

1                   A bill to be entitled  
2           An act relating to wetlands mitigation;  
3           amending s. 373.083, F.S.; authorizing a water  
4           management district governing board to delegate  
5           its powers, duties, and functions; amending s.  
6           373.4135, F.S.; requiring establishment and  
7           operation of mitigation projects under a  
8           memorandum of agreement, under certain  
9           conditions; providing requirements and  
10          exclusions; authorizing certain mitigation  
11          options for private single-family lots or  
12          homeowners; providing for notice; amending s.  
13          373.4136, F.S.; revising provisions relating to  
14          size and characteristics of the mitigation  
15          service area; providing for use of regional  
16          watersheds to guide establishment of mitigation  
17          service areas; requiring satisfaction of  
18          cumulative impact considerations; amending s.  
19          373.414, F.S.; revising reporting requirements  
20          relating to money donated as wetlands  
21          mitigation; specifying conditions under which  
22          proposed mitigation shall satisfy cumulative  
23          impact considerations for a regulated activity;  
24          requiring the Department of Environmental  
25          Protection and certain water management  
26          districts to adopt a single uniform wetland  
27          mitigation assessment method, by rule, by a  
28          specified date; directing local government use  
29          of the assessment method; providing conditions  
30          and procedures for use of the assessment  
31          method; deleting obsolete language; directing

1 study by the Office of Program Policy Analysis  
2 and Government Accountability on mitigation  
3 cumulative impact considerations; directing the  
4 St. Johns River Water Management District to  
5 classify the Lake Jesup Basin as a separate and  
6 distinct basin for certain purposes, and to  
7 treat it as a vested basin; creating s.  
8 373.200, F.S.; specifying the role of the  
9 Seminole Tribe Water Rights Compact; amending  
10 s. 20.255, F.S.; requiring the Governor to  
11 provide reasonable representation from all  
12 sections of the state in making appointments to  
13 the Environmental Regulation Commission;  
14 amending s. 287.042, F.S.; providing specific  
15 procurement powers for water management  
16 districts; providing an effective date.

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

19  
20 Section 1. Subsection (5) is added to section 373.083,  
21 Florida Statutes, to read:

22 373.083 General powers and duties of the governing  
23 board.--In addition to other powers and duties allowed it by  
24 law, the governing board is authorized to:

25 (5) Execute any of the powers, duties, and functions  
26 vested in the governing board through a member or members  
27 thereof, the executive director, or other district staff as  
28 designated by the governing board. The governing board may  
29 establish the scope and terms of any delegation. However, if  
30 the governing board delegates the authority to take final  
31 action on permit applications under part II or part IV, or

1 petitions for variances or waivers of permitting requirements  
2 under part II or part IV, the governing board shall provide a  
3 process for referring any denial of such application or  
4 petition to the governing board to take final action. The  
5 authority in this subsection is supplemental to any other  
6 provision of this chapter granting authority to the governing  
7 board to delegate specific powers, duties, or functions.

8 Section 2. Subsections (6) and (7) are added to  
9 section 373.4135, Florida Statutes, to read:

10 373.4135 Mitigation banks and offsite regional  
11 mitigation.--

12 (6) An environmental creation, preservation,  
13 enhancement, or restoration project, including regional  
14 offsite mitigation areas, for which money is donated or paid  
15 as mitigation, that is sponsored by the department, a water  
16 management district, or a local government and provides  
17 mitigation for five or more applicants for permits under this  
18 part, or for 35 or more acres of adverse impacts, shall be  
19 established and operated under a memorandum of agreement. The  
20 memorandum of agreement shall be between the governmental  
21 entity proposing the mitigation project and the department or  
22 water management district, as appropriate. Such memorandum of  
23 agreement need not be adopted by rule. For the purposes of  
24 this subsection, one creation, preservation, enhancement, or  
25 restoration project shall mean one or more parcels of land  
26 with similar ecological communities that are intended to be  
27 created, preserved, enhanced, or restored under a common  
28 scheme.

