

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1885\*

Short Title: Promote Private Compensatory Mitigation. (Public)

Sponsors: Senator Clodfelter.

Referred to: Agriculture/Environment/Natural Resources.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPENSATORY MITIGATION BY PRIVATE  
MITIGATION BANKS, AS RECOMMENDED BY THE ENVIRONMENTAL  
REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-214.11 reads as rewritten:

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

(a) Definition. – For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. ~~All~~ Except as provided in Section (d1)(1) of this section, compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to Applicant. ~~An applicant~~ the North Carolina Department of Transportation. – The North Carolina Department of Transportation may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United States Army Corps of Engineers:

- 1 (1) Payment of a fee established by the Department into the Ecosystem  
2 Restoration Fund established in G.S. 143-214.12.
- 3 (2) Donation of land to the Ecosystem Enhancement Program or to other  
4 public or private nonprofit conservation organizations as approved by  
5 the Department.
- 6 (3) Participation in a private wetlands mitigation bank.
- 7 (4) Preparing and implementing a wetlands restoration plan.

8 (d1) Compensatory Mitigation Options Available to Applicants Other than the  
9 North Carolina Department of Transportation. – An applicant other than the North  
10 Carolina Department of Transportation may satisfy compensatory wetlands mitigation  
11 requirements by the following actions, if those actions meet or exceed the requirements  
12 of the United States Army Corps of Engineers:

- 13 (1) Participation in a private wetlands mitigation bank. – This option is  
14 only available in a hydrologic area where there is at least one private  
15 wetlands mitigation bank that has been (i) approved by the United  
16 States Army Corps of Engineers and that has available mitigation  
17 credit or (ii) approved by the North Carolina Division of Water Quality  
18 for resources regulated under the Neuse and Tar-Pam rules and that  
19 has available mitigation credit. For purposes of this subdivision,  
20 "hydrologic area" means the eight-digit Hydrologic Unit Code where  
21 the mitigation bank is located and the adjacent eight-digit Hydrologic  
22 Unit Codes that are located within the same river basin.
- 23 (2) Payment of a fee established by the Department into the Ecosystem  
24 Restoration Fund established in G.S. 143-214.12. – This option is only  
25 available to an applicant if the option under subdivision (1) of this  
26 subsection is not available as an option.
- 27 (3) Donation of land to the Ecosystem Enhancement Program or to other  
28 public or private nonprofit conservation organizations as approved by  
29 the Department.
- 30 (4) Preparing and implementing a wetlands restoration plan.

31 (e) Payment Schedule. – A standardized schedule of per-acre payment amounts  
32 shall be established by the Environmental Management Commission. The monetary  
33 payment shall be based on the ecological functions and values of wetlands permitted to  
34 be lost and on the cost of restoring or creating wetlands capable of performing the same  
35 or similar functions, including directly related costs of wetlands restoration planning,  
36 long-term monitoring, and maintenance of restored areas.

37 (f) Mitigation Banks. – State agencies and private mitigation banking companies  
38 shall demonstrate that adequate, dedicated financial surety exists to provide for the  
39 perpetual land management and hydrological maintenance of lands acquired by the  
40 State as mitigation banks, or proposed to the State as privately operated and permitted  
41 mitigation banks.

42 (g) Payment for Taxes. – A State agency acquiring land to restore, enhance,  
43 preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the  
44 county in accordance with G.S. 146-22.3."

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**SECTION 2.** This act becomes effective October 1, 2008.