

**STORAGE NAME:** h1679a.ep  
**DATE:** April 15, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ENVIRONMENTAL PROTECTION  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1679  
**RELATING TO:** Surface Waters or Wetlands Mitigation  
**SPONSOR(S):** Representative Constantine  
**STATUTE(S) AFFECTED:** s. 373.414, F.S.  
**COMPANION BILL(S):** SB 1156 by Senator Williams

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) ENVIRONMENTAL PROTECTION YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

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**I. SUMMARY:**

HB 1679 provides that cash donations as a form of mitigation for wetland impacts can only be accepted for use in permitted environmental creation, preservation, enhancement, or restoration projects endorsed by the Department of Environmental Protection (DEP) or the water management districts (districts). It further provides that cash donations as a form of mitigation must result in no net loss of wetland functions. Cash donations can only be accepted for use in DEP or district projects for which all necessary permits have been issued.

The bill will have an indeterminate fiscal impact on the DEP and districts related to the costs of obtaining permits for projects which will receive support from cash donations as a form of mitigation.

The bill provides that the act will take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Just 40 years ago, Florida's "swamps" were considered nuisances: vegetative eyesores good only for breeding mosquitos. Back then, government was a willing partner with people who wanted to drain or dredge-and-fill the swamps. But in the 1960s, scientists began to realize the importance of these "wetlands" in groundwater recharge, flood control, and as wildlife habitat. The pendulum shifted toward protection of wetlands. Applicants for dredge-and-fill permits generally had to avoid wetlands as a condition of obtaining those permits. By the 1970s, however, the permitting agencies had realized that avoidance did not work to protect wetlands in all cases, especially when the "saved" wetlands were isolated from the rest of the ecosystem by development. "Mitigation" became the way to provide flexibility in the permitting process for both the regulating agencies and the permit applicants, with the 1984 passage of Florida's comprehensive Henderson Wetlands Act. Pursuant to s. 373.414, F.S., the Legislature directed DEP and the water management districts to consider allowing dredge-and-fill permit applicants to mitigate certain impacts caused by disturbing wetlands, in those situations where the applicant cannot meet the criteria.

Mitigation is the creation, restoration, enhancement or preservation of wetlands to offset the negative impacts to other wetlands from development. It is common that an applicant for a wetlands permit must do mitigation as a condition of obtaining the permit, although Florida law only directs the agencies to consider mitigation in deciding whether to permit activities in wetlands.

Originally, mitigation was conducted strictly on-site to restore or enhance wetlands directly linked to the disturbed area. Again, as their knowledge about wetlands grew, the permitting agencies decided that off-site mitigation was acceptable, as long as it directly offset permitting impacts. Now, restoration or enhancement of wetlands many miles away from the disturbed site is acceptable, as long as they are in the same watershed or mitigation service area. The definition of mitigation has been expanded to include wetlands preservation, which is the acquisition of wetlands that may or may not be linked to the wetlands which are being disturbed. There are instances where the permitting agency has allowed an applicant to restore the habitat of uplands adjacent to the disturbed wetlands, as a way to meet mitigation requirements.

Also in recent years, mitigation has changed from being the sole responsibility of the applicant, to the applicant in some cases making cash contributions to the agency or agencies involved in the permitting process to support wetlands restoration. To that end, the agencies established mitigation projects or mitigation areas, where permit applicants could contribute funds for long-term restoration and management projects. Many of these were in and around the Everglades.

In 1993, the Legislature passed a bill that merged the Departments of Environmental Regulation and Natural Resources, and named the new agency the Department of Environmental Protection (DEP). Included in the legislation was a new streamlined permitting process, which combined the wetlands dredge-and-fill permit and the management and storage of surface waters (MSSW) permit, into the environmental resource permit (ERP). The legislation directed DEP and the water management districts to develop rules to promote the creation of "mitigation banks."

