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LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

05/02/2011 03:47 PM

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Senator Ring moved the following:

**Senate Amendment (with title amendment)**

Delete lines 273 - 280

and insert:

Section 8. Subsection (18) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(18) The department, in coordination with ~~and~~ each water management district responsible for implementation of the environmental resource permitting program, shall develop a uniform mitigation assessment method for wetlands and other surface waters. ~~The department shall adopt the uniform~~



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14 ~~mitigation assessment method by rule no later than July 31,~~  
15 ~~2002.~~ The rule shall provide an exclusive, uniform, and  
16 consistent process for determining the amount of mitigation  
17 required to offset impacts to wetlands and other surface waters,  
18 and, once effective, shall supersede all rules, ordinances, and  
19 variance procedures from ordinances that determine the amount of  
20 mitigation needed to offset such impacts. Except when evaluating  
21 mitigation bank applications, which must meet the criteria of s.  
22 373.4136(1), the rule shall be applied only after determining  
23 that the mitigation is appropriate to offset the values and  
24 functions of wetlands and surface waters to be adversely  
25 impacted by the proposed activity. Once the department adopts  
26 the uniform mitigation assessment method by rule, the uniform  
27 mitigation assessment method shall be binding on the department,  
28 the water management districts, local governments, and any other  
29 governmental agencies and shall be the sole means to determine  
30 the amount of mitigation needed to offset adverse impacts to  
31 wetlands and other surface waters and to award and deduct  
32 mitigation bank credits. A water management district and any  
33 other governmental agency subject to chapter 120 may apply the  
34 uniform mitigation assessment method without the need to adopt  
35 it pursuant to s. 120.54. It shall be a goal of the department  
36 and water management districts that the uniform mitigation  
37 assessment method developed be practicable for use within the  
38 timeframes provided in the permitting process and result in a  
39 consistent process for determining mitigation requirements. It  
40 shall be recognized that any such method shall require the  
41 application of reasonable scientific judgment. The uniform  
42 mitigation assessment method must determine the value of



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43 functions provided by wetlands and other surface waters  
44 considering the current conditions of these areas, utilization  
45 by fish and wildlife, location, uniqueness, and hydrologic  
46 connection, ~~and, when applied to mitigation banks, the factors~~  
47 ~~listed in s. 373.4136(4)~~. The uniform mitigation assessment  
48 method shall also account for the expected time-lag associated  
49 with offsetting impacts and the degree of risk associated with  
50 the proposed mitigation. The uniform mitigation assessment  
51 method shall account for different ecological communities in  
52 different areas of the state. In developing the uniform  
53 mitigation assessment method, the department and water  
54 management districts shall consult with approved local programs  
55 under s. 403.182 which have an established mitigation program  
56 for wetlands or other surface waters. The department and water  
57 management districts shall consider the recommendations  
58 submitted by such approved local programs, including any  
59 recommendations relating to the adoption by the department and  
60 water management districts of any uniform mitigation methodology  
61 that has been adopted and used by an approved local program in  
62 its established mitigation program for wetlands or other surface  
63 waters. Environmental resource permitting rules may establish  
64 categories of permits or thresholds for minor impacts under  
65 which the use of the uniform mitigation assessment method will  
66 not be required. The application of the uniform mitigation  
67 assessment method is not subject to s. 70.001. In the event the  
68 rule establishing the uniform mitigation assessment method is  
69 deemed to be invalid, the applicable rules related to  
70 establishing needed mitigation in existence prior to the  
71 adoption of the uniform mitigation assessment method, including



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72 those adopted by a county which is an approved local program  
73 under s. 403.182, and the method described in paragraph (b) for  
74 existing mitigation banks, shall be authorized for use by the  
75 department, water management districts, local governments, and  
76 other state agencies.

77 (a) In developing the uniform mitigation assessment method,  
78 the department shall seek input from the United States Army  
79 Corps of Engineers in order to promote consistency in the  
80 mitigation assessment methods used by the state and federal  
81 permitting programs.

82 (b) An entity which has received a mitigation bank permit  
83 prior to the adoption of the uniform mitigation assessment  
84 method shall have impact sites assessed, for the purpose of  
85 deducting bank credits, using the credit assessment method,  
86 including any functional assessment methodology, which was in  
87 place when the bank was permitted; unless the entity elects to  
88 have its credits redetermined, and thereafter have its credits  
89 deducted, using the uniform mitigation assessment method.

90 (c) The department shall ensure statewide coordination and  
91 consistency in the interpretation and application of the uniform  
92 mitigation assessment method rule by providing programmatic  
93 training and guidance to staff of the department, water  
94 management districts, and local governments. To ensure that the  
95 uniform mitigation assessment method rule is interpreted and  
96 applied uniformly, the department's interpretation, guidance,  
97 and approach to applying the uniform mitigation assessment  
98 method rule shall govern.