29 (a) For any ongoing creation, preservation,  
30 enhancement, or restoration project and regional offsite  
31 mitigation area sponsored by the department, a water

1 management district, or a local government, for which money  
2 was or is paid as mitigation, that was begun prior to the  
3 effective date of this subsection and has operated as of the  
4 effective date of this subsection, or is anticipated to  
5 operate, in excess of the mitigation thresholds provided in  
6 this subsection, the governmental entity sponsoring such  
7 project shall submit a draft memorandum of agreement to the  
8 water management district or department by October 1, 2000.  
9 The governmental entity sponsoring such project shall make  
10 reasonable efforts to obtain the final signed memorandum of  
11 agreement within 1 year after such submittal. The governmental  
12 entity sponsoring such project may continue to receive moneys  
13 donated or paid toward the project as mitigation, provided the  
14 requirements of this paragraph are met.

15 (b) The memorandum of agreement shall establish  
16 criteria that each environmental creation, preservation,  
17 enhancement, or restoration project must meet. These criteria  
18 must address the elements listed in paragraph (c). The entity  
19 sponsoring such project, or category of projects, shall submit  
20 documentation or other evidence to the water management  
21 district or department that the project meets, or individual  
22 projects within a category meet, the specified criteria.

23 (c) At a minimum, the memorandum of agreement must  
24 address the following for each project authorized:

25 1. A description of the work that will be conducted on  
26 the site and a timeline for completion of such work.

27 2. A timeline for obtaining any required environmental  
28 resource permit.

29 3. The environmental success criteria that the project  
30 must achieve.

31

1           4. The monitoring and long-term management  
2 requirements that must be undertaken for the project.

3           5. An assessment of the project in accordance with s.  
4 373.4136(4)(a)-(i), until the adoption of the uniform wetland  
5 mitigation assessment method pursuant to s. 373.414(18).

6           6. A designation of the entity responsible for the  
7 successful completion of the mitigation work.

8           7. A definition of the geographic area where the  
9 project may be used as mitigation established using the  
10 criteria of s. 373.4136(6).

11           8. Full cost accounting of the project, including  
12 annual review and adjustment.

13           9. Provision and a timetable for the acquisition of  
14 any lands necessary for the project.

15           10. Provision for preservation of the site.

16           11. Provision for application of all moneys received  
17 solely to the project for which they were collected.

18           12. Provision for termination of the agreement and  
19 cessation of use of the project as mitigation if any material  
20 contingency of the agreement has failed to occur.

21           (d) A single memorandum of understanding may authorize  
22 more than one environmental creation, preservation,  
23 enhancement, or restoration project, or category of projects,  
24 as long as the elements listed in paragraph (c) are addressed  
25 for each project.

26           (e) Projects governed by this subsection, except for  
27 projects established pursuant to subsection (7), shall be  
28 subject to the provisions of s. 373.414(1)(b)1.

29           (f) The provisions of this subsection shall not apply  
30 to mitigation areas established to implement the provisions of  
31 s. 373.4137.

1           (g) The provisions of this subsection shall not apply  
 2 when the department, water management district, or local  
 3 government establishes, or contracts with a private entity to  
 4 establish, a mitigation bank permitted under s. 373.4136. The  
 5 provisions of this subsection shall not apply to other  
 6 entities that establish offsite regional mitigation as defined  
 7 in this section and s. 373.403.

