

March 23, 2009

S 755. PROMOTE PRIVATE MITIGATION BANKS. Filed 3/23/09. *TO PROMOTE THE USE OF PRIVATE COMPENSATORY MITIGATION BANKS FOR RIPARIAN BUFFER PROTECTION AND NUTRIENT OFFSET PAYMENTS AND TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION FOR WETLAND AND STREAM IMPACTS.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Clodfelter.

GS 143

March 24, 2009

S 755. PROMOTE PRIVATE MITIGATION BANKS. Filed 3/23/09. *TO PROMOTE THE USE OF PRIVATE COMPENSATORY MITIGATION BANKS FOR RIPARIAN BUFFER PROTECTION AND NUTRIENT OFFSET PAYMENTS AND TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION FOR WETLAND AND STREAM IMPACTS.*

Amends GS 143-214.11 to modify the definition of *compensatory mitigation* to mean the restoration, creation, enhancement, or preservation of jurisdictional waters (was, wetlands or other areas) required as a condition of a permit (was, section 404 permit) issued by the *Department of Environment and Natural Resources* (Department) or by the US Army Corps of Engineers (Corps). Defines *jurisdictional waters* as wetlands, streams, or other waters of the state or of the US. Clarifies that mitigation is compensatory and replaces *wetlands restoration* with *compensatory mitigation* throughout. Provides that the fee that may be paid by the Department of Transportation (DOT) or other applicants to satisfy compensatory mitigation requirements is established by the North Carolina Environmental Management Commission (Commission) (was, the Department). Specifies that DOT or any other applicant may participate in a private compensatory mitigation bank *that has been approved by the Corps, provided that the Department or the Corps, as applicable, approves the use of such bank for the required compensatory mitigation* to satisfy compensatory mitigation requirements. Deletes that other applicants may only participate in a private compensatory mitigation bank in a hydrologic area where there is at least one private wetlands mitigation that has been (1) approved by the Corps and that has available mitigation credit or (2) approved by the Division of Water Quality for resources regulated under the Neuse and Tar Pam rules and that has available credit. Specifies that compensatory mitigation payments amounts (was, per acre payment amounts) are required to be made by applicants to the Ecosystem Restoration Fund. Provides that compensatory mitigation payments for wetlands are to be calculated on a per-acre basis and payments for streams are to be calculated on a per-linear foot basis. Makes conforming and technical changes.

Amends GS 143-214.20 to differentiate compensatory mitigation options, which are available to satisfy the mitigation requirements for riparian buffer loss, according to whether the applicant is DOT or an applicant other than DOT. Adds that both DOT and other applicants may satisfy mitigation requirements by (1) participating in a private mitigation bank if the Department has approved the bank and approves the use of the bank for the required compensatory mitigation and (2) use any other action consistent with the goals of this statute that is approved by the Department. Provides that an applicant, other than DOT, may only pay a compensatory mitigation fee into the Riparian Buffer Fund if that applicant demonstrates that participation in a private mitigation bank is unavailable. Makes organizational and technical changes.

Repeals Section 4 of SL 2007-438 (related to nutrient offset payments that may be used to partially offset the nitrogen loading requirements for the Neuse River Basin and to partially offset the nitrogen and phosphorous loading requirements for the Tar-Pamlico River Basin through payment into the Riparian Buffer Restoration Fund). Instead, allows nutrient offset credits to be purchased be used to partially offset the nitrogen loading requirements specified in 15A NCAC 2B .0234 and 2B .0235 for the Neuse River Basin and to partially offset the nitrogen and phosphorous loading requirements specified in 15A NCAC 2B .0258 for the Tar-Pamlico River Basin. Requires that nutrient offset projects be consistent with rules adopted by the Commission for implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin and located within the same eight-digit Cataloging Unit in which the

associated nutrient loading takes place. Allows DOT, or an applicant other than DOT, to purchase nutrient offset credits through either (1) participation in a private nutrient offset bank approved by the Department if the Department approves the use of the bank for required nutrient offsets or (2) payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund. However, an applicant other than DOT may only pay the nutrient offset fee if the applicant demonstrates that participation in a private nutrient offset bank is unavailable.

Intro. by Clodfelter.

