

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1094*

Short Title: Rename WRP/Codify Ecosystem Enhancement Prgm. (Public)

Sponsors: Representatives Gibson, Harrell, Justice, and McComas (Primary Sponsors).

Referred to: Environment and Natural Resources.

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO CHANGE THE NAME OF THE WETLANDS RESTORATION PROGRAM TO THE ECOSYSTEM ENHANCEMENT PROGRAM AND TO CHANGE THE NAME OF THE WETLANDS RESTORATION FUND TO THE ECOSYSTEM RESTORATION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.8 reads as rewritten:

"§ 143-214.8. ~~Wetlands—Restoration~~Ecosystem Enhancement Program: established.

The ~~Wetlands Restoration~~Ecosystem Enhancement Program is established within the Department of Environment and Natural Resources. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall be developed by the Department as a nonregulatory statewide ~~wetlands restoration~~ecosystem enhancement program for the acquisition, maintenance, 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~~Ecosystem Enhancement Program shall consist of the following components:

- (1) Restoration and perpetual maintenance 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.
- (6) Land ownership and management.
- (7) Mapping, site identification, and assessment of wetlands functions.

- 1 (8) Oversight of private wetland mitigation banks to facilitate the
2 components of the ~~Wetlands Restoration~~Ecosystem Enhancement
3 Program."

4 **SECTION 2.** G.S. 143-214.9 reads as rewritten:

5 **"§ 143-214.9. ~~Wetlands Restoration~~Ecosystem Enhancement Program: purposes.**

6 The purposes of the program are as follows:

- 7 (1) To restore wetlands functions and values across the State to replace
8 critical functions lost through historic wetlands conversion and
9 through current and future permitted impacts. It is not the policy of the
10 State to destroy upland habitats unless it would further the purposes of
11 the ~~Wetlands Restoration~~Ecosystem Enhancement Program.
12 (2) To provide a consistent and simplified approach to address mitigation
13 requirements associated with permits or authorizations issued by the
14 United States Army Corps of Engineers under 33 U.S.C. § 1344.
15 (3) To streamline the wetlands permitting process, minimize delays in
16 permit decisions, and decrease the burden of permit applicants of
17 planning and performing compensatory mitigation for wetlands losses.
18 (4) To increase the ecological effectiveness of compensatory mitigation.
19 (5) To achieve a net increase in wetland acres, functions, and values in
20 each major river basin.
21 (6) To foster a comprehensive approach to environmental protection."

22 **SECTION 3.** G.S. 143-214.10 reads as rewritten:

23 **"§ 143-214.10. ~~Wetlands Restoration~~Ecosystem Enhancement Program:
24 development and implementation of basinwide restoration plans.**

25 Develop Basinwide Restoration Plans. – The Department shall develop basinwide
26 plans for wetlands and riparian area restoration with the goal of protecting and
27 enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational
28 opportunities within each of the 17 major river basins in the State. ~~Beginning July 1,~~
29 ~~1997, the~~ The Department shall develop and begin implementing a basinwide
30 restoration plan for each of the 17 river basins in the State in accordance with the
31 basinwide schedule currently established by the Division of Water Quality."

32 **SECTION 4.** G.S. 143-214.11 reads as rewritten:

33 **"§ 143-214.11. ~~Wetlands Restoration~~Ecosystem Enhancement Program:
34 compensatory mitigation.**

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

39 (b) Department of Environment and Natural Resources to Coordinate
40 Compensatory Mitigation. – All compensatory mitigation required by permits or
41 authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. §
42 1344 shall be coordinated by the Department consistent with the basinwide plans for
43 wetlands restoration and rules developed by the Environmental Management
44 Commission. All compensatory wetlands mitigation, whether performed by the

1 Department or by permit applicants, shall be consistent with the basinwide restoration
2 plans.

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

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

11 (1) Payment of a fee established by the Department into the ~~Wetlands~~
12 Ecosystem Restoration Fund established in G.S. 143-214.12.

13 (2) Donation of land to the ~~Wetlands Restoration~~ Ecosystem Enhancement
14 Program or to other public or private nonprofit conservation
15 organizations as approved by the Department.

16 (3) Participation in a private wetlands mitigation bank.

17 (4) Preparing and implementing a wetlands restoration plan.

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

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

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

32 **SECTION 5.** G.S. 143-214.12 reads as rewritten:

33 **"§ 143-214.12. ~~Wetlands Restoration~~ Ecosystem Enhancement Program: ~~Wetlands~~**
34 **Ecosystem Restoration Fund.**

35 (a) ~~Wetlands—Ecosystem~~ Restoration Fund. – The ~~Wetlands—Ecosystem~~
36 Restoration Fund is established as a nonreverting fund within the Department. The Fund
37 shall be treated as a special trust fund and shall be credited with interest by the State
38 Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The ~~Wetlands—Ecosystem~~
39 Restoration Fund shall provide a repository for monetary contributions and donations or
40 dedications of interests in real property to promote projects for the restoration,
41 enhancement, preservation, or creation of wetlands and riparian areas and for payments
42 made in lieu of compensatory mitigation as described in subsection (b) of this section.
43 No funds shall be expended from this Fund for any purpose other than those directly
44 contributing to the acquisition, perpetual maintenance, enhancement, restoration, or

1 creation of wetlands and riparian areas in accordance with the basinwide plan as
2 described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad
3 valorem taxes required under G.S. 146-22.3 when the Department is the State agency
4 making the acquisition.

