

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 for a report; providing an effective
7 date.

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

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

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

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

30 (b) If the applicant is unable to otherwise meet the
31 criteria set forth in this subsection, the governing board or

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

11 1. The department or water management districts may
 12 accept the donation of money as mitigation only where the
 13 donation is specified for use in a duly noticed
 14 department-or-water-management-district-governing-board-endorsed
 15 ~~<U>plan for department-or-water-management-district-endorsed,~~ an
 16 environmental creation, preservation, enhancement, or
 17 restoration project that offsets the impacts of the activity
 18 permitted under this part. However, the provisions of this
 19 subsection shall not apply to projects undertaken pursuant to
 20 s. 373.4137. Where a permit is required under this part to
 21 implement any project endorsed by the department or a water
 22 management district, all necessary permits must have been
 23 issued prior to the acceptance of any cash donation. After
 24 the effective date of this act, when money is donated to
 25 either the department or a water management district to offset
 26 impacts authorized by a permit under this part, the department
 27 or the water management district shall accept only a donation
 28 that represents the full cost to the department or water
 29 management district of undertaking the project that is
 30 intended to mitigate the adverse impacts. The full cost shall
 31 include all direct and indirect costs, as applicable, such as

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

23 2. The Department of Environmental Protection and the
24 water management districts shall report to the Executive
25 Office of the Governor by January 31 and July 31 of each year
26 all cash donations accepted during the preceding six months
27 for wetland mitigation purposes, which shall include a
28 description of the endorsed mitigation projects.

29 ~~3.2.~~ If the applicant is unable to meet water quality
30 standards because existing ambient water quality does not meet
31 standards, the governing board or the department shall

1 consider mitigation measures proposed by or acceptable to the
2 applicant that cause net improvement of the water quality in
3 the receiving body of water for those parameters which do not
4 meet standards.

5 ~~4.3.~~ If mitigation requirements imposed by a local
6 government for surface water and wetland impacts of an
7 activity regulated under this part cannot be reconciled with
8 mitigation requirements approved under a permit for the same
9 activity issued under this part, the mitigation requirements
10 for surface water and wetland impacts shall be controlled by
11 the permit issued under this part.

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