

By the Council for Ready Infrastructure and
Representatives Machek and Harrington

1 A bill to be entitled
2 An act relating to water supplies; amending s.
3 373.0831, F.S.; revising the criteria by which
4 water supply development projects may receive
5 priority consideration for funding assistance;
6 amending s. 373.236, F.S.; encouraging water
7 conservation measures in the permitting of
8 consumptive uses of water; amending s.
9 373.4135, F.S.; conforming language to changes
10 made by the act; amending s. 373.414, F.S.;
11 revising date for adoption by rule of a uniform
12 mitigation assessment method for wetlands and
13 other surface waters; clarifying scope of the
14 rule; deleting a study and report; amending s.
15 378.212, F.S.; providing water resource
16 enhancements as a basis for a variance from
17 phosphate mining land reclamation requirements;
18 amending s. 403.067, F.S.; authorizing the
19 development of interim measures or best
20 management practices for specified water bodies
21 or segments for which total maximum daily loads
22 or allocations have not yet been established;
23 amending s. 403.1835, F.S.; providing for
24 below-market interest rate loans for treatment
25 of polluted water; providing for a public
26 education program on state water resources;
27 providing for a study of the feasibility of
28 discharging reclaimed wastewater into canals in
29 Southeast Florida; requiring reports; repealing
30 s. 373.498, F.S., relating to the Water
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1 Resources Development Account; providing an
2 effective date.

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

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6 Section 1. Subsection (4) of section 373.0831, Florida
7 Statutes, is amended to read:

8 373.0831 Water resource development; water supply
9 development.--

10 (4)(a) Water supply development projects which are
11 consistent with the relevant regional water supply plans and
12 which meet at least one ~~or more~~ of the following criteria
13 shall receive priority consideration for state or water
14 management district funding assistance:

15 1. The project supports establishment of a dependable,
16 sustainable supply of water which is not otherwise financially
17 feasible;

18 2. The project provides substantial environmental
19 benefits by preventing or limiting adverse water resource
20 impacts, but requires funding assistance to be economically
21 competitive with other options; or

22 3. The project significantly implements reuse,
23 storage, recharge, or conservation of water in a manner that
24 contributes to the efficient use and sustainability of
25 regional water supply sources.

26 (b) Water supply development projects which meet the
27 criteria in paragraph (a) and also bring about replacement of
28 existing sources in order to help implement a minimum flow or
29 level shall be given first consideration for state or water
30 management district funding assistance.

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1 (c) If a proposed alternative water supply project is
2 identified in the relevant approved regional water supply
3 plan, the project shall be eligible for at least one of the
4 following:

5 1. A consumptive use permit with at least a 10-year
6 duration, if it otherwise meets the requirements for permit
7 issuance under s. 373.223 and rules adopted thereunder.

8 2. Consideration for priority funding pursuant to s.
9 373.1961(2) with the implementation of the water resource
10 development component of the proposed project.

11 Section 2. Subsection (4) is added to section 373.236,
12 Florida Statutes, to read:

13 373.236 Duration of permits; compliance reports.--

14 (4) The department or the water management district
15 shall consider issuing longer duration permits to applicants
16 who implement and provide reasonable assurances of effective
17 and efficient conservation measures that exceed the average
18 for the industry or type of water use and there is sufficient
19 data to provide reasonable assurance that the conditions for
20 permit issuance will be met for the duration of the permit.
21 Permits issued for a 10-year duration or longer shall be
22 subject to the provisions of subsection (3).

23 Section 3. Paragraph (c) of subsection (6) of section
24 373.4135, Florida Statutes, is amended to read:

25 373.4135 Mitigation banks and offsite regional
26 mitigation.--

27 (6) An environmental creation, preservation,
28 enhancement, or restoration project, including regional
29 offsite mitigation areas, for which money is donated or paid
30 as mitigation, that is sponsored by the department, a water
31 management district, or a local government and provides

1 mitigation for five or more applicants for permits under this
2 part, or for 35 or more acres of adverse impacts, shall be
3 established and operated under a memorandum of agreement. The
4 memorandum of agreement shall be between the governmental
5 entity proposing the mitigation project and the department or
6 water management district, as appropriate. Such memorandum of
7 agreement need not be adopted by rule. For the purposes of
8 this subsection, one creation, preservation, enhancement, or
9 restoration project shall mean one or more parcels of land
10 with similar ecological communities that are intended to be
11 created, preserved, enhanced, or restored under a common
12 scheme.

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

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

17 2. A timeline for obtaining any required environmental
18 resource permit.

19 3. The environmental success criteria that the project
20 must achieve.

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

23 5. An assessment of the project in accordance with s.
24 373.4136(4)(a)-(i), until the adoption of the uniform ~~wetland~~
25 mitigation assessment method for wetlands and other surface
26 waters pursuant to s. 373.414(18).

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

29 7. A definition of the geographic area where the
30 project may be used as mitigation established using the
31 criteria of s. 373.4136(6).

1 8. Full cost accounting of the project, including
2 annual review and adjustment.

3 9. Provision and a timetable for the acquisition of
4 any lands necessary for the project.

5 10. Provision for preservation of the site.

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

8 12. Provision for termination of the agreement and
9 cessation of use of the project as mitigation if any material
10 contingency of the agreement has failed to occur.