A mitigation bank is a piece of property where wetlands restoration, enhancement, preservation, or creation is conducted. The owner of the "bank" is awarded "credits" by DEP or a water management district, under the terms of a permit, upon successful completion of various stages of the work. In turn, the "bank" owner may use the "credits" to obtain ERPs for his own development projects, or sell them to other people who have to meet mitigation requirements in order to obtain ERPs for their projects.

Some private mitigation banks worry that the acceptance of cash donations for mitigation projects by public agencies places the private banks at a competitive disadvantage. The 1996 Legislature enacted Ch. 96-371, Laws of Florida, which codified many of the concepts, definitions, requirements, and procedures pertaining to mitigation banking, which had previously existed only in the rules of DEP and the water management districts. However, there were also new provisions, including an attempt to make private mitigation banks more competitive with public mitigation banks and mitigation areas by requiring full cost accounting when DEP or the district accept cash donations as a form of mitigation. Although full cost accounting has increased the cost of cash donations as a form of mitigation, it still appears to be a much less costly alternative to purchasing mitigation credits from a private bank.

**B. EFFECT OF PROPOSED CHANGES:**

HB 1769 requires that any DEP or water management district project, for which cash donations are accepted as a form of mitigation, must be permitted. Further, the cash donation, as a form of mitigation, must result in no net loss of wetland functions. Finally, all necessary permits for the DEP or water management district project would have to be issued prior to the acceptance of any cash donations to support the project.

The bill would limit the types of projects for which the DEP or water management district could accept cash donations to those that require a permit. As a result, cash donations could not be accepted for DEP or district preservation projects, which consist solely of acquisition and management and do not require a permit. In addition, the "no net loss of wetland functions" would also effectively eliminate preservation projects. Finally, the requirement that all necessary permits be issued prior to accepting cash donations could possibly eliminate this option if all such permits have not been issued at the time the permit for the wetland impact is to be issued.

Limiting the ability of the DEP and the water management districts to accept cash donations as a form of mitigation also narrows the range of mitigation alternatives for permit applicants who need to offset adverse impact to wetlands resulting from their proposed activity. Applicants for whom onsite mitigation is not practicable, in particular, may have less opportunity to choose the cash donation option and find it necessary to choose the likely more costly option of purchasing mitigation credits from a private bank.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

**D. SECTION-BY-SECTION RESEARCH:**

Section 1: Amends s. 373.414(1)(b), F.S., to provide that the DEP or water management districts can only accept cash donations for mitigation if the donation is specified for use in a permitted department-or-water-management-district-endorsed environmental creation, preservation, enhancement, or restoration project and if it offsets the impacts of the permitted activity and provides for no net loss of wetland functions. It also requires that the permit be issued for a department-or-water-management-district-endorsed project prior to accepting any cash donation for use in such a project.

Section 2: Provides that the act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

There will be an indeterminate effect on both the DEP and the water management districts associated with the cost of obtaining permits. The South Florida and St. Johns River Water Management District have been the most active in accepting cash donations as a form of mitigation and thus would be the most affected.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There would likely be an overall increase in the cost of mitigation because the bill reduces the availability of one of the less costly mitigation options. Permittees for whom onsite mitigation is not a practicable alternative would be the most likely to face higher costs for mitigation.

2. Direct Private Sector Benefits:

The reduction in the availability of cash donations as a form of mitigation could result in greater demand for mitigation credits, which could benefit private mitigation bankers.

3. Effects on Competition, Private Enterprise and Employment Markets:

See B.2.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or take an action that requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, a remove and insert amendment was adopted by the Committee on Environmental Protection. The amendment has two provisions. First, the DEP or water management districts may only accept cash donations as a form of mitigation for use in a duly noticed, endorsed plan for an environmental creation, preservation, enhancement, or restoration project that offsets the permitted adverse impact. Second, twice a year, the DEP and the water management districts are required to submit to the Governor a report of all cash donations for the preceding six months, including a description of endorsed mitigation projects.



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VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

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W. Ray Scott

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Wayne S. Kiger