

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 425

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/8/11

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 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."

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

37 ...



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

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

- 9        (1) Full Delivery/Bank Credit Purchase Program. – The NCEEP shall first seek  
10 to meet compensatory mitigation procurement requirements through its Full  
11 Delivery program or by the purchase of credits from a private compensatory  
12 mitigation bank, as defined by G.S. 143-214.11.
- 13        (2) Design/Build Program. – Any compensatory mitigation procurement  
14 requirements not fulfillable under subdivision (1) of this section shall be  
15 procured under a program in which NCEEP contracts with one private entity  
16 to lead or implement the design, construction, and post-construction  
17 monitoring of compensatory mitigation at sites obtained by the NCEEP.
- 18        (3) Design-Bid-Build Program. – Any compensatory mitigation procurement  
19 requirements not fulfillable under either subdivision (1) or (2) of this section  
20 may be procured under NCEEP's Design-Bid-Build program. NCEEP may  
21 utilize this program only when procurement under subdivision (1) or (2) of  
22 this section is not feasible. Any mitigation site design work currently being  
23 performed through contracts awarded under the Design-Bid-Build program  
24 shall be allowed to continue as scheduled. Contracts for construction of  
25 projects with a design already approved by NCEEP shall be awarded by  
26 NCEEP by issuing a Request for Proposal (RFP). Only contractors who have  
27 prequalified under procedures established by NCEEP shall be eligible to bid  
28 on NCEEP construction projects. Construction contracts issued under this  
29 subdivision shall be exempt from the requirements of Article 8B of Chapter  
30 143 of the General Statutes.

31        **SECTION 1.3.** The regulatory requirements for the establishment, operation, and  
32 monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of  
33 the execution of the Mitigation Banking Instrument or the award of a Full Delivery Contract.

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