

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-343
SENATE BILL 425

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REORGANIZE THE ECOSYSTEM ENHANCEMENT PROGRAM TO IMPROVE OPERATIONAL EFFICIENCY.

The General Assembly of North Carolina enacts:

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

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

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

- (1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.
- (1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.
- (1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.
- (2) ~~"Government entity" means the~~ Government entity. – The State and its agencies and subdivisions, ~~or the federal government, and units of local government.~~ government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.
- (3) ~~"Hydrologic area" means an~~ Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.
- (4) ~~"Jurisdictional waters" means wetlands,~~ Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.
- (4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.
- (4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank."
- (5) ~~"Unit of local government" means a~~ Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

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

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



- (1) Full Delivery/Bank Credit Purchase Program. – The NCEEP shall first seek to meet compensatory mitigation procurement requirements through its Full Delivery program or by the purchase of credits from a private compensatory mitigation bank, as defined by G.S. 143-214.11.
- (2) Existing Local Compensatory Mitigation Bank Credit Purchase Program. – Any compensatory mitigation procurement requirements not fulfillable under subdivision (1) of this section shall be procured from an existing local compensatory mitigation bank, as defined in G.S. 143-214.11, provided that the credit purchase is to mitigate the impacts of a project located within the mitigation bank service area and hydrologic area of the existing local compensatory mitigation bank.
- (3) Design/Build Program. – Any compensatory mitigation procurement requirements not fulfillable under subdivision (1) or (2) of this section shall be procured under a program in which NCEEP contracts with one private entity to lead or implement the design, construction, and post-construction monitoring of compensatory mitigation at sites obtained by the NCEEP. Such a program shall be considered the procurement of compensatory mitigation credits.
- (4) Design-Bid-Build Program. – Any compensatory mitigation procurement requirements not fulfillable under either subdivision (1) or (2) of this section may be procured under NCEEP's Design-Bid-Build program. NCEEP may utilize this program only when procurement under subdivision (1) or (2) of this section is not feasible. Any mitigation site design work currently being performed through contracts awarded under the Design-Bid-Build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by NCEEP shall be awarded by NCEEP by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by NCEEP shall be eligible to bid on NCEEP construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

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

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

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:53 a.m. this 27th day of June, 2011