

By Senator Forman

32-852-00

1                                   A bill to be entitled  
2           An act relating to mitigation banking; amending  
3           s. 373.4135, F.S.; specifying what must be  
4           included in a memorandum of agreement required  
5           for publicly sponsored offsite regional  
6           mitigation; amending s. 373.414, F.S.;  
7           requiring the Department of Environmental  
8           Protection and the water management districts  
9           to adopt a uniform functional assessment  
10          methodology for public or private mitigation  
11          banking; directing the department to conduct a  
12          comprehensive study of cumulative-impact  
13          analysis and report its results to the Governor  
14          and the Legislature; providing an effective  
15          date.

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

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19           Section 1. Subsection (6) is added to section  
20           373.4135, Florida Statutes, to read:

21                   373.4135 Mitigation banks and offsite regional  
22           mitigation.--

23                   (6) Any publicly sponsored offsite regional mitigation  
24           that is authorized to offset impacts under this part must  
25           operate under a memorandum of agreement specifying the duties  
26           and responsibilities of all parties involved in the publicly  
27           sponsored offsite mitigation. At a minimum, this memorandum of  
28           agreement must include the following:

29                   (a) Specification of the work that will be conducted  
30           on the site;

31                   (b) When the work will be completed;

- 1           (c) Environmental success criteria;  
2           (d) Monitoring and long-term management requirements  
3 of the site;  
4           (e) A requirement that the site be subject to the  
5 uniform functional assessment methodology;  
6           (f) Designation of the party responsible for the  
7 successful completion of the mitigation work;  
8           (g) A definition of the geographic area where  
9 mitigation can occur;  
10           (h) Full cost accounting of the project, including  
11 annual review and adjustment of the accounting and periodic  
12 outside audits thereof;  
13           (i) Provision and timetable for the acquisition of  
14 lands necessary for the mitigation site;  
15           (j) Provision for perpetual protection of the site;  
16           (k) The application of all moneys received solely to  
17 the project for which they were collected; and  
18           (l) Provision for termination of the agreement if any  
19 material contingency of the agreement has failed to occur.  
20           Section 2. Paragraph (b) of subsection (1) of section  
21 373.414, Florida Statutes, is amended, and subsection (19) is  
22 added to that section to read:  
23           373.414 Additional criteria for activities in surface  
24 waters and wetlands.--  
25           (1) As part of an applicant's demonstration that an  
26 activity regulated under this part will not be harmful to the  
27 water resources or will not be inconsistent with the overall  
28 objectives of the district, the governing board or the  
29 department shall require the applicant to provide reasonable  
30 assurance that state water quality standards applicable to  
31 waters as defined in s. 403.031(13) will not be violated and

1 reasonable assurance that such activity in, on, or over  
2 surface waters or wetlands, as delineated in s. 373.421(1), is  
3 not contrary to the public interest. However, if such an  
4 activity significantly degrades or is within an Outstanding  
5 Florida Water, as provided by department rule, the applicant  
6 must provide reasonable assurance that the proposed activity  
7 will be clearly in the public interest.

8 (b) If the applicant is unable to otherwise meet the  
9 criteria set forth in this subsection, the governing board or  
10 the department, in deciding to grant or deny a permit, shall  
11 consider measures proposed by or acceptable to the applicant  
12 to mitigate adverse effects that may be caused by the  
13 regulated activity. Such measures may include, but are not  
14 limited to, onsite mitigation, offsite mitigation, offsite  
15 regional mitigation, and the purchase of mitigation credits  
16 from mitigation banks permitted under s. 373.4136. It shall  
17 be the responsibility of the applicant to choose the form of  
18 mitigation. The mitigation must offset the adverse effects  
19 caused by the regulated activity.

20 1. The department or water management districts may  
21 accept the donation of money as mitigation only where the  
22 donation is specified for use in a duly noticed environmental  
23 creation, preservation, enhancement, or restoration project,  
24 endorsed by the department or the governing board of the water  
25 management district, which offsets the impacts of the activity  
26 permitted under this part. However, the provisions of this  
27 subsection shall not apply to projects undertaken pursuant to  
28 s. 373.4137 or chapter 378. Where a permit is required under  
29 this part to implement any project endorsed by the department  
30 or a water management district, all necessary permits must  
31 have been issued prior to the acceptance of any cash donation.