GS 143

May 5, 2009

S 755. PROMOTE MITIGATION BANKS (NEW). Filed 3/23/09. Senate committee substitute makes the following changes to 1st edition. Removes the word private as a qualifier for the term mitigation bank in the title and throughout the bill. Amends GS 143-214.11(b) and GS 143-214.20(a) to require that all compensatory mitigation actions be consistent with the state rules for wetland and stream mitigation and for protection and maintenance of riparian buffers. Modifies changes to GS 143-214.11(d1) to provide that applicants other than the NC Department of Transportation (DOT) may satisfy compensatory mitigation requirements related to jurisdictional waters (e.g., wetlands and streams) by participating in a compensatory mitigation bank only (1) if the Department of Environment and Natural Resources (DENR) or the US Army Corps of Engineers approves of the use of the bank and (2) the US Army Corps of Engineers has approved of at least one compensatory mitigation bank within the hydrologic area. Modifies changes to GS 143-214.20 (a2) to provide that applicants other than DOT may satisfy compensatory mitigation requirements related to riparian buffers by participating in a compensatory mitigation bank only if (1) DENR approves of the use of the bank and (2) DENR has approved at least one compensatory mitigation bank within the hydrologic area. Deletes language in GS 143-214.20(a1) and (a2) that would have allowed DENR to approve other types of compensatory mitigation actions not specifically identified in statute. Makes technical changes.

May 6, 2009

S 755. PROMOTE MITIGATION BANKS. Filed 3/23/09. Senate committee substitute makes the following changes to 2nd edition: Revises bill to make provisions on compensatory mitigation applicable to units of local government and governmental authorities to the same extent as the Department of Transportation.

June 18, 2009

S 755. PROMOTE MITIGATION BANKS. Filed 3/23/09. House committee substitute makes the following changes to 3rd edition. Defines *unit of local government* as a *local government*, *public authority*, or *special district*, as defined in GS 159-7, in proposed amended GS 143-214.11, GS 143-214.20, and new Section 4(b). Makes conforming changes by deleting the term *governmental authorities* throughout the act. Provides that a party (was, applicants for nutrient offset credits) other than the Department of Transportation or a unit of local government may purchase nutrient offset credits through specified options.

July 8, 2009

S 755. PROMOTE MITIGATION BANKS. Filed 3/23/09. House committee substitute makes the following changes to 4th edition. Amends GS 143-214.11 to include in the definitions for the section (1) *government entity*, meaning the state and its agencies and subdivisions, the federal government, and units of local government and (2) *hydrologic area*, meaning an eight-digit Cataloging Unit designated by the United States Geological Survey. Delineates the compensatory mitigation options available to government entities (was, available to the NC Department of Transportation and Units of Local Government). Makes conforming changes replacing references to the NC Department of Transportation and Units of Local Government with the term *government entities* as newly defined in GS 143-214.11.

Amends GS 143-214.20 to clarify that one of the options available to applicants other than government entities to satisfy compensatory mitigation requirements is participation in a

compensatory mitigation bank, if the Department of Environment and Natural Resources (DENR) *has approved the bank* and DENR approves the use of the bank for the required compensatory mitigation. Directs the North Carolina Environmental Management Commission (Commission) to establish a standard schedule of compensatory mitigation fees *for payments to the Riparian Buffer Restoration Fund pursuant to this section*.

Permits nutrient offset credits to be purchased to partially offset nutrient loadings to surface waters as required by the Commission (was, limited the purchase of nutrient offset credits for use to partially offset the nitrogen loading requirements for the Neuse River Basin and the nitrogen and phosphorous loading requirements for the Tar-Pamlico River Basin). Requires that the nutrient offset projects authorized under this section be (1) consistent with rules adopted by the Commission for implementation of nutrient management strategies (was, applicable only to implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin) and (2) located within the same hydrologic area as defined in GS 143-214.11.

Clarifies that one of the options available to government entities for the purchase of nutrient offsets is participation in a nutrient offset bank, providing that DENR *has approved the bank* and DENR approves the use of the bank for the required nutrient offsets.

Directs DENR to study whether the preference for compensatory wetland and stream mitigation banks established by SL 2008-152, as amended by this act, and the preference for riparian buffer mitigation and nutrient offset banks established by this act make it likely that the Ecosystem Enhancement Program will be unable to recoup investments made in riparian buffer mitigation and nutrient offset projects. Directs DENR to report its findings and recommendations to the Environmental Review Commission no later than February 1, 2010.

Makes additional conforming, technical, and organizational changes. Makes conforming changes to the title.

July 27, 2009

SL 2009-337 (S 755). PROMOTE MITIGATION BANKS. AN ACT TO PROMOTE THE USE OF COMPENSATORY MITIGATION BANKS FOR RIPARIAN BUFFER PROTECTION AND NUTRIENT OFFSET PAYMENTS, TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION FOR WETLAND AND STREAM IMPACTS, AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY CERTAIN IMPACTS THAT THE PROMOTION OF COMPENSATORY MITIGATION BANKS MAY HAVE ON THE ECOSYSTEM ENHANCEMENT PROGRAM. Summarized in *Daily Bulletin* 3/24/09, 5/5/09, 5/6/09, 6/18/09, and 7/8/09. Enacted July 24, 2009. Effective July 24, 2009.