

114TH CONGRESS
2D SESSION

S. 2727

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting State or Indian land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2016

Mr. SULLIVAN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting State or Indian land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PRESERVATION LEASING OF STATE OR INDIAN**
4 **LAND.**

5 (a) IN GENERAL.—Section 404 of the Federal Water
6 Pollution Control Act (33 U.S.C. 1344) is amended by
7 adding at the end the following:

1 “(u) PRESERVATION LEASING OF STATE OR INDIAN
2 LAND.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) INDIAN LAND.—The term ‘Indian
5 land’ means land owned by, operated by, or oth-
6 erwise belonging to an Indian tribe.

7 “(B) INDIAN TRIBE.—The term ‘Indian
8 tribe’ has the meaning given the term in section
9 4 of the Indian Self-Determination and Edu-
10 cation Assistance Act (25 U.S.C. 450b).

11 “(C) PERMITTED ACTIVITY.—The term
12 ‘permitted activity’ means a discharge of
13 dredged or fill material for which a permit is
14 issued under this section.

15 “(D) PERMITTEE.—The term ‘permittee’
16 means a person that is issued a permit under
17 this section.

18 “(E) PRESERVATION LEASE.—The term
19 ‘preservation lease’ means an agreement under
20 which a permittee leases wetlands or other
21 aquatic sites on State or Indian land for the
22 sole purpose of preserving the wetlands or other
23 aquatic sites in an undisturbed state during the
24 term of the lease to mitigate for a permitted ac-
25 tivity.

1 “(F) STATE LAND.—The term ‘State land’
2 means land owned by, operated by, or otherwise
3 belonging to a State.

4 “(2) PRESERVATION LEASING OF STATE OR IN-
5 DIAN LAND.—The Secretary shall allow a permittee
6 to satisfy compensatory mitigation requirements for
7 a permitted activity by entering into a preservation
8 lease with—

9 “(A) a State, if the permitted activity af-
10 fects wetlands that are located in the same wa-
11 tershed as the State land to be leased; or

12 “(B) an Indian tribe, if the permitted ac-
13 tivity affects wetlands that are located in the
14 same watershed as the Indian land to be leased.

15 “(3) TERM.—In order to satisfy compensatory
16 mitigation requirements, the term of a preservation
17 lease—

18 “(A) shall be not less than the life of the
19 permitted activity; and

20 “(B) shall be adjusted to account for the
21 cessation, in whole or in part, of the impacts
22 caused by the permitted activity.

23 “(4) SITUATIONS IN WHICH A PERMITTEE
24 CEASES TO MAINTAIN PERMITTED ACTIVITY.—

1 “(A) PERMIT MODIFICATIONS.—If a per-
2 mittee enters into a preservation lease with a
3 State or Indian tribe under this subsection and
4 subsequently ceases to maintain the permitted
5 activity or seeks to abandon the permitted ac-
6 tivity without a good faith transfer the per-
7 mittee shall obtain a permit modification from
8 the Secretary, which may require restoration
9 and rehabilitation of the area.

10 “(B) CONSULTATION WITH A STATE OR IN-
11 DIAN TRIBE.—Before making a determination
12 under subparagraph (A) as to whether, and to
13 what degree, restoration and rehabilitation are
14 required, the Secretary shall consult, and fully
15 consider, the position of the State or Indian
16 tribe that is a party to any preservation lease
17 relating to the permitted activity.

18 “(C) RESTORATION AND REHABILITATION
19 PLANS.—

20 “(i) IN GENERAL.—If the Secretary
21 determines under subparagraph (A) that
22 restoration and rehabilitation are required,
23 the Secretary may require the permittee to
24 submit to the Secretary and the State or
25 Indian tribe, as appropriate, a plan for

1 conducting the restoration and rehabilita-
2 tion.

3 “(ii) CONTENTS.—A restoration and
4 rehabilitation plan submitted under clause
5 (i) shall include, at a minimum, goals and
6 objectives, performance standards, and
7 plans for site treatment, reporting, reme-
8 dial work, and monitoring to ensure that
9 performance standards are met.

10 “(D) REVERSION OF LAND.—After activi-
11 ties conducted under a restoration and rehabili-
12 tation plan submitted under subparagraph
13 (C)(i) have been completed and the hydrological
14 functions and fish and wildlife habitat of the
15 area impacted by the permitted activity have
16 been restored pursuant to the restoration and
17 rehabilitation plan, the land subject to the lease
18 shall revert back to the State or Indian tribe,
19 as appropriate, without restriction.”.

20 (b) APPLICABILITY.—The amendment made by sub-
21 section (a) shall apply to permits issued under section 404
22 of the Federal Water Pollution Control Act (33 U.S.C.
23 1344) after the date of enactment of this Act.

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