1 After the effective date of this act, when money is donated to  
2 either the department or a water management district to offset  
3 impacts authorized by a permit under this part, the department  
4 or the water management district shall accept only a donation  
5 that represents the full cost to the department or water  
6 management district of undertaking the project that is  
7 intended to mitigate the adverse impacts. The full cost shall  
8 include all direct and indirect costs, as applicable, such as  
9 those for land acquisition, land restoration or enhancement,  
10 perpetual land management, and general overhead consisting of  
11 costs such as staff time, building, and vehicles. The  
12 department or the water management district may use a  
13 multiplier or percentage to add to other direct or indirect  
14 costs to estimate general overhead. Mitigation credit for  
15 such a donation shall be given only to the extent that the  
16 donation covers the full cost to the agency of undertaking the  
17 project that is intended to mitigate the adverse impacts.  
18 However, nothing herein shall be construed to prevent the  
19 department or a water management district from accepting a  
20 donation representing a portion of a larger project, provided  
21 that the donation covers the full cost of that portion and  
22 mitigation credit is given only for that portion. The  
23 department or water management district may deviate from the  
24 full cost requirements of this subparagraph to resolve a  
25 proceeding brought pursuant to chapter 70 or a claim for  
26 inverse condemnation. Nothing in this section shall be  
27 construed to require the owner of a private mitigation bank,  
28 permitted under s. 373.4136, to include the full cost of a  
29 mitigation credit in the price of the credit to a purchaser of  
30 said credit.  
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1           2. The department and each water management district  
2 shall report to the Executive Office of the Governor by  
3 January 31 and July 31 of each year all cash donations  
4 accepted during the preceding 6 months for wetland mitigation  
5 purposes, which shall include a description of the endorsed  
6 mitigation projects.

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

14           4. If mitigation requirements imposed by a local  
15 government for surface water and wetland impacts of an  
16 activity regulated under this part cannot be reconciled with  
17 mitigation requirements approved under a permit for the same  
18 activity issued under this part, the mitigation requirements  
19 for surface water and wetland impacts shall be controlled by  
20 the permit issued under this part.

21           5. The department and each water management district  
22 shall adopt a single uniform functional assessment methodology  
23 by rule by July 1, 2001. The department and water management  
24 districts shall use the uniform functional assessment  
25 methodology to assess impacts, award credits, and deduct  
26 credits from any public or private mitigation bank or offsite  
27 regional mitigation area. The uniform functional assessment  
28 methodology may account for particular ecological communities  
29 through the state. The uniform functional assessment  
30 methodology is the exclusive mechanism for determining credit  
31 requirements for mitigation banks or offsite regional

1 mitigation areas, notwithstanding any rule or statute to the  
2 contrary. However, any entity that has received a mitigation  
3 bank permit before the adoption of the uniform assessment  
4 methodology may have bank credits deducted under the authority  
5 of the credit assessment methodology existing when then bank  
6 was permitted. However, after July 1, 2001, any permitted  
7 entity may elect to have credits deducted under the authority  
8 of the uniform assessment methodology.

9 (19) The department shall conduct a comprehensive  
10 study of cumulative-impact analysis. The cumulative-impact  
11 study, as recommended in the Office for Program Policy and  
12 Government Accountability's Report entitled, "Wetland  
13 Mitigation," must examine cumulative-impact criteria in light  
14 of larger environmental permitting issues. The scope of the  
15 study must address the justification for cumulative-impact  
16 analysis; whether a practical, consistent, and equitable  
17 methodology can be developed for assessing cumulative impacts,  
18 and if cumulative-impact analysis fits into broader  
19 environmental and economic growth management goals.

20 (a) The department shall convene a broadly  
21 representative group of key stakeholders in the public and  
22 private sectors to provide technical guidance and advice to  
23 the study. The department shall report the results of this  
24 study to the Governor and the Legislature by July 1, 2001.

25 (b) Because of the regional benefits of permitted  
26 mitigation banks and offsite regional mitigation, if the  
27 mitigation offsets the impacts of the activity regulated under  
28 this part as required by paragraph (1)(b), any cumulative  
29 impacts associated with the activity are presumed acceptable  
30 if the mitigation for that activity is located within the same  
31 mitigation service area as the impact. Cumulative-impacts

1 consideration by the department and the water management  
2 districts is exclusively governed by this subsection pending  
3 the outcome of the cumulative-impact study required by this  
4 subsection.

5 Section 3. This act shall take effect upon becoming a  
6 law.

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9 SENATE SUMMARY

10 Provides requirements for a memorandum of agreement that  
11 is required for publicly sponsored offsite regional  
12 mitigation. Provides for a uniform functional assessment  
13 methodology for wetlands mitigation. Directs the  
14 Department of Environmental Protection to conduct a study  
15 of cumulative-impact analysis.  
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