

By Senators Holzendorf and Horne

2-1360A-01

See HB 1623

1 A bill to be entitled
2 An act relating to wetland mitigation; creating
3 s. 373.4139, F.S.; providing definitions;
4 authorizing the mitigation of wetland and
5 surface water impacts resulting from the Better
6 Jacksonville Plan through the acquisition of
7 lands for preservation and through wetland
8 restoration, enhancement, and creation projects
9 of regional environmental benefit; providing
10 legislative intent with respect to such
11 mitigation; specifying areas to be afforded
12 preference as mitigation areas; authorizing the
13 City of Jacksonville and the St. Johns River
14 Water Management District to jointly determine
15 other areas to be afforded preference as
16 mitigation lands; providing sources of funds
17 for wetland and surface water mitigation;
18 providing procedure with respect to land
19 acquisition; requiring the preparation of an
20 inventory of wetland and surface water
21 resources to be impacted; providing for annual
22 updating of the inventory; specifying inventory
23 contents; requiring the district to develop a
24 mitigation plan annually; requiring annual
25 approval of a conceptual plan for mitigating
26 impacts contained in the inventory by the
27 governing board of the district; providing that
28 approval of the conceptual plan creates a
29 presumption that the mitigation contained
30 therein satisfies the mitigation permitting
31 requirements of ch. 373, F.S.; requiring the

1 district to forward copies of the conceptual
2 plan to, and seek to obtain formal concurrence
3 of, specified federal agencies; providing
4 procedure and requirements with respect to
5 wetland and surface water mitigation;
6 specifying powers of the district with regard
7 to permitting; providing funding requirements;
8 requiring specified deposits by permittees;
9 authorizing the district and the City of
10 Jacksonville to enter into certain agreements;
11 authorizing the district to enter into certain
12 contracts; providing specified powers of the
13 district; providing procedure in the event that
14 conceptual mitigation plans are not approved or
15 adopted; authorizing exclusion of certain
16 projects from the conceptual plan; providing
17 construction; amending s. 373.4135, F.S.;
18 providing nonapplicability to the provisions of
19 s. 373.4139 with respect to the required
20 establishment of specified environmental
21 creation, preservation, enhancement, and
22 restoration projects; providing an effective
23 date.

24

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

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27 Section 1. Section 373.4139, Florida Statutes, is
28 created to read:

29

373.4139 Better Jacksonville Plan mitigation.--

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(1) As used in this section:

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1 (a) "Better Jacksonville Plan" means that program of
2 Duval County improvements described in Chapter 761,
3 Jacksonville Ordinance Code, which was approved by referendum
4 on October 3, 2000, including, at the discretion of the
5 sponsoring authority, any Jacksonville Transportation
6 Authority project or Jacksonville Electric Authority utility
7 project, within Duval County or adjacent counties, constructed
8 in conjunction with any Better Jacksonville Plan project.

9 (b) "City" means the City of Jacksonville.

10 (c) "District" means the St. Johns River Water
11 Management District.

12 (2) The Legislature finds that infrastructure
13 improvements associated with the Better Jacksonville Plan are
14 of regional benefit. It is the intent of the Legislature that
15 wetland and surface water impacts resulting from the Better
16 Jacksonville Plan, or portions thereof, may be mitigated
17 through the acquisition of lands for preservation and through
18 wetland restoration, enhancement, or creation projects of
19 corresponding regional environmental benefit.

20 (a) For the purposes of this section, the Legislature
21 finds that the following areas shall be afforded preference as
22 mitigation areas:

23 1. The Timucuan Historic and Ecological Preserve.

24 2. The Pumpkin Hill Creek State Buffer Preserve.

25 3. The Nassau-St. Johns River Aquatic Preserves.

26 4. The Cedar Swamp Conservation and Recreation Lands
27 project.

28 5. The Cecil Field Conservation Corridor and nearby
29 watersheds.

30 6. The Julington-Durbin Creeks Conservation and
31 Recreation Lands project and tributaries.

1 7. The Thomas Creek watershed.

2 (b) The City of Jacksonville and the St. Johns River
3 Water Management District may jointly determine areas other
4 than those enumerated in paragraph (a) which should be
5 afforded preference as mitigation lands.

