

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 1299

Short Title: Wetlands Restoration Program/Funds.

(Public)

---

Sponsors: Senators Plexico, Ballantine, Hoyle, Jordan; Hobbs, Blackmon, Winner, Conder, Edwards, Rand, Sherron, Hartsell, Cooper, Davis, and Martin of Pitt.

---

Referred to: Appropriations.

---

May 23, 1996

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE WETLANDS RESTORATION PROGRAM AND  
FUND AND TO APPROPRIATE FUNDS TO IMPLEMENT THE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

**"§ 143-214.8. Wetlands Restoration Program: established.**

The Wetlands Restoration Program is established within the Department of Environment, Health, and Natural Resources. The Wetlands Restoration Program shall be developed by the Department as a nonregulatory statewide wetlands restoration program for the acquisition, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The Wetlands Restoration Program shall consist of the following components:

- (1) Restoration of wetlands.
- (2) Development of restoration plans.
- (3) Landowner contact and land acquisition.
- (4) Evaluation of site plans and engineering studies.
- (5) Oversight of construction and monitoring of restoration sites.

1           (6) Land ownership and management.

2           (7) Mapping, site identification, and assessment of wetlands functions.

3 **"§ 143-214.9. Wetlands Restoration Program: purposes.**

4       The purposes of the program are as follows:

5           (1) To restore wetlands functions and values across the State to replace  
6 critical functions lost through historic wetlands conversion and through  
7 current and future permitted impacts. It is not the policy of the State to  
8 destroy upland habitats unless it would further the purposes of the  
9 Wetlands Restoration Program.

10          (2) To provide a consistent and simplified approach to address mitigation  
11 requirements associated with permits or authorizations issued by the  
12 United States Army Corps of Engineers under 33 U.S.C. § 1344.

13          (3) To streamline the wetlands permitting process, minimize delays in  
14 permit decisions, and decrease the burden of permit applicants of  
15 planning and performing compensatory mitigation for wetlands losses.

16          (4) To increase the ecological effectiveness of compensatory mitigation.

17          (5) To achieve a net increase in wetland acres, functions, and values in each  
18 major river basin.

19          (6) To foster a comprehensive approach to environmental protection.

20 **"§ 143-214.10. Wetlands Restoration Program: development and implementation**  
21 **of basinwide restoration plans.**

22       Develop Basinwide Restoration Plans. – The Department shall develop basinwide  
23 plans for wetlands and riparian area restoration with the goal of protecting and enhancing  
24 water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities  
25 within each of the 17 major river basins in the State. Beginning July 1, 1997, the  
26 Department shall develop and begin implementing a basinwide restoration plan for each  
27 of the 17 river basins in the State in accordance with the basinwide schedule currently  
28 established by the Division of Environmental Management.

29 **"§ 143-214.11. Wetlands Restoration Program: compensatory mitigation.**

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

34       (b) Department of Environment, Health, and Natural Resources to Coordinate  
35 Compensatory Mitigation. – All compensatory mitigation required by permits or  
36 authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. §  
37 1344 shall be coordinated by the Department consistent with the basinwide plans for  
38 wetlands restoration and rules developed by the Environmental Management  
39 Commission. All compensatory wetlands mitigation, whether performed by the  
40 Department or by permit applicants, shall be consistent with the basinwide restoration  
41 plans.

42       (c) Mitigation Emphasis on Replacing Ecological Function Within Same River  
43 Basin. – The emphasis of mitigation is on replacing functions within the same river basin

1 unless it is demonstrated that restoration of other areas would be more beneficial to the  
2 overall purposes of the Wetlands Restoration Program.

