

1
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:

31

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.