6 (c) For the purposes of this section, priorities for
7 acquisition for wetland preservation, enhancement, or
8 restoration shall be given to mitigation lands afforded
9 preference to the extent that they can offset the adverse
10 impacts of the Better Jacksonville Plan.

11 (3) Funds for wetland and surface water mitigation for
12 impacts resulting from infrastructure improvements associated
13 with Better Jacksonville Plan projects shall be provided
14 through the funding mechanisms identified in the Better
15 Jacksonville Plan. Where feasible, mitigation funds shall be
16 used in coordination with funds from the Conservation and
17 Recreation Lands Trust Fund, the Florida Communities Trust,
18 the St. Johns River Water Management District's land
19 acquisition program, the Jacksonville Preservation and
20 Environmental Capital Property Fund, or from other appropriate
21 sources, and shall be coordinated with the Better Jacksonville
22 Plan Financial Administration Committee when applicable.

23 (4) Whenever land acquisition is required to mitigate
24 Better Jacksonville Plan wetland impacts, the St. Johns River
25 Water Management District shall consult the Mayor's Oversight
26 Commission for the Preservation Project, created by City of
27 Jacksonville Mayoral Executive Order 99-2, in determining
28 which lands should be acquired and the order of purchase of
29 such lands.

30 (5) The Better Jacksonville Plan Project
31 Administration Committee shall prepare by January 1, 2002, an

1 inventory of wetland and surface water resources to be
2 impacted directly, secondarily, and cumulatively by the
3 construction, alteration, operation, or maintenance of
4 projects in the Better Jacksonville Plan. Said resources shall
5 include buffers that protect wetlands from the secondary
6 impacts associated with adjacent upland activities. This
7 inventory shall be updated annually on January 1 of each year
8 beginning January 1, 2003. Each annual update shall reflect
9 the anticipated wetland and surface water impacts of all
10 incomplete Better Jacksonville Plan projects based on the best
11 and most current information available. The inventory and each
12 annual update shall list the acreage, type, and location of
13 the resources anticipated to be impacted, as well as provide
14 an assessment of the functions presently served by such
15 resources, within and adjacent to the preliminary
16 rights-of-way of an incomplete Better Jacksonville Plan
17 project. In project designs, impacts shall be reduced or
18 eliminated through practicable design modifications in
19 accordance with this part and its implementing regulations.

20 (6) Prior to July 1 of each year, the district, in
21 consultation with the Better Jacksonville Plan Project
22 Administration Committee or its designee, the United States
23 Army Corps of Engineers, the United States Fish and Wildlife
24 Service, and other appropriate agencies and interested parties
25 shall develop a mitigation plan for the primary purpose of
26 compliance with 33 U.S.C. s. 1344 and the mitigation
27 requirements of this chapter.

28 (7) Beginning on July 1, 2002, and by July 1 of each
29 year thereafter, the governing board of the St. Johns River
30 Water Management District shall approve a conceptual plan for
31 mitigating the impacts contained in the inventory. The plan

1 may be amended as needed to anticipate schedule changes or
2 additional projects.

3 (a) Approval of the conceptual mitigation plan by the
4 governing board of the St. Johns River Water Management
5 District shall create a presumption that the mitigation in the
6 approved plan satisfies the wetland and surface water
7 mitigation permitting requirements of this chapter for those
8 permit applications submitted to the district to authorize
9 Better Jacksonville Plan projects, provided that the impacts
10 proposed are consistent with those reflected in the inventory
11 submitted in accordance with subsection (5) and that the
12 impacts have been reduced and eliminated pursuant to general
13 law.

14 (b) Upon approval of the conceptual mitigation plan,
15 the St. Johns River Water Management District shall forward a
16 copy of the plan to all appropriate federal agencies,
17 including the United States Army Corps of Engineers. The
18 district shall seek to obtain formal concurrence of the
19 approved mitigation plans from the federal agencies
20 responsible for granting permits for the construction of
21 projects associated with the Better Jacksonville Plan.

