

Bill No. SB 2162

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	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Subsections (6) and (7) are added to		
18	section 373.4135, Florida Statutes, to read:		
19	373.4135 Mitigation banks and offsite regional		
20	mitigation.--		
21	<u>(6) An environmental creation, preservation,</u>		
22	<u>enhancement, or restoration project, including regional</u>		
23	<u>offsite mitigation areas, for which money is donated or paid</u>		
24	<u>as mitigation, which is sponsored by the department, a water</u>		
25	<u>management district, or a local government and which provides</u>		
26	<u>mitigation for five or more applicants for permits under this</u>		
27	<u>part, or 35 or more acres of adverse impacts, shall be</u>		
28	<u>established and operated under a memorandum of agreement. Such</u>		
29	<u>memorandum of agreement need not be adopted by rule. The</u>		
30	<u>memorandum of agreement shall be between the governmental</u>		
31	<u>entity proposing the mitigation project and the department or</u>		

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1 water management district, as appropriate. For the purposes of
2 this subsection, one creation, preservation, enhancement, or
3 restoration project shall mean one or more parcels of land
4 with similar ecological communities which are intended to be
5 created, preserved, enhanced, or restored under a common
6 scheme.

7 (a) For ongoing creation, preservation, enhancement,
8 or restoration projects and regional offsite mitigation areas
9 sponsored by the department, a water management district, or a
10 local government, and for which money was or is paid as
11 mitigation, which were begun prior to the effective date of
12 this subsection, and which have operated as of the effective
13 date of this subsection, or are anticipated to operate, in
14 excess of the thresholds listed above, the governmental entity
15 sponsoring such project shall submit a draft memorandum of
16 agreement to the water management district or department by
17 October 1, 2000. The governmental entity sponsoring such
18 project shall make reasonable efforts to obtain the final
19 signed memorandum of agreement within 1 year after submittal.
20 The governmental entity sponsoring the project may continue to
21 receive moneys donated or paid toward the project as
22 mitigation if the provisions of this paragraph are met.

23 (b) The memorandum of agreement shall establish
24 criteria that each environmental creation, preservation,
25 enhancement, or restoration project must meet. These criteria
26 must address the elements listed in paragraph (c). The entity
27 sponsoring such project or categories of projects shall submit
28 documentation or other evidence to the water management
29 district or department that the project meets, or individual
30 projects within that category meet, the specified criteria.

31 (c) At a minimum, the memorandum of agreement must

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- 1 address the following for each project authorized:
2 1. A description of the work that will be conducted on
3 the site and timeline for completion of such work;
4 2. A timeline for obtaining any required environmental
5 resource permit;
6 3. The environmental success criteria that the project
7 must achieve;
8 4. The monitoring and long-term management
9 requirements that must be undertaken for the project;
10 5. An assessment of the project in accordance with s.
11 373.4136(4)(a)-(i), until the adoption of the uniform wetland
12 mitigation assessment method pursuant to s. 373.414(18);
13 6. A designation of the entity responsible for the
14 successful completion of the mitigation work;
15 7. A definition of the geographic area where the
16 project may be used as a mitigation established using the
17 criteria of s. 373.4136(6);
18 8. Full cost accounting of the project, including
19 annual review and adjustment;
20 9. Provision and timetable for the acquisition of any
21 lands necessary for the project;
22 10. Provision for preservation of the site;
23 11. Provision for application of all moneys received
24 solely to the project for which they were collected; and
25 12. Provision for termination of the agreement and
26 cessation of use of the project as mitigation if any material
27 contingency of the agreement has failed to occur.
28 (d) A single memorandum of understanding may authorize
29 more than one environmental creation, preservation,
30 enhancement, or restoration projects or categories of projects
31 if the elements in paragraph (c) are met for each project.

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1 (e) Projects governed by this subsection, except for
2 projects established pursuant to s. 373.4137(7), are subject
3 to s. 373.414(1)(b)1.

4 (f) This subsection does not apply to mitigation areas
5 established to implement s. 373.4137.

6 (g) This subsection does not apply if the department,
7 water management district, or local government establishes, or
8 contracts with a private entity to establish, a mitigation
9 bank permitted under s. 373.4136. This subsection does not
10 apply to other entities that establish offsite regional
11 mitigation as defined in this section and s. 373.403.

