

Bill No. CS for SB 1250

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Forman moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 11, between lines 4 and 5,		
15			
16	insert:		
17	Section 7. Subsections (4), (6), and (11) of section		
18	373.4136, Florida Statutes, are amended and subsection (12) is		
19	added to that section to read:		
20	373.4136 Establishment and operation of mitigation		
21	banks.--		
22	(4) MITIGATION CREDITS.--After evaluating the		
23	information submitted by the applicant for a mitigation bank		
24	permit and assessing the proposed mitigation bank pursuant to		
25	the criteria in this section, the department or water		
26	management district shall award a number of mitigation credits		
27	to a proposed mitigation bank or phase of such mitigation		
28	bank. An entity establishing and operating a mitigation bank		
29	may apply to modify the mitigation bank permit to seek the		
30	award of additional mitigation credits if the mitigation bank		
31	results in an additional increase in ecological value over the		

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1 value contemplated at the time of the original permit  
2 issuance, or the most recent modification thereto involving  
3 the number of credits awarded. The number of credits awarded  
4 shall be based on the degree of improvement in ecological  
5 value expected to result from the establishment and operation  
6 of the mitigation bank as determined using a functional  
7 assessment methodology. Each water management district that  
8 has responsibility for reviewing and taking final agency  
9 action on mitigation bank permit applications pursuant to the  
10 operating agreements adopted under s. 373.046, and the  
11 department, shall adopt a uniform functional assessment  
12 methodology by rule no later than January 1, 2001. The  
13 methodology may account for different ecological communities  
14 in different areas of the state, and shall be used by the  
15 department and the water management districts to award credits  
16 and to deduct credits from a mitigation bank. A local  
17 government that operates an independent wetland regulatory  
18 program is not required to use this uniform functional  
19 assessment methodology for its program. An entity that  
20 received a mitigation bank permit before the adoption of the  
21 uniform functional assessment methodology shall have credits  
22 deducted from its bank pursuant to the credit assessment  
23 method in place when the bank was permitted, unless the entity  
24 elects to have credits deducted pursuant to the uniform  
25 functional assessment methodology. Before the adoption of the  
26 uniform functional assessment methodology rule and at the  
27 request of the holder of a mitigation bank permit, impact  
28 sites for which credits from that mitigation bank are proposed  
29 for use as mitigation must be assessed using the same  
30 functional assessment methodology as that used to assess and  
31 assign credits to the mitigation bank. The environmental

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1 resource permit rule mitigation ratios may not be used to  
2 determine mitigation bank credit requirements for those impact  
3 sites in which a functional assessment methodology is used.

4 The uniform functional assessment methodology must, at a  
5 minimum, evaluate ~~In determining the degree of improvement in~~  
6 ~~ecological value,~~ each of the following factors, ~~at a minimum,~~  
7 ~~shall be evaluated:~~

8 (a) The extent to which target hydrologic regimes can  
9 be achieved and maintained.

10 (b) The extent to which management activities promote  
11 natural ecological conditions, such as natural fire patterns.

12 (c) The proximity of the mitigation bank to areas with  
13 regionally significant ecological resources or habitats, such  
14 as national or state parks, Outstanding National Resource  
15 Waters and associated watersheds, Outstanding Florida Waters  
16 and associated watersheds, and lands acquired through  
17 governmental or nonprofit land acquisition programs for  
18 environmental conservation; and the extent to which the  
19 mitigation bank establishes corridors for fish, wildlife, or  
20 listed species to those resources or habitats.

21 (d) The quality and quantity of wetland or upland  
22 restoration, enhancement, preservation, or creation.

23 (e) The ecological and hydrological relationship  
24 between wetlands and uplands in the mitigation bank.

25 (f) The extent to which the mitigation bank provides  
26 habitat for fish and wildlife, especially habitat for species  
27 listed as threatened, endangered, or of special concern, or  
28 provides habitats that are unique for that mitigation service  
29 area.

30 (g) The extent to which the lands that are to be  
31 preserved are already protected by existing state, local, or

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1 federal regulations or land use restrictions.

2 (h) The extent to which lands to be preserved would be  
3 adversely affected if they were not preserved.

4 (i) Any special designation or classification of the  
5 affected waters and lands.

6 (6) MITIGATION SERVICE AREA.--The department or water  
7 management district shall establish a mitigation service area  
8 for each mitigation bank permit. The department or water  
9 management district shall notify and consider comments  
10 received on the proposed mitigation service area from each  
11 local government within the proposed mitigation service area  
12 that operates a wetlands regulatory program. Except as  
13 provided herein, mitigation credits may be withdrawn and used  
14 only to offset adverse impacts in the mitigation service area.  
15 The boundaries of the mitigation service area shall depend  
16 upon the geographic area where the mitigation bank could  
17 reasonably be expected to offset adverse impacts. A  
18 mitigation service area must generally be at least as large as  
19 the regional watershed in which the mitigation bank is  
20 located.A mitigation service area may be larger than the  
21 regional watershed if the mitigation bank provides exceptional  
22 ecological value such that adverse impacts outside the  
23 regional watershed could reasonably be expected to be  
24 adequately offset by the mitigation bank. In exceptional  
25 circumstances,a mitigation service area may be smaller than a  
26 regional watershed if adverse impacts throughout the regional  
27 watershed cannot reasonably be expected to be offset by the  
28 mitigation bank because of local ecological or hydrological  
29 conditions. Mitigation service areas may overlap, and  
30 mitigation service areas for two or more mitigation banks may  
31 be approved for a regional watershed.

