

NATURAL RESOURCES CODE
TITLE 12. WETLANDS
CHAPTER 221. WETLAND MITIGATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. DEFINITIONS. In this chapter:

(1) "Buffer zone" means a strip of land adjoining a wetland mitigation bank to protect the wetland habitat and wildlife within the bank from the impact of an activity outside the zone. The term includes a strip of land composed primarily of water or a strip of land that includes a fence, wall, or screen of vegetation.

(2) "Eligible political subdivision" means:

(A) a county with a population of 3.3 million or more or a county adjacent to such a county; or

(B) a conservation and reclamation district:

(i) that is established under Section 59, Article XVI, Texas Constitution;

(ii) the boundaries of which are within a county that has a population of 3.3 million or more; and

(iii) that is authorized under other law to participate in a program under this chapter.

(3) "Federal requirement" means a requirement of the federal government contained in a statute, regulation, or guideline for an eligible mitigation bank program or a wetland regulation program.

(4) "Mitigation bank" means a parcel of land that has undergone or is proposed to undergo a physical change necessary to create or optimize the acreage or quality of wetland habitat on the parcel expressly to provide a mitigation credit to offset an adverse impact to wetland caused by an approved project located elsewhere.

(5) "Mitigation credit" means a unit of measured area that supports wetland habitat or wetland habitat value that did not exist at the mitigation bank site before the mitigation bank was developed.

(6) "Wetland" means land that:

(A) has a predominance of hydric soil;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of that vegetation.

(7) "Wetland regulation program" means a program of the state, a state agency, or an eligible political subdivision under which the state, agency, or subdivision administers its own individual or general permit program regulating the use of wetland. Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 114, eff. Sept. 1, 2001.

Sec. 221.002. USE OF MONEY. A state agency or an eligible political subdivision may use any money to accomplish a purpose of this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.003. COST OF MOVING OR CHANGING FACILITY. If a state agency, eligible political subdivision, or nonprofit corporation, in exercising a power under this chapter, makes it necessary to move, raise, lower, reroute, or change the grade of or alter the construction of a pipeline, highway, railroad, electric transmission or distribution line, or telephone or telegraph property or facility, the agency, subdivision, or corporation must bear the sole expense of the action.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER B. WETLAND MITIGATION BANKING AND CONTRACTS

Sec. 221.021. ACTIONS TO ESTABLISH OR MAINTAIN MITIGATION BANK. (a) With the approval of the General Land Office, a state agency or eligible political subdivision may take any necessary and

reasonable action to comply with a federal requirement to establish or maintain a mitigation bank. An action under this section may include:

(1) authorizing or making a continuing study of wetland areas and wetland mitigation programs;

(2) consistent with federal requirements, engaging in a wetland mitigation program and adopting and enforcing permanent land use and control measures on land the agency or subdivision owns in a mitigation bank;

(3) consulting with, providing information to, and entering into an agreement with a federal agency to identify and publish information about wetland areas;

(4) cooperating with a federal or state agency in connection with a study or investigation regarding the adequacy of a local measure with respect to a federal or state wetland program;

(5) improving the long-range management or use of wetland or a wetland mitigation bank;

(6) purchasing, leasing, condemning, or otherwise acquiring property inside or outside the eligible political subdivision that is necessary for a wetland mitigation bank or buffer zone and, as necessary, improving the land or other property as a wetland mitigation bank, including any adjacent buffer zone, to comply with a federal requirement;

(7) requesting or receiving aid from a federal or state agency or an eligible political subdivision;

(8) purchasing, selling, or contracting to purchase or sell a mitigation credit in a mitigation bank;

(9) incurring a liability or borrowing money on terms approved by the governing body of the subdivision;

(10) acquiring, holding, using, selling, leasing, or disposing of real or personal property, including a license, patent, right, or interest, that is necessary, convenient, or useful for the full exercise of a power under this chapter;

(11) contracting with any operator to use or operate any part of a mitigation bank; and

(12) procuring any type of insurance and paying an insurance premium in an amount the governing body of the eligible

political subdivision considers necessary or advisable.

(b) The power of eminent domain granted by this section does not enable a state agency or eligible political subdivision to acquire by condemnation an interest in land that is owned or used by a public utility. In this subsection, "public utility" has the meaning assigned by the Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.022. OPTIONAL MITIGATION BANK PROVISIONS. A mitigation bank project may include a provision for:

- (1) a park;
- (2) recreation;
- (3) a scenic area; or
- (4) flood control.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.023. MITIGATION BANK CONTRACTS; CONTRACT PAYMENTS. (a) A state agency or eligible political subdivision may contract with another state agency or eligible political subdivision to pay jointly any part of the cost to acquire, design, construct, improve, or maintain a wetland mitigation bank or a buffer zone.

(b) Payment of the cost of a project or a payment required to be made under a contract may be made out of bond proceeds, taxes, or any other money available for the payment.

