

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**SESSION LAW 2008-152  
SENATE BILL 1885**

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

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

- (1) Participation in a private wetlands mitigation bank. – This option is only available in a hydrologic area where there is at least one private wetlands mitigation bank that has been (i) approved by the United States Army Corps of Engineers and that has available mitigation

credit or (ii) approved by the North Carolina Division of Water Quality for resources regulated under the Neuse and Tar-Pam rules and that has available mitigation credit. For purposes of this subdivision, "hydrologic area" means the eight-digit Hydrologic Unit Code where the mitigation bank is located.

(2) Payment of a fee established by the Department into the Ecosystem Restoration Fund established in G.S. 143-214.12. – This option is only available to an applicant if the option under subdivision (1) of this subsection is not available as an option.

(3) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(4) Preparing and implementing a wetlands restoration plan.

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

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

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

**SECTION 2.** This act becomes effective October 1, 2008, and applies to applications for a mitigation permit submitted on or after that date.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of July, 2008.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 8:40 p.m. this 2<sup>nd</sup> day of August, 2008