99 (d) Applicants shall submit the information needed to  
100 perform the assessment required under the uniform mitigation



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101 assessment method rule, and may submit the qualitative  
102 characterization and quantitative assessment for each assessment  
103 area specified by the rule. The reviewing agency shall review  
104 that information and notify the applicant of any inadequacy in  
105 the information or application of the assessment method.

106 (e) When conducting qualitative characterization of  
107 artificial wetlands and other surface waters, such as borrow  
108 pits, ditches, and canals, under the uniform mitigation  
109 assessment method rule, the native community type to which it is  
110 most analogous in function shall be used as a reference. For  
111 wetlands or other surface waters that have been altered from  
112 their native community type, the historic community type at that  
113 location shall be used as a reference, unless the alteration has  
114 been of such a degree and extent that a different native  
115 community type is now present and self-sustaining.

116 (f) When conducting qualitative characterization of upland  
117 mitigation assessment areas, the characterization shall include  
118 functions that the upland assessment area provides to the fish  
119 and wildlife of the associated wetland or other surface waters.  
120 These functions shall be considered when scoring the upland  
121 assessment area for preservation, enhancement, or restoration.  
122 Any increase in these functions resulting from activities in an  
123 upland mitigation assessment area shall be accounted for in the  
124 upland assessment area scoring.

125 (g) The term "preservation mitigation," as used in the  
126 uniform mitigation assessment method, means the protection of  
127 important wetland, other surface water, or upland ecosystems  
128 predominantly in their existing condition and absent  
129 restoration, creation, or enhancement from adverse impacts by



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130 placing a conservation easement or other comparable land use  
131 restriction over the property or by donation of fee simple  
132 interest in the property. Preservation may include a management  
133 plan for perpetual protection of the area. The preservation  
134 adjustment factor set forth in rule 62-345.500(3), Florida  
135 Administrative Code, shall apply only to preservation  
136 mitigation.

137 (h) When assessing a preservation mitigation assessment  
138 area under the uniform mitigation assessment method, the  
139 following shall apply:

140 1. "Without preservation" shall consider the reasonably  
141 anticipated loss of functions and values provided by the  
142 assessment area, assuming the area is not preserved.

143 2. Each of the considerations of the preservation  
144 adjustment factor specified in rule 62-345.500(3)(a), Florida  
145 Administrative Code, shall be equally weighted and scored on a  
146 scale from 0, no value, to 0.2, optimal value. In addition, the  
147 minimum preservation adjustment factor shall be 0.2.

148 (i) The location and landscape support scores, pursuant to  
149 rule 62-345.500, Florida Administrative Code, may change in the  
150 "with mitigation" or "with impact" condition in both upland and  
151 wetland assessment areas, regardless of the initial community  
152 structure or water environment scores.

153 (j) When a mitigation plan for creation, restoration, or  
154 enhancement includes a preservation mechanism, such as a  
155 conservation easement, the "with mitigation" assessment of that  
156 creation, restoration, or enhancement shall consider, and the  
157 scores shall reflect, the benefits of that preservation  
158 mechanism, and the benefits of that preservation mechanism may



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159 not be scored separately.

160 (k) Any entity holding a mitigation bank permit that was  
161 evaluated under the uniform mitigation assessment rule before  
162 the effective date of paragraphs (c)-(j) may submit a permit  
163 modification request to the relevant permitting agency to have  
164 such mitigation bank reassessed pursuant to the provisions set  
165 forth in this section, and the relevant permitting agency shall  
166 reassess such mitigation bank, if such request is filed with  
167 that agency no later than September 30, 2011.

168 Section 9. Subsection (3) of section 403.813, Florida  
169 Statutes, is amended to read:

170 403.813 Permits issued at district centers; exceptions.—

171 (3) A permit is not required under this chapter, chapter  
172 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
173 chapter 25270, 1949, Laws of Florida, for maintenance dredging  
174 conducted under this section by the seaports of Jacksonville,  
175 Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port  
176 Everglades, Miami,

177  
178 ===== T I T L E A M E N D M E N T =====

179 And the title is amended as follows:

180 Between lines 38 and 39

181 insert:

182 amending s. 373.414, F.S.; revising provisions for the  
183 uniform mitigation assessment method rule for wetlands  
184 and other surface waters; providing requirements for  
185 the interpretation and application of the uniform  
186 mitigation assessment method rule; providing an  
187 exception; providing for "preservation mitigation" and



188 "without preservation" for the purposes of certain  
189 assessments pursuant to the rule; providing for  
190 reassessment of mitigation banks under certain  
191 conditions;