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1           (a) In determining the extent to which a mitigation  
2 bank provides exceptional ecological value such that adverse  
3 impacts outside the regional watershed could reasonably be  
4 expected to be adequately offset by the mitigation bank, the  
5 department or the water management district shall consider the  
6 characteristics, size, and location of the mitigation bank  
7 and, at a minimum, the extent to which the mitigation bank:

8           1. Will promote a regional integrated ecological  
9 network;

10           2. Will significantly enhance the water quality or  
11 restoration of an offsite receiving water body that is  
12 designated as an Outstanding Florida Water, a Wild and Scenic  
13 River, an aquatic preserve, a water body designated in a plan  
14 adopted pursuant to s. 373.456 of the Surface Water  
15 Improvement and Management Act, or a nationally designated  
16 estuarine preserve;

17           3. Will provide for the long-term viability of  
18 endangered or threatened species or species of special  
19 concern; and

20           4. Is consistent with the objectives of a regional  
21 management plan adopted or endorsed by the department or water  
22 management districts.

23           (b) Once a mitigation bank service area has been  
24 established by the department or a water management district  
25 for a mitigation bank, such service area shall be accepted by  
26 all water management districts, local governments, and the  
27 department.

28           (c) If the requirements in s. 373.4135(1)(b) are met,  
29 the following projects or activities regulated under this part  
30 shall be eligible to use a mitigation bank, regardless of  
31 whether they are ~~notwithstanding the fact that they are not~~

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1 ~~completely~~ located within the mitigation service area:

2           1. Projects with adverse impacts partially located  
3 within the mitigation service area.

4           2. Linear projects, such as roadways, transmission  
5 lines, distribution lines, pipelines, or railways.

6           3. Projects with total adverse impacts of less than 1  
7 acre in size.

8           (11) RULES.--The department and water management  
9 district may adopt rules to implement the provisions of s.  
10 373.4135 and this section, which shall include, but not be  
11 limited to, provisions:

12           (a) Requiring financial responsibility for the  
13 construction, operation, and long-term management of a  
14 mitigation bank;

15           (b) For the perpetual protection and management of  
16 mitigation banks; and

17           (c) For the use of the functional assessment  
18 methodology referenced in this section.~~Establishing a system~~  
19 ~~and methodology for the valuation, assessment, and award of~~  
20 ~~mitigation credits.~~

21           (12) PROCESSING.--Mitigation bank permit applications  
22 are subject to s. 373.4141.

23           Section 8. Subsection (4) of section 373.4137, Florida  
24 Statutes, is amended to read:

25           373.4137 Mitigation requirements.--

26           (4) Prior to December 31, 1996, each water management  
27 district, in consultation with the Department of Environmental  
28 Protection, the United States Army Corps of Engineers, and  
29 other appropriate federal, state, and local governments, shall  
30 develop a plan for the primary purpose of complying with the  
31 mitigation requirements adopted pursuant to this part and 33

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1 U.S.C. s. 1344. This plan shall also address significant  
2 aquatic and exotic plant problems within wetlands and other  
3 surface waters. In developing such plans, the districts shall  
4 utilize sound ecosystem management practices to address  
5 significant water resource needs. In determining the  
6 activities to be included in such plans, the districts shall  
7 ~~also~~ consider the purchase of credits from public or private  
8 mitigation banks permitted under s. 373.4136 and approved in  
9 accordance with the Federal Guidance for the Establishment,  
10 Use, and Operation of Mitigation Banks (60 Fed. Reg. S8605).  
11 To the maximum extent practicable under state and federal law,  
12 preference shall be given to the use of a mitigation bank when  
13 the transportation project impact occurs within the mitigation  
14 bank's service area, the mitigation bank has the number and  
15 type of credits needed to offset the impact, the mitigation  
16 bank will ~~this part and shall include such purchase as a part~~  
17 ~~of the mitigation plan when such purchase would offset the~~  
18 ~~impact of the transportation project,~~ provide equal benefits  
19 to the water resources as ~~than~~ other mitigation options being  
20 considered, and the mitigation bank will provide the most  
21 cost-effective mitigation option. The mitigation plan shall  
22 be preliminarily approved by the water management district  
23 governing board and shall be submitted to the secretary of the  
24 Department of Environmental Protection for review and final  
25 approval. At least 30 days prior to preliminary approval, the  
26 water management district shall provide a copy of the draft  
27 mitigation plan to any person who has requested a copy.

