation sites and project users of the  
93 mitigation bank.

94 (j) Notwithstanding the provisions of the prior subsection, a bog landowner may only  
95 after the first year of the initial bank agent's term, utilize any qualified non-profit organization,  
96 or private entity or person to establish a separate mitigation bank and act as bank agent for such  
97 owner's approved bog lands.

98 (k) The executive office of environmental affairs no later than March 1 of each year,  
99 shall file an annual report that provides an assessment of the program for the prior calendar year,

100 with the senate and house chairpersons of the joint committee on environment, natural resources  
101 and agriculture. Each report shall contain information about bog lands accepted for off-site  
102 mitigation including information on the amount, acreage, location and types of wetlands restored  
103 and credits issued or traded, and list of all projects utilizing bog site bank credits, and the  
104 environmental effectiveness of mitigation banks in protecting wetland resources under the  
105 program. A report shall be filed for each year the program is in existence.

106 (l) For the purposes of this section the term “Bank Credits” or “Credits”, shall mean  
107 the 1 or more units of trade that quantifies and represents the environmental value of the  
108 mitigation bog land, as determined by acreage, location, natural resource purpose and natural  
109 habitat value, or other uniform method of assessment, as established under program rules.

110 SECTION 2. Subsections (a) through (l), inclusive, of section 1 shall be repealed 5  
111 years from the effective date of this act; except, subsection (k) of said section 1 shall be repealed  
112 on March 1 next occurring from the date said other subsections are repealed.