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

29           Section 3. Subsection (6) of section 373.4136, Florida  
 30 Statutes, is amended to read:

1           373.4136 Establishment and operation of mitigation  
 2 banks.--

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

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

1 the water management district shall consider the  
2 characteristics, size, and location of the mitigation bank  
3 and, at a minimum, the extent to which the mitigation bank:  
4       1. Contributes to ~~Will promote~~ a regional integrated  
5 ecological network;  
6       2. Will significantly enhance the water quality or  
7 restoration of an offsite receiving water body that is  
8 designated as an Outstanding Florida Water, a Wild and Scenic  
9 River, an aquatic preserve, a water body designated in a plan  
10 adopted pursuant to s. 373.456 of the Surface Water  
11 Improvement and Management Act, or a nationally designated  
12 estuarine preserve;  
13       3. Will provide for the long-term viability of  
14 endangered or threatened species or species of special  
15 concern; ~~and~~  
16       4. Is consistent with the objectives of a regional  
17 management plan adopted or endorsed by the department or water  
18 management districts; ~~and-~~  
19       5. Can reasonably be expected to offset specific types  
20 of wetland impacts within a specific geographic area. A  
21 mitigation bank need not be able to offset all expected  
22 impacts within its service area.  
23       (b) The department and water management districts  
24 shall use regional watersheds to guide the establishment of  
25 mitigation service areas. Drainage basins established pursuant  
26 to s. 373.414(8) may be used as regional watersheds when they  
27 are established based on the hydrological or ecological  
28 characteristics of the basin. A mitigation service area may  
29 extend beyond the regional watershed in which the bank is  
30 located into all or part of other regional watersheds when the  
31 mitigation bank has the ability to offset adverse impacts



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

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

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

18 1. Projects with adverse impacts partially located  
19 within the mitigation service area.

20 2. Linear projects, such as roadways, transmission  
21 lines, distribution lines, pipelines, or railways.

22 3. Projects with total adverse impacts of less than 1  
23 acre in size.

24 Section 4. Paragraph (b) of subsection (1) and  
25 subsections (8) and (18) of section 373.414, Florida Statutes,  
26 are amended, and subsection (19) is added to said section, to  
27 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

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

25 1. The department or water management districts may  
26 accept the donation of money as mitigation only where the  
27 donation is specified for use in a duly noticed environmental  
28 creation, preservation, enhancement, or restoration project,  
29 endorsed by the department or the governing board of the water  
30 management district, which offsets the impacts of the activity  
31 permitted under this part. However, the provisions of this

1 subsection shall not apply to projects undertaken pursuant to  
2 s. 373.4137 or chapter 378. Where a permit is required under  
3 this part to implement any project endorsed by the department  
4 or a water management district, all necessary permits must  
5 have been issued prior to the acceptance of any cash donation.  
6 After the effective date of this act, when money is donated to  
7 either the department or a water management district to offset  
8 impacts authorized by a permit under this part, the department  
9 or the water management district shall accept only a donation  
10 that represents the full cost to the department or water  
11 management district of undertaking the project that is  
12 intended to mitigate the adverse impacts. The full cost shall  
13 include all direct and indirect costs, as applicable, such as  
14 those for land acquisition, land restoration or enhancement,  
15 perpetual land management, and general overhead consisting of  
16 costs such as staff time, building, and vehicles. The  
17 department or the water management district may use a  
18 multiplier or percentage to add to other direct or indirect  
19 costs to estimate general overhead. Mitigation credit for  
20 such a donation shall be given only to the extent that the  
21 donation covers the full cost to the agency of undertaking the  
22 project that is intended to mitigate the adverse impacts.  
23 However, nothing herein shall be construed to prevent the  
24 department or a water management district from accepting a  
25 donation representing a portion of a larger project, provided  
26 that the donation covers the full cost of that portion and  
27 mitigation credit is given only for that portion. The  
28 department or water management district may deviate from the  
29 full cost requirements of this subparagraph to resolve a  
30 proceeding brought pursuant to chapter 70 or a claim for  
31 inverse condemnation. Nothing in this section shall be

1 construed to require the owner of a private mitigation bank,  
2 permitted under s. 373.4136, to include the full cost of a  
3 mitigation credit in the price of the credit to a purchaser of  
4 said credit.

5         2. The department and each water management district  
6 shall report to the Executive Office of the Governor by  
7 January 31 ~~and July 31~~ of each year all cash donations  
8 accepted under subparagraph 1.during the preceding calendar  
9 year 6 months for wetland mitigation purposes, ~~which shall~~  
10 ~~include a description of the endorsed mitigation projects.~~ The  
11 report shall exclude those contributions pursuant to s.  
12 373.4137. The report shall include a description of the  
13 endorsed mitigation projects and, except for projects governed  
14 by s. 373.4135(6), shall address, as applicable, success  
15 criteria, project implementation status and timeframe,  
16 monitoring, long-term management, provisions for preservation,  
17 and full cost accounting.