22 (8) Wetland and surface water mitigation required as a
23 result of construction, alteration, operation, or maintenance
24 associated with Better Jacksonville Plan projects for which
25 permits are required under this part shall be accomplished in
26 the following manner:

27 (a) The City of Jacksonville or the specific project
28 program manager or his or her agent shall apply to the St.
29 Johns River Water Management District for construction permits
30 subject to the district's authority. The district shall be
31 solely responsible for review and final action on such permits

1 as required by this chapter or chapter 403. No local
2 environmental permits shall be required for construction of
3 the project. Should any federal permitting authority require
4 modification of a mitigation plan to gain that authority's
5 approval, the district shall have the authority to make
6 appropriate modifications, insofar as the total funding amount
7 budgeted by the district for wetland mitigation of the project
8 will allow. Should any federal agency require modification to
9 a Better Jacksonville Plan project to meet federal wetlands
10 permitting criteria, the Better Jacksonville Plan permittee
11 shall be responsible for funding any increased cost. The St.
12 Johns River Water Management District shall not be required to
13 expend funds for wetland mitigation in excess of those
14 provided.

15 (b) The St. Johns River Water Management District
16 shall review permit applications for Better Jacksonville Plan
17 projects in accordance with its permitting responsibilities
18 under this chapter. Following approval of the plan, any
19 mitigation required for wetland or surface water impacts
20 associated with any Better Jacksonville Plan project shall be
21 addressed through a permit condition requiring that the
22 permittee deposit \$81,727 for each acre of impact with the St.
23 Johns River Water Management District within 30 days after the
24 permit is issued. Upon depositing the acreage fee, the
25 permittee's wetland mitigation obligations under this chapter
26 for that project shall be deemed satisfied. Beginning on July
27 1, 2003, and each July 1 thereafter, the cost per acre shall
28 be adjusted by the percentage change in the average of the
29 consumer price index issued by the United States Department of
30 Labor for the most recent 12-month period. The district shall
31 condition permits such that construction shall not commence

1 until such funds have been deposited with the district. Upon
2 the receipt of the mitigation funds, the district shall be
3 responsible for implementing the required wetland mitigation.

4 (c) The City of Jacksonville and the district may
5 enter into agreements whereby the city may implement
6 mitigation, place funds in escrow for future impacts, or
7 provide the district funds to implement mitigation for future
8 impacts associated with Better Jacksonville Plan projects.

9 (d) In addition to using Better Jacksonville Plan
10 funds to carry out district-sponsored wetland mitigation
11 projects, the district may contract with other public or
12 private entities to supply mitigation or use Better
13 Jacksonville Plan funds to purchase wetland mitigation credits
14 in public or private mitigation banks, provided such banks
15 have all proper permits and such mitigation is identified in
16 the approved conceptual plan.

17 (e) Notwithstanding the division of permitting
18 responsibilities set forth in the Operating Agreement
19 Concerning Regulation under this part, dated October 27, 1998,
20 between the Department of Environmental Protection and the St.
21 Johns River Water Management District, adopted as Rule
22 62-113.100, Florida Administrative Code, the district shall
23 have the authority and responsibility to make all permitting
24 decisions and to take all enforcement actions related to such
25 permitting decisions for all permits required under this part
26 for Better Jacksonville Plan projects.

27 (f) The St. Johns River Water Management District
28 shall have full authority to acquire those lands and implement
29 the mitigation identified in the mitigation plan.

30 (g) The St. Johns River Water Management District
31 shall serve as acquisition agent in acquiring lands necessary

1 to implement the mitigation plan once it is approved, unless
2 the district and the City of Jacksonville agree otherwise.
3 Unless the City of Jacksonville agrees to arrange for
4 appraisals of lands to be acquired for wetland mitigation, the
5 St. Johns River Water Management District may contract or
6 otherwise enter into agreements for appraisals of mitigation
7 projects with the agency responsible for the right-of-way
8 acquisition for the Better Jacksonville Plan. Such appraisals
9 may be made by the agency responsible for right-of-way
10 acquisition either in conjunction with, or separate from,
11 appraisals of property necessary for right-of-way acquisition.
12 Title to lands that are acquired by the St. Johns River Water
13 Management District as mitigation lands shall be held by the
14 district and may be transferred, if appropriate for management
15 purposes, to another public or governmental agency. Management
16 plans for mitigation lands shall be prepared and implemented
17 by the agency holding title to the lands in consultation with
18 the Better Jacksonville Plan Project Administration Committee
19 or other entity designated by the City of Jacksonville. The
20 management plans shall be in accordance with the criteria of
21 this chapter and federal permit requirements.

