**A** **BILL**

TO AMEND THE 1976 CODE BY ADDING ARTICLE 5 TO CHAPTER 11, TITLE 49, RELATING TO WATERS, WATER RESOURCES, AND DRAINAGE, TO ENACT THE “WETLANDS RESTORATION ACT” TO PROVIDE THAT CERTAIN IMPOUNDMENTS THAT ORIGINALLY IMPOUNDED A PARCEL OF TIDELAND OR MARSHLAND BUT NO LONGER COMPLETELY IMPOUNDS THAT PARCEL MAY BE REPAIRED OR RESTORED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 11, Title 49 of the 1976 Code is amended by adding:

“Article 5

Wetlands Restoration Act

Section 49‑11‑300. This article may be cited as the ‘Wetlands Restoration Act’.

Section 49‑11‑310. For the purposes of this article:

(1) ‘Impound’ means to accumulate, hold, store, or confine water within a tideland or marshland through the use of an impoundment.

(2) ‘Impoundment’ means a dam, dike, natural structure, or any combination thereof that encloses a parcel of tideland or marshland.

(3) ‘Navigable waters of this State’ means streams or other waterways that inherently and by their nature have the capacity for valuable floatage, irrespective of the fact of actual use or the extent of such use and are accessible at the ordinary stage of the water.

Section 49‑11‑320. An impoundment that originally impounded a particular parcel of tideland or marshland but no longer completely impounds that parcel may be restored or repaired if:

(1) The restoration or repair:

(a) is undertaken by the owner who has fee simple title to a tideland or marshland;

(b) does not deny public access to navigable waters of this State;

(c) is completed pursuant to a management plan that protects or enhances the water quality and ecosystem of the impounded tideland or marshland and surrounding areas;

(d) complies with applicable federal laws, regulations, or permitting requirements; and

(2) at least seventy‑five percent of the impoundment is substantially intact and capable of impounding water.

Section 49‑11‑330. To establish fee simple ownership of tidelands or marshlands, a purported owner must show an unbroken chain of marketable title from:

(1) a valid grant from the crown or the State and that the grant’s language was sufficient to convey title to the land below the high water mark; or

(2) a predecessor in title who had marketable title to the parcel at a time when the tidelands or marshlands were completely impounded.

Section 49‑11‑340. (A) Any state requirement for mitigation that arises as a result of repair or restoration is satisfied when the repair or restoration and management plan required pursuant to Section 49‑11‑320(C) results in an enhancement to the impounded wetlands.

(B) For the purposes of this section, an enhancement includes, but is not limited to, actions taken in the impounded area that result in an:

(1) increase in the biodiversity;

(2) increase in the production of flora or fauna;

(3) enhancement to the habitat for endangered or threatened species; or

(4) introduction or establishment of a wetland ecosystem that is unique or diverse relative to the surrounding unimpounded wetlands.

Section 49‑11‑350. Nothing in this article abrogates or impairs a property owner’s right to repair or reclaim a breached dam or dike pursuant to any other law or regulation.

Section 49‑11‑360. The department must promulgate regulations necessary to permit and implement the provisions of this section.”

SECTION 2. Department of Health and Environment Control Coastal Division Regulation 30‑12(K) is repealed.

SECTION 3. This act takes effect upon approval by the Governor.

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