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SENATE BILL DRS35247-MH-90D* (03/15)

Short Title: Mitigation Services Amendments.

(Public)

Sponsors: Senators Brock and Cook (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE THE PROVISION OF MITIGATION SERVICES BY THE
3 PRIVATE SECTOR.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 143-214.11 reads as rewritten:

6 "§ 143-214.11. Division of Mitigation Services: compensatory mitigation.

7 ...

8 (b) ~~Department to Coordinate Compensatory Mitigation.~~ Mitigation Requirements. – All
9 compensatory mitigation required by permits or authorizations issued by the Department or by
10 the United States Army Corps of Engineers shall be coordinated by the Department consistent
11 with the basinwide restoration plans and rules developed by the Environmental Management
12 Commission. All compensatory mitigation, whether performed by the Department or by permit
13 applicants, shall be consistent with the basinwide restoration plans. All compensatory
14 mitigation shall be consistent with rules adopted by the Commission for wetland and stream
15 mitigation and for protection and maintenance of riparian ~~buffers.~~ buffers and shall advance the
16 functional improvement goals identified in any applicable basinwide restoration plan prepared
17 by the Department as required by G.S. 143-214.10.

18 (b1) No Eminent Domain Power. – Nothing in this section shall allow the Division of
19 Mitigation Services to acquire land by condemnation under the provisions of Chapter 40A of
20 the General Statutes.

21 (c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same
22 River Basin. – The emphasis of compensatory mitigation is on replacing functions within the
23 same river basin unless it is demonstrated that restoration of other areas would be more
24 beneficial to the overall purposes of the Division of Mitigation Services.

25 (d) ~~Compensatory Mitigation Options Available to Government Entities.~~ —A
26 government entity may Permit Applicants. – Permit applicants shall satisfy compensatory
27 mitigation requirements by participating in a private compensatory mitigation bank that has
28 been approved by the United States Army Corps of Engineers, provided that the Department or
29 the United States Army Corps of Engineers, as applicable, approves the use of such bank for
30 the required compensatory mitigation. If the Department or the United States Army Corps of
31 Engineers, as applicable, determines that it is not practicable for an applicant to satisfy
32 compensatory mitigation requirements by requirements through a private compensatory
33 mitigation bank, the applicant may also satisfy compensatory mitigation requirements through
34 any of the following actions, if those actions are consistent with the basinwide restoration plans
35 and also meet or exceed the requirements of the Department or of the United States Army
36 Corps of Engineers, as applicable:



- 1 (1) Payment of a fee established by the Commission into the Ecosystem
2 Restoration Fund established in G.S. 143-214.12.
- 3 ~~(2) Donation of land to the Division of Mitigation Services or to other public or~~
4 ~~private nonprofit conservation organizations as approved by the Department.~~
- 5 ~~(3) 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.~~
- 9 (4) ~~Preparing and implementing a compensatory mitigation~~
10 ~~plan.~~ Permittee-responsible mitigation.
- 11 ~~(d1) Compensatory Mitigation Options Available to Applicants Other than Government~~
12 ~~Entities. An applicant other than a government entity may satisfy compensatory mitigation~~
13 ~~requirements by the following actions, if those actions meet or exceed the requirements of the~~
14 ~~United States Army Corps of Engineers:~~
- 15 (1) ~~Participation in a compensatory mitigation bank that has been approved by~~
16 ~~the United States Army Corps of Engineers, provided that the Department or~~
17 ~~the United States Army Corps of Engineers, as applicable, approves the use~~
18 ~~of such bank for the required compensatory mitigation. This option is only~~
19 ~~available in a hydrologic area where there is at least one compensatory~~
20 ~~mitigation bank that has been approved by the United States Army Corps of~~
21 ~~Engineers.~~
- 22 (2) ~~Payment of a fee established by the Commission into the Ecosystem~~
23 ~~Restoration Fund established in G.S. 143-214.12. This option is only~~
24 ~~available to an applicant who demonstrates that the option under subdivision~~
25 ~~(1) of this subsection is not available.~~
- 26 (3) ~~Donation of land to the Division of Mitigation Services or to other public or~~
27 ~~private nonprofit conservation organizations as approved by the Department.~~
- 28 (4) ~~Preparing and implementing a compensatory mitigation plan.~~
- 29 (e) Payment Schedule. – A standardized ~~The Commission shall establish a schedule of~~
30 ~~compensatory mitigation payment amounts shall be established by the Commission.~~ fees for
31 mitigation credits purchased by permit applicants from the Division of Mitigation Services. The
32 schedule shall be based on the actual cost for the Division of Mitigation Services to generate
33 the credits. ~~Compensatory mitigation payments shall be made by applicants to the Ecosystem~~
34 ~~Restoration Fund established in G.S. 143-214.12. The monetary payment shall be based on the~~
35 ~~ecological functions and values of wetlands and streams permitted to be lost and on the cost of~~
36 ~~restoring or creating wetlands and streams capable of performing the same or similar functions,~~
37 ~~including directly related costs of wetland and stream restoration planning, long-term~~
38 ~~monitoring, and maintenance of restored areas. Compensatory mitigation payments for~~
39 ~~wetlands shall be calculated on a per acre basis. Compensatory mitigation payments for streams~~
40 ~~shall be calculated on a per linear foot basis.~~
- 41 ...
- 42 (j) The regulatory requirements for the establishment, operation, and monitoring of a
43 compensatory mitigation bank or full delivery project shall vest at the time of the execution of
44 the mitigation banking instrument or the award of a full delivery contract.
- 45 (k) All compensatory mitigation banks operating within the State shall register with the
46 Division of Mitigation Services. Registration shall include the following information:
- 47 (1) The bank name and cataloging unit number.
- 48 (2) Types and amounts of approved credits and sponsor contact information for
49 each mitigation bank, as documented by approved mitigation banking
50 instruments.

1 (3) Electronic files representing the property boundaries and approved service
2 areas of the mitigation bank in a format prescribed by the Department.

3 (4) Any other information requested by the Department.

4 The Department shall provide public access to the information required by this subsection
5 on its Web site."

6 **SECTION 2.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
7 amended by adding a new section to read:

8 "**§ 143-214.16. Limit Division of Mitigation Services fee in lieu of mitigation acceptance in**
9 **certain river basins.**

10 The Department of Environmental Quality, Division of Mitigation Services, shall develop a
11 program to increase the State's ability to utilize private mitigation banks to satisfy
12 compensatory mitigation requirements of the State. The program shall include all of the
13 following components:

14 (1) Thirty-six months after the effective date of this act, the Division of
15 Mitigation Services shall cease acceptance of fees from governmental and
16 nongovernmental entities in lieu of mitigation for stream, wetland, riparian
17 buffer, and nutrient impacts permitted to occur in the Neuse and Cape Fear
18 River Basins.

19 (2) The Department, with the concurrence of the Environmental Management
20 Commission, may cease acceptance of fees in lieu of mitigation within
21 additional river basins after June 30, 2020, provided the public is notified at
22 least 24 months in advance of the cessation of service.

23 (3) In the event of unforeseen, unique, or exigent circumstances and upon the
24 request of the Secretary of Commerce or the Secretary of Transportation, the
25 Department may direct the Division of Mitigation Services to accept fees in
26 lieu of mitigation to support permits for projects owned or sponsored by the
27 Departments of Commerce or Transportation."

28 **SECTION 3.** No later than October 1, 2017, the Commission shall adopt
29 temporary rules that (i) implement G.S. 143-214.16, as enacted by Section 2 of this act, and (ii)
30 set a revised schedule of mitigation fees consistent with G.S. 143-214.11(e), as amended by
31 Section 1 of this act. The temporary rules shall remain in effect until permanent rules that
32 replace the temporary rules become effective.

33 **SECTION 4.** Section 3 of this act is effective when it becomes law. The remainder
34 of this act becomes effective October 1, 2017.