22 (h) In the event that the district fails to timely
23 adopt the conceptual mitigation plans as contemplated in this
24 section, or in the event that such plans are not approved by
25 the appropriate federal agencies, the City of Jacksonville may
26 apply to the appropriate agencies for permits, which
27 applications may be accompanied by conventional mitigation
28 plans, and proceed as if this section did not exist. Nothing
29 in this section shall, in any way, prevent the City of
30 Jacksonville from electing not to build a project of the
31 Better Jacksonville Plan.

1 (i) Specific projects may be excluded from the
2 conceptual mitigation plan and shall not be subject to this
3 section upon the finding by either the City of Jacksonville or
4 the district that the inclusion of such projects would hamper
5 the efficiency or timeliness of the mitigation planning and
6 permitting process or if the district is unable to identify
7 wetland mitigation that would offset the impact of the
8 project.

9 (9) This section shall not be construed to eliminate
10 the need for the City of Jacksonville to comply with the
11 requirement to implement practicable design modifications,
12 including realignment of projects, to reduce or eliminate the
13 impacts of its projects on wetlands and other surface waters
14 as required by rules adopted pursuant to this part, or to
15 diminish the authority under this part to regulate other
16 impacts, including water quantity or water quality impacts, or
17 impacts regulated under this part that are not identified in
18 the inventory described in subsection (5).

19 Section 2. Paragraph (h) is added to subsection (6) of
20 section 373.4135, Florida Statutes, to read:

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

23 (6) An environmental creation, preservation,
24 enhancement, or restoration project, including regional
25 offsite mitigation areas, for which money is donated or paid
26 as mitigation, that is sponsored by the department, a water
27 management district, or a local government and provides
28 mitigation for five or more applicants for permits under this
29 part, or for 35 or more acres of adverse impacts, shall be
30 established and operated under a memorandum of agreement. The
31 memorandum of agreement shall be between the governmental

1 entity proposing the mitigation project and the department or
2 water management district, as appropriate. Such memorandum of
3 agreement need not be adopted by rule. For the purposes of
4 this subsection, one creation, preservation, enhancement, or
5 restoration project shall mean one or more parcels of land
6 with similar ecological communities that are intended to be
7 created, preserved, enhanced, or restored under a common
8 scheme.

9 (h) The provisions of this subsection do not apply to
10 mitigation areas established to implement the provisions of s.
11 373.4139.

12 Section 3. This act shall take effect upon becoming a
13 law.

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LEGISLATIVE SUMMARY

Authorizes the mitigation of wetland and surface water impacts resulting from the Better Jacksonville Plan, as defined in the act, through the acquisition of lands for preservation and through wetland restoration, enhancement, and creation projects of regional environmental benefit. Provides legislative intent with respect to such mitigation. Specifies areas to be afforded preference as mitigation areas. Authorizes the City of Jacksonville and the St. Johns River Water Management District to jointly determine other areas to be afforded preference as mitigation lands. Defines the "Better Jacksonville Plan" for purposes of the act. Provides sources of funds for wetland and surface water mitigation. Provides procedure with respect to land acquisition. Requires preparation of an inventory of wetland and surface water resources to be impacted. Provides for annual updating of the inventory and specifies inventory contents. Requires the district to develop a mitigation plan annually. Requires annual approval of a conceptual plan for mitigating impacts contained in the inventory by the governing board of the district. Provides that approval of the mitigation plan, and of the conceptual plan, creates a presumption that the mitigation contained therein satisfies the mitigation permitting requirements of ch. 373, F.S. Requires the district to forward copies of the conceptual plan to, and seek to obtain formal concurrence of, specified federal agencies. Provides procedure and requirements with respect to wetland and surface water mitigation. Specifies powers of the district with regard to permitting. Provides funding requirements. Requires specified deposits by permittees. Authorizes the district and the City of Jacksonville to enter into certain agreements. Authorizes the district to enter into certain contracts. Provides specified powers of the district. Provides procedure in the event that conceptual mitigation plans are not approved or adopted. Authorizes exclusion of certain projects from the conceptual plan.