12 (7) The department, water management districts, and
13 local governments may elect to establish and manage mitigation
14 sites, including regional offsite mitigation areas, or
15 contract with permitted mitigation banks to provide mitigation
16 options for private single-family lots or homeowners. The
17 department, water management districts, and local governments
18 shall provide a written notice of their election under this
19 subsection by United States mail to those individuals who have
20 requested, in writing, to receive such notice. The use of
21 mitigation options established under this section are not
22 subject to the full-cost accounting provision of s.
23 373.414(1)(b)1. To use a mitigation option established under
24 this section, the applicant for a permit under this part must
25 be a private, single-family lot or homeowner, and the land
26 upon which the adverse impact is located must be intended for
27 use as a single-family residence by the current owner. The
28 applicant must not be a corporation, partnership, or other
29 business entity. However, this subsection does not apply to
30 other entities that establish offsite regional mitigation as
31 defined in this section and s. 373.403.

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1 Section 2. Subsection (6) of section 373.4136, Florida
2 Statutes, is amended to read:

3 373.4136 Establishment and operation of mitigation
4 banks.--

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

28 (a) In determining the boundaries of the mitigation
29 service area ~~extent to which a mitigation bank provides~~
30 ~~exceptional ecological value such that adverse impacts outside~~
31 ~~the regional watershed could reasonably be expected to be~~

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1 ~~adequately offset by the mitigation bank~~, the department or
2 the water management district shall consider the
3 characteristics, size, and location of the mitigation bank
4 and, at a minimum, the extent to which the mitigation bank:

5 1. Contributes to ~~Will promote~~ a regional integrated
6 ecological network;

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

14 3. Will provide for the long-term viability of
15 endangered or threatened species or species of special
16 concern; ~~and~~

17 4. Is consistent with the objectives of a regional
18 management plan adopted or endorsed by the department or water
19 management districts; ~~and~~

20 5. Can reasonably be expected to offset specific types
21 of wetland impacts within a specific geographic area. A
22 mitigation bank need not be able to offset all expected
23 impacts within its service area.

24 (b) The department and water management districts
25 shall use regional watersheds to guide the establishment of
26 mitigation service areas. Drainage basins established pursuant
27 to s. 373.414(8) may be used as regional watersheds if they
28 are established based on the hydrologic or ecological
29 characteristics of the basin. A mitigation service area may
30 extend beyond the regional watershed in which the bank is
31 located into all or part of other regional watersheds if the

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1 mitigation bank has the ability to offset adverse impacts
2 outside that regional watershed. Similarly, a mitigation
3 service area may be smaller than the regional watershed in
4 which the mitigation bank is located if adverse impacts
5 throughout the regional watershed cannot reasonably be
6 expected to be offset by the mitigation bank because of local
7 ecological or hydrological conditions.

8 (c)(b) Once a mitigation bank service area has been
9 established by the department or a water management district
10 for a mitigation bank, such service area shall be accepted by
11 all water management districts, local governments, and the
12 department.

13 (d)(c) If the requirements in ss. 373.414(1)(b) and
14 373.414(8)s. 373.4135(1)(b) are met, the following projects
15 or activities regulated under this part shall be eligible to
16 use a mitigation bank, regardless of whether ~~notwithstanding~~
17 ~~the fact that~~ they are ~~not completely~~ located within the
18 mitigation service area:

- 19 1. Projects with adverse impacts partially located
20 within the mitigation service area.
- 21 2. Linear projects, such as roadways, transmission
22 lines, distribution lines, pipelines, or railways.
- 23 3. Projects with total adverse impacts of less than 1
24 acre in size.

25 Section 3. Subsections (1), (8), and (18) of section
26 373.414, Florida Statutes, are amended, and subsection (19) is
27 added to that section, to read:

28 373.414 Additional criteria for activities in surface
29 waters and wetlands.--

30 (1) As part of an applicant's demonstration that an
31 activity regulated under this part will not be harmful to the

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1 water resources or will not be inconsistent with the overall
2 objectives of the district, the governing board or the
3 department shall require the applicant to provide reasonable
4 assurance that state water quality standards applicable to
5 waters as defined in s. 403.031(13) will not be violated and
6 reasonable assurance that such activity in, on, or over
7 surface waters or wetlands, as delineated in s. 373.421(1), is
8 not contrary to the public interest. However, if such an
9 activity significantly degrades or is within an Outstanding
10 Florida Water, as provided by department rule, the applicant
11 must provide reasonable assurance that the proposed activity
12 will be clearly in the public interest.

