

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

2

HOUSE BILL 938  
Committee Substitute Favorable 5/16/13

Short Title: Improve Wetlands Mitigation Programs.

(Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

1 AN ACT TO (1) CLARIFY THE FUNCTIONAL VALUE OF ISOLATED WETLANDS  
2 AND INTERMITTENT STREAMS, (2) DIRECT THE DEPARTMENT OF  
3 ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF  
4 TRANSPORTATION TO JOINTLY PETITION THE WILMINGTON DISTRICT OF  
5 THE UNITED STATES ARMY CORPS OF ENGINEERS TO ALLOW FOR GREATER  
6 FLEXIBILITY AND OPPORTUNITY TO PERFORM WETLANDS MITIGATION  
7 BEYOND THE IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR,  
8 AND (3) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL  
9 RESOURCES AND THE ENVIRONMENTAL MANAGEMENT COMMISSION TO  
10 REVIEW FEES CHARGED BY THE ECOSYSTEM ENHANCEMENT PROGRAM.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.(a)** G.S. 143-214.11 reads as rewritten:

13 **"§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

14 ...

15  
16 (c) Compensatory Mitigation Emphasis on Replacing Ecological Function and Values  
17 Within Same River Basin. – The emphasis of compensatory mitigation is on replacing  
18 functions and values within the same river basin unless it is demonstrated that restoration of  
19 other areas would be more beneficial to the overall purposes of the Ecosystem Enhancement  
20 Program.

21 (d) Compensatory Mitigation Options Available to Government Entities. – A  
22 government entity may satisfy compensatory mitigation requirements by the following actions,  
23 if those actions are consistent with the basinwide restoration plans and also meet or exceed the  
24 requirements of the Department or of the United States Army Corps of Engineers, as  
25 applicable:

- 26 (1) Payment of a fee established by the Commission into the Ecosystem  
27 Restoration Fund established in G.S. 143-214.12.
- 28 (2) Donation of land to the Ecosystem Enhancement Program or to other public  
29 or private nonprofit conservation organizations as approved by the  
30 Department.
- 31 (3) Participation in a compensatory mitigation bank that has been approved by  
32 the United States Army Corps of Engineers, provided that the Department or  
33 the United States Army Corps of Engineers, as applicable, approves the use  
34 of such bank for the required compensatory mitigation.
- 35 (4) Preparing and implementing a compensatory mitigation plan.



1 (d1) Compensatory Mitigation Options Available to Applicants Other than Government  
2 Entities. – An applicant other than a government entity may satisfy compensatory mitigation  
3 requirements by the following actions, if those actions meet or exceed the requirements of the  
4 United States Army Corps of Engineers:

5 (1) Participation in a compensatory mitigation bank that has been approved by  
6 the United States Army Corps of Engineers, provided that the Department or  
7 the United States Army Corps of Engineers, as applicable, approves the use  
8 of such bank for the required compensatory mitigation. This option is only  
9 available in a hydrologic area where there is at least one compensatory  
10 mitigation bank that has been approved by the United States Army Corps of  
11 Engineers.

12 (2) Payment of a fee established by the Commission into the Ecosystem  
13 Restoration Fund established in G.S. 143-214.12. – This option is only  
14 available to an applicant who demonstrates that the option under subdivision  
15 (1) of this subsection is not available.

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

19 (4) Preparing and implementing a compensatory mitigation plan.

20 (e) Payment Schedule. – A standardized schedule of compensatory mitigation payment  
21 amounts shall be established by the Commission. Compensatory mitigation payments shall be  
22 made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The  
23 monetary payment shall be based on the ecological functions and values of ~~wetlands and~~  
24 ~~streams~~ specific types of wetlands and streams, including coastal wetlands, riparian wetlands,  
25 non-riparian wetlands, perennial streams, and intermittent streams, permitted to be lost and on  
26 the cost of restoring or creating wetlands and streams capable of performing the same or similar  
27 functions, including directly related costs of wetland and stream restoration planning, long-term  
28 monitoring, and maintenance of restored areas. Compensatory mitigation payments for  
29 wetlands shall be calculated on a per acre basis. Waters of the State that are isolated wetlands  
30 shall have one-third the functional value of wetlands that are contiguous with waters of the  
31 United States. Compensatory mitigation payments for streams shall be calculated on a per  
32 linear foot basis. Intermittent streams shall have one-third the functional value of perennial  
33 streams.

34 ...."

35 **SECTION 1.(b)** No later than March 1, 2014, the Environmental Management  
36 Commission shall adopt rules to amend its standardized schedule of compensatory mitigation  
37 payments consistent with G.S. 143-214.11, as amended by subsection (a) of this section.

38 **SECTION 2.(a)** No later than October 1, 2013, the Department of Environment  
39 and Natural Resources and the Department of Transportation shall jointly petition the  
40 Wilmington District of the United States Army Corps of Engineers (Wilmington District) to  
41 allow for greater flexibility and opportunity to perform wetlands mitigation outside of the  
42 eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall  
43 seek this greater flexibility and opportunity for mitigation for both public and private  
44 development. The Departments shall request that the Wilmington District review the flexibility  
45 and opportunities for mitigation allowed by other Districts of the United States Army Corps of  
46 Engineers.

47 **SECTION 2.(b)** The Departments shall jointly report on their progress in  
48 petitioning the Wilmington District as required by subsection (a) of this section to the  
49 Environmental Review Commission no later than January 1, 2014.

50 **SECTION 3.(a)** The Department of Environment and Natural Resources, including  
51 the Ecosystem Enhancement Program and the Division of Water Quality, and the

1 Environmental Management Commission shall review the fee structures of the individual  
2 programs administered by the Ecosystem Enhancement Program, including the fee structures of  
3 the compensatory mitigation program, the riparian buffer protection program, and the nutrient  
4 offset program. In their review, the Department and Commission shall examine ways that the  
5 fee structures might be made more efficient and cost-effective while still maintaining adequate  
6 protection of public health, the environment, and natural resources. The Department and  
7 Commission shall specifically consider the requirements of G.S. 143-214.11(e) that:

8 (1) Compensatory mitigation payments shall be based on the ecological  
9 functions and values of wetlands and streams permitted to be lost and on the  
10 cost of restoring or creating wetlands and streams capable of performing the  
11 same or similar functions, including directly related costs of wetland and  
12 stream restoration planning, long-term monitoring, and maintenance of  
13 restored areas.

14 (2) Compensatory mitigation payments for wetlands shall be calculated on a per  
15 acre basis.

16 (3) Compensatory mitigation payments for streams shall be calculated on a per  
17 linear foot basis.

18 **SECTION 3.(b)** The Department and Commission shall report on the results of the  
19 review required by subsection (a) of this section, including any anticipated changes to the fee  
20 structures or recommendations, to the Environmental Review Commission no later than  
21 January 1, 2014.

22 **SECTION 4.** This act is effective when it becomes law.