

By Representative Constantine

1 A bill to be entitled
2 An act relating to surface waters or wetlands
3 mitigation; amending s. 373.414, F.S.; revising
4 conditions for the acceptance of money as
5 mitigation in certain permitted projects;
6 providing an effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Paragraph (b) of subsection (1) of section
11 373.414, Florida Statutes, 1996 Supplement, is amended to
12 read:

13 373.414 Additional criteria for activities in surface
14 waters and wetlands.--

15 (1) As part of an applicant's demonstration that an
16 activity regulated under this part will not be harmful to the
17 water resources or will not be inconsistent with the overall
18 objectives of the district, the governing board or the
19 department shall require the applicant to provide reasonable
20 assurance that state water quality standards applicable to
21 waters as defined in s. 403.031(13) will not be violated and
22 reasonable assurance that such activity in, on, or over
23 surface waters or wetlands, as delineated in s. 373.421(1), is
24 not contrary to the public interest. However, if such an
25 activity significantly degrades or is within an Outstanding
26 Florida Water, as provided by department rule, the applicant
27 must provide reasonable assurance that the proposed activity
28 will be clearly in the public interest.

29 (b) If the applicant is unable to otherwise meet the
30 criteria set forth in this subsection, the governing board or
31 the department, in deciding to grant or deny a permit, shall

1 consider measures proposed by or acceptable to the applicant
2 to mitigate adverse effects that may be caused by the
3 regulated activity. Such measures may include, but are not
4 limited to, onsite mitigation, offsite mitigation, offsite
5 regional mitigation, and the purchase of mitigation credits
6 from mitigation banks permitted under s. 373.4136. It shall
7 be the responsibility of the applicant to choose the form of
8 mitigation. The mitigation must offset the adverse effects
9 caused by the regulated activity.

10 1. The department or water management districts may
11 accept the donation of money as mitigation only where the
12 donation is specified for use in a permitted
13 department-or-water-management-district-endorsed environmental
14 creation, preservation, enhancement, or restoration project
15 that offsets the impacts of the activity permitted under this
16 part and that provides for no net loss of wetland functions.
17 However, the provisions of this subsection shall not apply to
18 projects undertaken pursuant to s. 373.4137. ~~Where a permit is~~
19 ~~required under this part to implement any project endorsed by~~
20 ~~the department or a water management district,~~All necessary
21 permits for any project endorsed by the department or water
22 management district must be ~~have been~~ issued prior to the
23 acceptance of any cash donation. After the effective date of
24 this act, when money is donated to either the department or a
25 water management district to offset impacts authorized by a
26 permit under this part, the department or the water management
27 district shall accept only a donation that represents the full
28 cost to the department or water management district of
29 undertaking the project that is intended to mitigate the
30 adverse impacts. The full cost shall include all direct and
31 indirect costs, as applicable, such as those for land

1 acquisition, land restoration or enhancement, perpetual land
2 management, and general overhead consisting of costs such as
3 staff time, building, and vehicles. The department or the
4 water management district may use a multiplier or percentage
5 to add to other direct or indirect costs to estimate general
6 overhead. Mitigation credit for such a donation shall be
7 given only to the extent that the donation covers the full
8 cost to the agency of undertaking the project that is intended
9 to mitigate the adverse impacts. However, nothing herein
10 shall be construed to prevent the department or a water
11 management district from accepting a donation representing a
12 portion of a larger project, provided that the donation covers
13 the full cost of that portion and mitigation credit is given
14 only for that portion. The department or water management
15 district may deviate from the full cost requirements of this
16 subparagraph to resolve a proceeding brought pursuant to
17 chapter 70 or a claim for inverse condemnation. Nothing in
18 this section shall be construed to require the owner of a
19 private mitigation bank, permitted under s. 373.4136, to
20 include the full cost of a mitigation credit in the price of
21 the credit to a purchaser of said credit.

22 2. If the applicant is unable to meet water quality
23 standards because existing ambient water quality does not meet
24 standards, the governing board or the department shall
25 consider mitigation measures proposed by or acceptable to the
26 applicant that cause net improvement of the water quality in
27 the receiving body of water for those parameters which do not
28 meet standards.

29 3. If mitigation requirements imposed by a local
30 government for surface water and wetland impacts of an
31 activity regulated under this part cannot be reconciled with

1 mitigation requirements approved under a permit for the same
2 activity issued under this part, the mitigation requirements
3 for surface water and wetland impacts shall be controlled by
4 the permit issued under this part.

5 Section 2. This act shall take effect upon becoming a
6 law.

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9 SENATE SUMMARY

10 Revises conditions for the acceptance of money as
11 mitigation in permitted
12 department-or-water-management-district endorsed surface
13 waters or wetlands projects.
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