(c) If a contract provides for payment over a term of years, an eligible political subdivision may impose a tax in an amount necessary to:

- (1) create a sinking fund for the contract payments;
- and
- (2) make the payments when due.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER C. PROVISIONS FOR POLITICAL SUBDIVISIONS

Sec. 221.041. APPLICATION TO FEDERAL AGENCY. On behalf of an eligible political subdivision that proposes to administer its own individual or general wetland regulation program, the governor may apply to the appropriate federal agency for program approval. Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.042. COMPLIANCE WITH FEDERAL PROGRAM. An eligible political subdivision authorized to implement a wetland mitigation program may comply with a program established by the federal government with respect to the implementation of a wetland regulation program or for the acquisition, ownership, or operation of a wetland mitigation bank. Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.043. COUNTY APPROVAL OF POLITICAL SUBDIVISION PROGRAM. An eligible political subdivision may not institute a wetland regulation program unless the commissioners court of each county in which the eligible political subdivision lies approves the program after conducting a public hearing. Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.044. RULES FOR WETLAND DELINEATION. (a) An eligible political subdivision authorized to implement a wetland mitigation program may adopt and compile reasonably necessary rules.

(b) An eligible political subdivision by rule may set standards for delineating land as wetland for purposes of:

- (1) this chapter; or
- (2) a federal requirement.

(c) A rule under Subsection (b) may be adopted after consultation with federal agencies, including the United States Fish and Wildlife Service, the United States Environmental

Protection Agency, the United States Army Corps of Engineers, and the Soil Conservation Service of the United States Department of Agriculture.

(d) A standard for delineating wetland must comply with federal requirements for delineating wetland.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.045. PERMIT. (a) An eligible political subdivision authorized to implement a wetland mitigation program may issue a permit that incorporates, and assures compliance with, an applicable:

- (1) requirement of this chapter; or
- (2) federal requirement.

(b) A permit may be terminated or modified for cause, including:

- (1) violation of a permit condition;
- (2) obtaining a permit by misrepresentation or not fully disclosing all relevant facts; or
- (3) a change in a condition that requires temporarily or permanently reducing or eliminating the permitted activity.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.046. MITIGATION BANK FINANCING. (a) A mitigation project participant may issue a bond, note, or other obligation to acquire land for, to pay any part of the cost of, or to acquire, construct, improve, operate, or maintain a wetland mitigation bank.

(b) The subdivision may issue a bond, note, or obligation:

- (1) in one or more series; and
- (2) payable from and secured by:
 - (A) a tax;
 - (B) an assessment;
 - (C) an impact fee;
 - (D) revenue;
 - (E) a grant or gift;
 - (F) a lease or contract; or

(G) a combination of resources listed in Paragraphs (A)-(F).

(c) In this section, "mitigation project participant" means an eligible political subdivision that seeks to:

(1) implement a project the unavoidable result of which would adversely affect wetland; and

(2) compensate for the loss of wetland acreage or wetland habitat value through participation in a mitigation bank.
Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.047. BOND REQUIREMENTS. (a) A bond issued under Section 221.046 is a negotiable instrument within the meaning and for purposes of the Business & Commerce Code.

(b) The bond may be:

(1) issued registrable as to principal or as to both principal and interest; or

(2) made redeemable before maturity.

(c) The bond may be:

(1) issued in the form, denominations, and manner and under the terms provided by the order or resolution authorizing the issuance of the bond; and

(2) sold in the manner, at the price, and under the terms provided by the order or resolution authorizing the issuance of the bond.

(d) The bond shall:

(1) be executed in accordance with the order or resolution authorizing the issuance of the bond; and

(2) bear interest at the rate provided by the order or resolution authorizing the issuance of the bond.

(e) The bond may bear interest and may be issued in accordance with:

(1) Chapters 1201, 1204, and 1371, Government Code;
or

(2) Subchapters A-C, Chapter 1207, Government Code.

(f) The bond may be additionally secured by a:

(1) mortgage or deed of trust on real property that is

related to the mitigation bank; or

(2) chattel mortgage, lien, or security interest on personal property appurtenant to that real property.

(g) The eligible political subdivision may authorize the execution of a trust indenture, mortgage, deed of trust, or other encumbrance to evidence the indebtedness.

(h) The eligible political subdivision may pledge to the payment of the bond any part of a grant, a donation, revenue, or income received or to be received from the United States or any other source.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.361, eff. Sept. 1, 2001.

Sec. 221.048. BOND PROCEEDS. If the use authorized by the order or resolution authorizing the issuance of a bond under Section [221.046](#), the bond proceeds may be used to:

(1) pay interest on the bond during or after the acquisition or construction of an improvement project financed by the bond issue;

(2) pay administrative and operation expenses;

(3) create a reserve fund for payment of the principal of and interest on the bonds; or

(4) create any other fund.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.