28 (a) If the Department of Environmental Protection and  
29 water management districts are unable to identify mitigation  
30 that would offset the impacts of a project included in the  
31 inventory, either due to the nature of the impact or the

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1 amount of funds available, that project shall not be addressed  
2 in the mitigation plan and the project shall not be subject to  
3 the provisions of this section.

4 (b) Specific projects may be excluded from the  
5 mitigation plan and shall not be subject to this section upon  
6 the agreement of the Department of Transportation, the  
7 Department of Environmental Protection, and the appropriate  
8 water management district that the inclusion of such projects  
9 would hamper the efficiency or timeliness of the mitigation  
10 planning and permitting process.

11 (c) Those transportation projects that are proposed to  
12 commence in fiscal year 1996-1997 shall not be addressed in  
13 the mitigation plan, and the provisions of subsection (7)  
14 shall not apply to these projects. The Department of  
15 Transportation may enter into interagency agreements with the  
16 Department of Environmental Protection or any water management  
17 district to perform mitigation planning and implementation for  
18 these projects.

19 (d) On July 1, 1996, the Department of Transportation  
20 shall transfer to the Department of Environmental Protection  
21 \$12 million from the State Transportation Trust Fund for the  
22 purposes of the surface water improvement management program  
23 and to address statewide aquatic and exotic plant problems  
24 within wetlands and other surface waters. Such funds shall be  
25 considered an advance upon funds that the Department of  
26 Transportation would provide for statewide mitigation during  
27 the 1997-1998, 1998-1999, and 1999-2000 fiscal years. This  
28 use of mitigation funds for surface water improvement  
29 management projects or aquatic and exotic plant control may be  
30 utilized as mitigation for transportation projects to the  
31 extent that it complies with the mitigation requirements



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1 adopted pursuant to this part and 33 U.S.C. s. 1344. To the  
2 extent that such activities result in mitigation credit for  
3 projects permitted in fiscal year 1996-1997, all or part of  
4 the \$12 million funding for surface water improvement  
5 management projects or aquatic and exotic plant control in  
6 fiscal year 1996-1997 shall be drawn from Department of  
7 Transportation mitigation funding for fiscal year 1996-1997  
8 rather than from mitigation funding for fiscal years  
9 1997-1998, 1998-1999, and 1999-2000, in an amount equal to the  
10 cost per acre of impact described in subsection (3), times the  
11 acreage of impact that is mitigated by such plant control  
12 activities. Any part of the \$12 million that does not result  
13 in mitigation credit for projects permitted in fiscal year  
14 1996-1997 shall remain available for mitigation credit during  
15 fiscal years 1997-1998, 1998-1999, or 1999-2000.

16 Section 9. Subsection (8) of section 373.414, Florida  
17 Statutes, is amended to read:

18 373.414 Additional criteria for activities in surface  
19 waters and wetlands.--

20 (8) The governing board or the department, in deciding  
21 whether to grant or deny a permit for an activity regulated  
22 under this part shall consider the cumulative impacts upon  
23 surface water and wetlands, as delineated in s. 373.421(1),  
24 within the same watershed ~~drainage basin~~ as defined in s.  
25 373.403(12)~~373.403(9)~~, of:

26 (a) The activity for which the permit is sought.

27 (b) Projects which are existing or activities  
28 regulated under this part which are under construction or  
29 projects for which permits or determinations pursuant to s.  
30 373.421 or s. 403.914 have been sought.

31 (c) Activities which are under review, approved, or

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1 vested pursuant to s. 380.06, or other activities regulated  
 2 under this part which may reasonably be expected to be located  
 3 within surface waters or wetlands, as delineated in s.  
 4 373.421(1), in the same water shed ~~drainage basin~~ as defined  
 5 in s. 373.403(12)~~s. 373.403(9)~~, based upon the comprehensive  
 6 plans, adopted pursuant to chapter 163, of the local  
 7 governments having jurisdiction over the activities, or  
 8 applicable land use restrictions and regulations.

9  
 10 Provided that the mitigation offsets the impacts of the  
 11 activity regulated under this part, as required by s.  
 12 373.414(1)(b), the cumulative impacts of an activity regulated  
 13 under this part shall not be considered unacceptable if the  
 14 mitigation for that activity will be located within the same  
 15 watershed as the impact.

16  
17 (Redesignate subsequent sections.)

18  
19  
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 1, line 27, after the semicolon

23  
24 insert:

25 amending s. 373.4136, F.S.; requiring the  
 26 adoption of a uniform functional assessment  
 27 methodology rule; revising standards for  
 28 determining the boundaries of a mitigation  
 29 service area; providing for the processing of  
 30 mitigation bank permits; amending s. 373.4137,  
 31 F.S.; authorizing the use of mitigation banks;

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1           amending s. 373.414, F.S.; providing for  
2           consideration of cumulative impacts;  
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