5 (a1) The Department may distribute funds from the ~~Wetlands~~Ecosystem
6 Restoration Fund directly to a federal or State agency, a local government, or a private,
7 nonprofit conservation organization to acquire, manage, and maintain real property or
8 an interest in real property for the purposes set out in subsection (a) of this section. A
9 recipient of funds under this subsection shall grant a conservation easement in the real
10 property or interest in real property acquired with the funds to the Department in a form
11 that is acceptable to the Department. The Department may convey real property or an
12 interest in real property that has been acquired under the ~~Wetlands~~
13 ~~Restoration~~Ecosystem Enhancement Program to a federal or State agency, a local
14 government, or a private, nonprofit conservation organization to acquire, manage, and
15 maintain real property or an interest in real property for the purposes set out in
16 subsection (a) of this section. A grantee of real property or an interest in real property
17 under this subsection shall grant a conservation easement in the real property or interest
18 in real property to the Department in a form that is acceptable to the Department.

19 (b) Authorized Methods of Payment. – A person subject to a permit or
20 authorization issued by the United States Army Corps of Engineers under 33 U.S.C. §
21 1344, may contribute to the ~~Wetlands Restoration~~Ecosystem Enhancement Program, to
22 comply with conditions to, or terms of, the permit or authorization, if participation in
23 the ~~Wetlands Restoration~~Ecosystem Enhancement Program will meet the mitigation
24 requirements of the United States Army Corps of Engineers. The Department shall, at
25 the discretion of the applicant, accept payment into the ~~Wetlands~~Ecosystem Restoration
26 Fund in lieu of other compensatory mitigation requirements of any authorizations issued
27 by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the
28 contributions will meet the mitigation requirements of the United States Army Corps of
29 Engineers. Payment may be made in the form of monetary contributions according to a
30 fee schedule established by the Environmental Management Commission or in the form
31 of donations of real property provided that the property is approved by the Department
32 as a suitable site consistent with the basinwide wetlands restoration plan.

33 (c) Accounting of Payments. – The Department shall provide an itemized
34 statement that accounts for each payment into the Fund. The statement shall include the
35 expenses and activities financed by the payment."

36 **SECTION 6.** G.S. 143-214.13 reads as rewritten:

37 "**§ 143-214.13. ~~Wetlands Restoration~~Ecosystem Enhancement Program: reporting**
38 **requirement.**

39 (a) The Department of Environment and Natural Resources shall report each year
40 by November 1 to the Environmental Review Commission regarding its progress in
41 implementing the ~~Wetlands Restoration~~Ecosystem Enhancement Program and its use of
42 the funds in the ~~Wetlands~~Ecosystem Restoration Fund. The report shall document
43 statewide wetlands losses and gains and compensatory mitigation performed under
44 G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of

1 receipts and disbursements of the ~~Wetlands~~Ecosystem Restoration Fund, an analysis of
2 the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis
3 between the State's ~~Wetlands Restoration~~Ecosystem Enhancement Program and private
4 mitigation banks. The Department shall also send a copy of its report to the Fiscal
5 Research Division of the General Assembly.

6 (b) The Department shall maintain an inventory of all property that is held,
7 managed, maintained, enhanced, restored, or used to create wetlands under the
8 ~~Wetlands Restoration~~Ecosystem Enhancement Program. The inventory shall also list all
9 conservation easements held by the Department. The inventory shall be included in the
10 annual report required under subsection (a) of this section."

11 **SECTION 7.** G.S. 143-214.14(c) reads as rewritten:

12 "(c) Legislative Goals and Policies. – It is the goal of the General Assembly that,
13 to the extent practicable, the State shall adopt water quality protection plans that are
14 developed and implemented in cooperation and coordination with local governments
15 and that the State shall adopt water quality protection requirements that are proportional
16 to the relative contributions of pollution from all sources in terms of both the loading
17 and proximity of those sources. Furthermore, it is the goal of the General Assembly to
18 encourage and support State-local partnerships for improved water quality protection
19 through the provision of technical and financial assistance available through the Clean
20 Water Management Trust Fund, the ~~Wetlands~~ Ecosystem Enhancement Program, the
21 Ecosystem Restoration Fund, water quality planning and project grant programs, the
22 State's revolving loan and grant programs for water and wastewater facilities, other
23 funding sources, and future appropriations. The Commission shall implement these
24 goals in accordance with the standards, procedures, and requirements set out in this
25 section."

26 **SECTION 8.** This act is effective when it becomes law.