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

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

1 water and wetland impacts shall be controlled by the permit  
2 issued under this part.

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

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

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

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

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

31

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

1 proposed mitigation. The uniform wetland mitigation assessment  
2 method shall account for different ecological communities in  
3 different areas of the state. In developing the uniform  
4 wetland mitigation assessment method, the department and water  
5 management districts shall consult with approved local  
6 programs under s. 403.182 which have an established wetland  
7 mitigation program. The department and water management  
8 districts shall consider the recommendations submitted by such  
9 approved local programs, including any recommendations  
10 relating to the adoption by the department and water  
11 management districts of any uniform wetland mitigation  
12 methodology that has been adopted and used by an approved  
13 local program in its established wetland mitigation program.  
14 Environmental resource permitting rules may establish  
15 categories of permits or thresholds for minor impacts under  
16 which the use of the uniform wetland mitigation assessment  
17 method will not be required. The application of the uniform  
18 wetland mitigation assessment method is not subject to s.  
19 70.001. In the event the rule establishing the uniform wetland  
20 mitigation assessment method is deemed to be invalid, the  
21 applicable rules related to establishing needed mitigation in  
22 existence prior to the adoption of the uniform wetland  
23 mitigation assessment method, including those adopted by a  
24 county which is an approved local program under s. 403.182,  
25 and the method described in paragraph (b) for existing  
26 mitigation banks, shall be authorized for use by the  
27 department, water management districts, local governments, and  
28 other state agencies.

29 (a) In developing the uniform wetland mitigation  
30 assessment method, the department shall seek input from the  
31 United States Army Corps of Engineers in order to promote

1 consistency in the mitigation assessment methods used by the  
2 state and federal permitting programs.

3 (b) An entity which has received a mitigation bank  
4 permit prior to the adoption of the uniform wetland mitigation  
5 assessment method shall have impact sites assessed, for the  
6 purpose of deducting bank credits, using the credit assessment  
7 method, including any functional assessment methodology, which  
8 was in place when the bank was permitted; unless the entity  
9 elects to have its credits redetermined, and thereafter have  
10 its credits deducted, using the uniform wetland mitigation  
11 assessment method.

12 ~~(a) For impacts resulting from activities regulated~~  
13 ~~under this part, the Legislature finds that successful~~  
14 ~~mitigation performed by the public and private sectors has~~  
15 ~~helped to preserve the state's natural resources.~~

16 ~~(b) The Office of Program Policy Analysis and~~  
17 ~~Government Accountability shall study the mitigation options~~  
18 ~~as defined by paragraph (1)(b), implemented from 1994 to the~~  
19 ~~present, and issue a report by January 31, 2000. The study~~  
20 ~~shall consider the effectiveness and costs of the current~~  
21 ~~mitigation options in offsetting adverse effects to wetlands~~  
22 ~~and wetland functions, including the application of cumulative~~  
23 ~~impact considerations, and identify, as appropriate,~~  
24 ~~recommendations for statutory or rule changes to increase the~~  
25 ~~effectiveness of mitigation strategies.~~

26 (19) The Office of Program Policy Analysis and  
27 Government Accountability shall study the cumulative impact  
28 consideration required by s. 373.414(8) and issue a report by  
29 July 1, 2001. The study shall address the justification for  
30 the cumulative impact consideration, changes that can provide  
31 clarity and certainty in the cumulative impact consideration,



1 and whether a practicable, consistent, and equitable  
2 methodology can be developed for considering cumulative  
3 impacts within the environmental resource permitting program.

4 Section 5. Under its Environmental Resource Permit  
5 program, the St. Johns River Water Management District shall  
6 delineate the Lake Jesup basin as a separate and distinct  
7 drainage basin and regional watershed as shown in Figure  
8 12.2.8-1 and Appendix M, of the St. Johns River Water  
9 Management District's Applicants Handbook: Management and  
10 Storage of Surface Waters, incorporated by reference in Rule  
11 40C-4.091, Florida Administrative Code, effective as of May 1,  
12 2000.