3 (d) **Compensatory Mitigation Options Available to Applicant.** – An applicant may  
4 satisfy compensatory wetlands mitigation requirements by the following actions, if those  
5 actions are consistent with the basinwide restoration plans and also meet or exceed the  
6 requirements of the United State Army Corps of Engineers:

7 (1) **Payment of a fee established by the Department into the Wetlands**  
8 **Restoration Fund established in G.S. 143-214.6.**

9 (2) **Donation of land to the Wetlands Restoration Program or to other public**  
10 **or private nonprofit conservation organizations as approved by the**  
11 **Department.**

12 (3) **Participation in a private wetlands mitigation bank.**

13 (4) **Preparing and implementing a wetlands restoration plan.**

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

20 **§ 143-214.12. Wetlands Restoration Program: Wetlands Restoration Fund.**

21 (a) **Wetlands Restoration Fund.** – The Wetlands Restoration Fund is established  
22 as a nonreverting fund within the Department. The Fund shall be treated as a special trust  
23 fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2  
24 and G.S. 147-69.3. The Wetlands Restoration Fund shall provide a repository for  
25 monetary contributions and donations or dedications of interests in real property to  
26 promote projects for the restoration, enhancement, preservation, or creation of wetlands  
27 and riparian areas and for payments made in lieu of compensatory mitigation as described  
28 in subsection (b) of this section. No funds shall be expended from this Fund for any  
29 purpose other than those directly contributing to the acquisition, enhancement,  
30 restoration, or creation of wetlands and riparian areas in accordance with the basinwide  
31 plan as described in subsection (a) of this section.

32 (b) **Authorized Methods of Payment.** – A person subject to a permit or  
33 authorization issued by the United States Army Corps of Engineers under 33 U.S.C. §  
34 1344, may contribute to the Wetlands Restoration Program, to comply with conditions to,  
35 or terms of, the permit or authorization, if participation in the Wetlands Restoration  
36 Program will meet the mitigation requirements of the United States Army Corps of  
37 Engineers. The Department shall, at the discretion of the applicant, accept payment into  
38 the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements of  
39 any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C.  
40 § 1344 if the contributions will meet the mitigation requirements of the United States  
41 Army Corps of Engineers. Payment may be made in the form of monetary contributions  
42 according to a fee schedule established by the Environmental Management Commission

1 or in the form of donations of real property provided that the property is approved by the  
2 Department as a suitable site consistent with the basinwide wetlands restoration plan.

3 **"§ 143-214.13. Wetlands Restoration Program: reporting requirement.**

4 The Department of Environment, Health, and Natural Resources shall report annually  
5 to the Environmental Review Commission regarding its progress in implementing the  
6 Wetlands Restoration Program and its use of the funds in the Wetlands Restoration Fund.  
7 The report shall document statewide wetlands losses and gains and compensatory  
8 mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall  
9 also provide an accounting of receipts and disbursements of the Wetlands Restoration  
10 Fund and analysis of the per acre cost of wetlands restoration. The Department shall also  
11 send a copy of its report to the Fiscal Research Division of the General Assembly."

12 Sec. 2. The Department of Environment, Health, and Natural Resources is  
13 directed to negotiate and enter into a Memorandum of Agreement with the United States  
14 Army Corps of Engineers regarding the restoration, creation, enhancement, and  
15 preservation of wetlands and the compensatory mitigation required of permit applicants  
16 under 33 U.S.C. § 1344. The purpose of the Memorandum of Agreement is to ensure that  
17 the State's implementation of the Wetlands Restoration Program with regard to mitigation  
18 of wetlands satisfies the United States Army Corps of Engineers and that the standards  
19 developed by the State to which the State's and other mitigation banks must adhere is  
20 acceptable to the Corps for purposes of Section 404 mitigation requirements.

21 Sec. 3. There is appropriated from the General Fund to the Wetlands  
22 Restoration Fund in the Department of Environment, Health, and Natural Resources, the  
23 sum of two million dollars (\$2,000,000) in recurring funds for the 1996-97 fiscal year.

24 Sec. 4. There is appropriated from the General Fund to the Department of  
25 Environment, Health, and Natural Resources, the sum of five hundred thousand dollars  
26 (\$500,000) in recurring funds for the 1996-97 fiscal year to support 10 staff positions and  
27 for administrative and other expenses to implement the Wetlands Restoration Program.

28 Sec. 5. This act becomes effective July 1, 1996.