

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 425
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/8/11
House Committee Substitute Favorable 6/15/11

Short Title: Ecosystem Enhancement Program Changes.

(Public)

Sponsors:

Referred to:

March 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
3 RESOURCES TO REORGANIZE THE ECOSYSTEM ENHANCEMENT PROGRAM
4 TO IMPROVE OPERATIONAL EFFICIENCY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1.1. G.S. 143-214.11 reads as rewritten:

7 "§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.

8 (a) Definitions. – The following definitions apply to this section:

9 (1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The
10 restoration, creation, enhancement, or preservation of jurisdictional waters
11 required as a condition of a permit issued by the Department or by the
12 United States Army Corps of Engineers.

13 (1a) Compensatory mitigation bank. – A private compensatory mitigation bank or
14 an existing local compensatory mitigation bank.

15 (1b) Existing local compensatory mitigation bank. – A mitigation bank operated
16 by a unit of local government that is a party to a mitigation banking
17 instrument executed on or before July 1, 2011.

18 (2) ~~"Government entity" means the~~ Government entity. – The State and its
19 agencies and subdivisions, or the federal government, and units of local
20 ~~government.~~ government. "Government entity" does not include a unit of
21 local government unless the unit of local government was a party to a
22 mitigation banking instrument executed on or before July 1, 2011.

23 (3) ~~"Hydrologic area" means an~~ Hydrologic area. – An eight-digit Cataloging
24 Unit designated by the United States Geological Survey.

25 (4) ~~"Jurisdictional waters" means wetlands,~~ Jurisdictional waters. – Wetlands,
26 streams, or other waters of the State or of the United States.

27 (4a) Mitigation banking instrument. – The legal document for the establishment,
28 operation, and use of a mitigation bank.

29 (4b) Private compensatory mitigation bank. – A site created by a private
30 compensatory mitigation provider and approved for mitigation credit by
31 State and federal regulatory authorities through execution of a mitigation
32 banking instrument. No site owned by a government entity or unit of local
33 government shall be considered a "private compensatory mitigation bank."



1 (5) ~~"Unit of local government" means a~~ Unit of local government. – A "local
2 government," "public authority," or "special district" as defined in
3 G.S. 159-7.

4 ...

5 (h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An
6 existing local compensatory mitigation bank shall comply with the requirements of Article 12
7 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it
8 transfers any mitigation credits to another person."

9 **SECTION 1.2.** The North Carolina Ecosystem Enhancement Program (NCEEP)
10 shall exercise its authority to provide for compensatory mitigation under the authority granted
11 by G.S. 143-214.11 by using the following mitigation procurement programs, in order of
12 preference:

13 (1) Full Delivery/Bank Credit Purchase Program. – The NCEEP shall first seek
14 to meet compensatory mitigation procurement requirements through its Full
15 Delivery program or by the purchase of credits from a private compensatory
16 mitigation bank, as defined by G.S. 143-214.11.

17 (2) Existing Local Compensatory Mitigation Bank Credit Purchase Program. –
18 Any compensatory mitigation procurement requirements not fulfillable
19 under subdivision (1) of this section shall be procured from an existing local
20 compensatory mitigation bank, as defined in G.S. 143-214.11, provided that
21 the credit purchase is to mitigate the impacts of a project located within the
22 mitigation bank service area and hydrologic area of the existing local
23 compensatory mitigation bank.

24 (3) Design/Build Program. – Any compensatory mitigation procurement
25 requirements not fulfillable under subdivision (1) or (2) of this section shall
26 be procured under a program in which NCEEP contracts with one private
27 entity to lead or implement the design, construction, and post-construction
28 monitoring of compensatory mitigation at sites obtained by the NCEEP.
29 Such a program shall be considered the procurement of compensatory
30 mitigation credits.

31 (4) Design-Bid-Build Program. – Any compensatory mitigation procurement
32 requirements not fulfillable under either subdivision (1) or (2) of this section
33 may be procured under NCEEP's Design-Bid-Build program. NCEEP may
34 utilize this program only when procurement under subdivision (1) or (2) of
35 this section is not feasible. Any mitigation site design work currently being
36 performed through contracts awarded under the Design-Bid-Build program
37 shall be allowed to continue as scheduled. Contracts for construction of
38 projects with a design already approved by NCEEP shall be awarded by
39 NCEEP by issuing a Request for Proposal (RFP). Only contractors who have
40 prequalified under procedures established by NCEEP shall be eligible to bid
41 on NCEEP construction projects. Construction contracts issued under this
42 subdivision shall be exempt from the requirements of Article 8B of Chapter
43 143 of the General Statutes.

44 **SECTION 1.3.** The regulatory requirements for the establishment, operation, and
45 monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of
46 the execution of the Mitigation Banking Instrument or the award of a full delivery contract.

47 **SECTION 2.** This act is effective when it becomes law and applies to all projects
48 and contracts awarded on or after that date.