13 Section 6. Section 373.200, Florida Statutes, is  
14 created to read:

15 373.200 Seminole Tribe Water Rights Compact.--Pursuant  
16 to the provisions of s. 285.165, the South Florida Water  
17 Management District is authorized to act in accordance with  
18 the Seminole Tribe Water Rights Compact incorporated by  
19 reference therein.

20 Section 7. Subsection 10 of section 20.255, Florida  
21 Statutes, is amended to read:

22 20.255 Department of Environmental Protection.--There  
23 is created a Department of Environmental Protection.

24 (10) There is created as a part of the Department of  
25 Environmental Protection an Environmental Regulation  
26 Commission. The commission shall be composed of seven  
27 residents of this state appointed by the Governor, subject to  
28 confirmation by the Senate. In making appointments, the  
29 Governor shall provide reasonable representation from all  
30 sections of the state.~~The commission shall include one, but~~  
31 ~~not more than two, members from each water management district~~

1 ~~who have resided in the district for at least 1 year, and the~~  
2 ~~remainder shall be selected from the state at large.~~

3 Membership shall be representative of agriculture, the  
4 development industry, local government, the environmental  
5 community, lay citizens, and members of the scientific and  
6 technical community who have substantial expertise in the  
7 areas of the fate and transport of water pollutants,  
8 toxicology, epidemiology, geology, biology, environmental  
9 sciences, or engineering. The Governor shall appoint the  
10 chair, and the vice chair shall be elected from among the  
11 membership. The members serving on the commission on July 1,  
12 1995, shall continue to serve on the commission for the  
13 remainder of their current terms. All appointments thereafter  
14 shall continue to be for 4-year terms. The Governor may at any  
15 time fill a vacancy for the unexpired term. The members of the  
16 commission shall serve without compensation, but shall be paid  
17 travel and per diem as provided in s. 112.061 while in the  
18 performance of their official duties. Administrative,  
19 personnel, and other support services necessary for the  
20 commission shall be furnished by the department.

21 Section 8. Paragraph (c) of subsection (2) of section  
22 287.042, Florida Statutes, is amended to read:

23 287.042 Powers, duties, and functions.--The department  
24 shall have the following powers, duties, and functions:

25 (2)

26 (c) Any person who files an action protesting a  
27 decision or intended decision pertaining to contracts  
28 administered by the department, a water management district,  
29 or a state agency pursuant to s. 120.57(3)(b) shall post with  
30 the department, the water management district, or the state  
31 agency at the time of filing the formal written protest a bond

1 payable to the department, the water management district, or  
2 state agency in an amount equal to 1 percent of the  
3 department's, the water management district's or the state  
4 agency's estimate of the total volume of the contract or  
5 \$5,000, whichever is less, which bond shall be conditioned  
6 upon the payment of all costs which may be adjudged against  
7 him or her in the administrative hearing in which the action  
8 is brought and in any subsequent appellate court proceeding.  
9 For protests of decisions or intended decisions of the  
10 department pertaining to agencies' requests for approval of  
11 exceptional purchases, the bond shall be in an amount equal to  
12 1 percent of the requesting agency's estimate of the contract  
13 amount for the exceptional purchase requested or \$5,000,  
14 whichever is less. In lieu of a bond, the department, the  
15 water management district, or state agency may, in either  
16 case, accept a cashier's check or money order in the amount of  
17 the bond. If, after completion of the administrative hearing  
18 process and any appellate court proceedings, the water  
19 management district or agency prevails, it shall recover all  
20 costs and charges which shall be included in the final order  
21 or judgment, excluding attorney's fees. This section shall not  
22 apply to protests filed by the Minority Business Advocacy and  
23 Assistance Office. Upon payment of such costs and charges by  
24 the person protesting the award, the bond, cashier's check, or  
25 money order shall be returned to him or her. If the person  
26 protesting the award prevails, he or she shall recover from  
27 the agency or water management district, all costs and charges  
28 which shall be included in the final order of judgment,  
29 excluding attorney's fees.

30 Section 9. This act shall take effect upon becoming a  
31 law.