13 (a) In determining whether an activity, which is in,
14 on, or over surface waters or wetlands, as delineated in s.
15 373.421(1), and is regulated under this part, is not contrary
16 to the public interest or is clearly in the public interest,
17 the governing board or the department shall consider and
18 balance the following criteria:

19 1. Whether the activity will adversely affect the
20 public health, safety, or welfare or the property of others;

21 2. Whether the activity will adversely affect the
22 conservation of fish and wildlife, including endangered or
23 threatened species, or their habitats;

24 3. Whether the activity will adversely affect
25 navigation or the flow of water or cause harmful erosion or
26 shoaling;

27 4. Whether the activity will adversely affect the
28 fishing or recreational values or marine productivity in the
29 vicinity of the activity;

30 5. Whether the activity will be of a temporary or
31 permanent nature;

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

30 2. The department and each water management district
31 shall report to the Executive Office of the Governor by

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1 January 31 ~~and July 31~~ of each year all cash donations
2 accepted under subparagraph 1. during the preceding calendar
3 year 6 months for wetland mitigation purposes, ~~which shall~~
4 ~~include a description of the endorsed mitigation projects.~~ The
5 report must exclude contributions made pursuant to s.
6 373.4137. The report must include a description of the
7 endorsed mitigation projects and, except for projects governed
8 by s. 373.4135(6), shall address, as applicable, success
9 criteria, project implementation status and timeframe,
10 monitoring, long-term management, provisions for preservation,
11 and full-cost accounting.

12 3. If the applicant is unable to meet water quality
13 standards because existing ambient water quality does not meet
14 standards, the governing board or the department shall
15 consider mitigation measures proposed by or acceptable to the
16 applicant that cause net improvement of the water quality in
17 the receiving body of water for those parameters which do not
18 meet standards.

19 4. If mitigation requirements imposed by a local
20 government for surface water and wetland impacts of an
21 activity regulated under this part cannot be reconciled with
22 mitigation requirements approved under a permit for the same
23 activity issued under this part, including application of the
24 uniform wetland assessment method adopted pursuant to
25 subsection (18), the mitigation requirements for surface water
26 and wetland impacts shall be controlled by the permit issued
27 under this part.

28 (c) Where activities for a single project regulated
29 under this part occur in more than one local government
30 jurisdiction, and where permit conditions or regulatory
31 requirements are imposed by a local government for these

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1 activities which cannot be reconciled with those imposed by a
2 permit under this part for the same activities, the permit
3 conditions or regulatory requirements shall be controlled by
4 the permit issued under this part.

5 (8)(a) The governing board or the department, in
6 deciding whether to grant or deny a permit for an activity
7 regulated under this part shall consider the cumulative
8 impacts upon surface water and wetlands, as delineated in s.
9 373.421(1), within the same drainage basin as defined in s.
10 373.403(9), of:

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

12 2.(b) Projects which are existing or activities
13 regulated under this part which are under construction or
14 projects for which permits or determinations pursuant to s.
15 373.421 or s. 403.914 have been sought.

16 3.(c) Activities which are under review, approved, or
17 vested pursuant to s. 380.06, or other activities regulated
18 under this part which may reasonably be expected to be located
19 within surface waters or wetlands, as delineated in s.
20 373.421(1), in the same drainage basin as defined in s.
21 373.403(9), based upon the comprehensive plans, adopted
22 pursuant to chapter 163, of the local governments having
23 jurisdiction over the activities, or applicable land use
24 restrictions and regulations.

25 (b) If an applicant proposes mitigation within the
26 same drainage basin as the adverse impacts to be mitigated,
27 and if the mitigation offsets these adverse impacts, the
28 governing board and department shall consider the regulated
29 activity to meet the requirements of paragraph (a). However
30 this paragraph does not prohibit mitigation outside the
31 drainage basin which offsets the adverse impacts within the

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1 drainage basin.
2 (18) ~~MITIGATION STUDIES.~~--The department and each
3 water management district responsible for implementation of
4 the environmental resource permitting program shall develop a
5 uniform wetland mitigation assessment method no later than
6 October 1, 2001. The department shall adopt the uniform
7 mitigation assessment method by rule no later than January 31,
8 2002. Once the department adopts the uniform wetland
9 mitigation assessment method by rule, the uniform wetland
10 mitigation assessment method shall be binding on the
11 department, the water management districts, local governments,
12 and any other governmental agencies, and shall be the sole
13 means to determine the mitigation needed to offset adverse
14 impacts and to award and deduct mitigation credits. A water
15 management district and any other governmental agency subject
16 to chapter 120 may apply the uniform wetland mitigation
17 assessment method without the need to adopt it pursuant to s.
18 120.54. It shall be a goal of the department and water
19 management districts that the uniform wetland mitigation
20 assessment method developed be practical for use within the
21 timeframes provided in the permitting process and results in a
22 consistent process for determining mitigation requirements. It
23 shall be recognized that any such method will require the
24 application of reasonable scientific judgment. The uniform
25 wetland mitigation assessment method must determine the value
26 of functions provided by wetlands and other surface waters
27 considering the current conditions of these areas, use by fish
28 and wildlife, location, uniqueness, and hydrologic connection,
29 in addition to the factors listed in s. 373.4136(4). The
30 uniform wetland mitigation assessment method shall also
31 account for the expected time lag associated with offsetting

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1 impacts and the degrees of risk associated with the proposed
2 mitigation. The uniform wetland mitigation assessment method
3 may account for different ecological communities in different
4 areas of the state. Environmental resource permitting rules
5 may establish categories of permits or thresholds for minor
6 impacts under which the use of the uniform wetland mitigation
7 assessment method will not be required. The application of the
8 uniform wetland mitigation assessment method is not subject to
9 s. 70.001. If the rule establishing the uniform wetland
10 mitigation assessment method is deemed to be invalid, the
11 applicable rules related to establishing needed mitigation in
12 existence prior to the adoption of the uniform wetland
13 mitigation assessment method and the method described in
14 paragraph (b) for existing mitigation banks shall be
15 authorized for use by the department, water management
16 districts, local governments, and other state agencies.

17 (a) In developing the uniform wetland mitigation
18 assessment method, the department shall seek input from the
19 United State Army Corps of Engineers in order to promote
20 consistency in the mitigation assessment methods used by the
21 state and federal permitting programs.

22 (b) An entity that has received a mitigation bank
23 permit prior to the adoption of the uniform wetland mitigation
24 assessment method shall have impact sites assessed, for the
25 purpose of deducting bank credits, using the credit assessment
26 method, including any functional assessment methodology, in
27 place when the bank was permitted, unless the entity elects to
28 have its credits redetermined, and thereafter have its credits
29 deducted, using the uniform wetland mitigation assessment
30 method.

31 ~~(a) For impacts resulting from activities regulated~~

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1 ~~under this part, the Legislature finds that successful~~
2 ~~mitigation performed by the public and private sectors has~~
3 ~~helped to preserve the state's natural resources.~~

4 ~~(b) The Office of Program Policy Analysis and~~
5 ~~Government Accountability shall study the mitigation options~~
6 ~~as defined by paragraph (1)(b), implemented from 1994 to the~~
7 ~~present, and issue a report by January 31, 2000. The study~~
8 ~~shall consider the effectiveness and costs of the current~~
9 ~~mitigation options in offsetting adverse effects to wetlands~~
10 ~~and wetland functions, including the application of cumulative~~
11 ~~impact considerations, and identify, as appropriate,~~
12 ~~recommendations for statutory or rule changes to increase the~~
13 ~~effectiveness of mitigation strategies.~~

14 (19) The Office of Program Policy Analysis and
15 Governmental Accountability shall study the cumulative impact
16 consideration required by subsection (8) and issue a report by
17 July 1, 2001. The study shall address the justification for
18 the cumulative impact consideration; changes that can provide
19 clarity and certainty in the cumulative impact consideration;
20 and whether a practical, consistent, and equitable methodology
21 can be developed for considering cumulative impacts within the
22 environmental resource permitting program.

23 Section 4. This act shall take effect upon becoming a
24 law.

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26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete everything before the enacting clause

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31 and insert:

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A bill to be entitled
An act relating to mitigation; amending s.
373.4135, F.S.; requiring a memorandum of
agreement under certain conditions; amending s.
373.4136, F.S.; revising provisions relating to
the size of the mitigation service area;
providing for use of regional watersheds to
guide the establishment of mitigation service
areas; requiring satisfaction of cumulative
impact considerations; providing rulemaking
authority; providing that mitigation bank
permit applications are subject to certain
established processing procedures; amending s.
373.414, F.S.; revising reporting provisions
relating to money donated as wetlands
mitigation; requiring the Department of
Environmental Protection and certain water
management districts to adopt a single uniform
functional assessment methodology, by rule, by
a specified date; directing local government
use of the methodology; providing conditions
and procedures for use of the methodology;
directing a study by the Office of Program
Policy Analysis and Governmental Accountability
on cumulative impacts; providing an effective
date.