11 Section 4. Paragraph (b) of subsection (1) and
12 subsections (18) and (19) of section 373.414, Florida
13 Statutes, are amended to read:

14 373.414 Additional criteria for activities in surface
15 waters and wetlands.--

16 (1) As part of an applicant's demonstration that an
17 activity regulated under this part will not be harmful to the
18 water resources or will not be inconsistent with the overall
19 objectives of the district, the governing board or the
20 department shall require the applicant to provide reasonable
21 assurance that state water quality standards applicable to
22 waters as defined in s. 403.031(13) will not be violated and
23 reasonable assurance that such activity in, on, or over
24 surface waters or wetlands, as delineated in s. 373.421(1), is
25 not contrary to the public interest. However, if such an
26 activity significantly degrades or is within an Outstanding
27 Florida Water, as provided by department rule, the applicant
28 must provide reasonable assurance that the proposed activity
29 will be clearly in the public interest.

30 (b) If the applicant is unable to otherwise meet the
31 criteria set forth in this subsection, the governing board or

1 the department, in deciding to grant or deny a permit, shall
2 consider measures proposed by or acceptable to the applicant
3 to mitigate adverse effects that may be caused by the
4 regulated activity. Such measures may include, but are not
5 limited to, onsite mitigation, offsite mitigation, offsite
6 regional mitigation, and the purchase of mitigation credits
7 from mitigation banks permitted under s. 373.4136. It shall
8 be the responsibility of the applicant to choose the form of
9 mitigation. The mitigation must offset the adverse effects
10 caused by the regulated activity.

11 1. The department or water management districts may
12 accept the donation of money as mitigation only where the
13 donation is specified for use in a duly noticed environmental
14 creation, preservation, enhancement, or restoration project,
15 endorsed by the department or the governing board of the water
16 management district, which offsets the impacts of the activity
17 permitted under this part. However, the provisions of this
18 subsection shall not apply to projects undertaken pursuant to
19 s. 373.4137 or chapter 378. Where a permit is required under
20 this part to implement any project endorsed by the department
21 or a water management district, all necessary permits must
22 have been issued prior to the acceptance of any cash donation.
23 After the effective date of this act, when money is donated to
24 either the department or a water management district to offset
25 impacts authorized by a permit under this part, the department
26 or the water management district shall accept only a donation
27 that represents the full cost to the department or water
28 management district of undertaking the project that is
29 intended to mitigate the adverse impacts. The full cost shall
30 include all direct and indirect costs, as applicable, such as
31 those for land acquisition, land restoration or enhancement,

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

22 2. The department and each water management district
23 shall report to the Executive Office of the Governor by
24 January 31 of each year all cash donations accepted under
25 subparagraph 1. during the preceding calendar year for wetland
26 mitigation purposes. The report shall exclude those
27 contributions pursuant to s. 373.4137. The report shall
28 include a description of the endorsed mitigation projects and,
29 except for projects governed by s. 373.4135(6), shall address,
30 as applicable, success criteria, project implementation status
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1 and timeframe, monitoring, long-term management, provisions
2 for preservation, and full cost accounting.

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

10 4. If mitigation requirements imposed by a local
11 government for surface water and wetland impacts of an
12 activity regulated under this part cannot be reconciled with
13 mitigation requirements approved under a permit for the same
14 activity issued under this part, including application of the
15 uniform ~~wetland~~ mitigation assessment method for wetlands and
16 other surface waters adopted pursuant to subsection (18), the
17 mitigation requirements for surface water and wetland impacts
18 shall be controlled by the permit issued under this part.

19 (18) The department and each water management district
20 responsible for implementation of the environmental resource
21 permitting program shall develop a uniform ~~wetland~~ mitigation
22 assessment method for wetlands and other surface waters ~~no~~
23 ~~later than October 1, 2001~~. The department shall adopt the
24 uniform ~~wetland~~ mitigation assessment method by rule no later
25 than July ~~January~~ 31, 2002. The rule shall provide an
26 exclusive and consistent process for determining the amount of
27 mitigation required to offset impacts to wetlands and other
28 surface waters, and, once effective, shall supersede all
29 rules, ordinances, and variance procedures from ordinances
30 that determine the amount of mitigation needed to offset such
31 impacts. Once the department adopts the uniform ~~wetland~~

1 mitigation assessment method by rule, the uniform ~~wetland~~
2 mitigation assessment method shall be binding on the
3 department, the water management districts, local governments,
4 and any other governmental agencies and shall be the sole
5 means to determine the amount of mitigation needed to offset
6 adverse impacts to wetlands and other surface waters and to
7 award and deduct mitigation bank credits. A water management
8 district and any other governmental agency subject to chapter
9 120 may apply the uniform ~~wetland~~ mitigation assessment method
10 without the need to adopt it pursuant to s. 120.54. It shall
11 be a goal of the department and water management districts
12 that the uniform ~~wetland~~ mitigation assessment method
13 developed be practicable for use within the timeframes
14 provided in the permitting process and result in a consistent
15 process for determining mitigation requirements. It shall be
16 recognized that any such method shall require the application
17 of reasonable scientific judgment. The uniform ~~wetland~~
18 mitigation assessment method must determine the value of
19 functions provided by wetlands and other surface waters
20 considering the current conditions of these areas, utilization
21 by fish and wildlife, location, uniqueness, and hydrologic
22 connection, and, when applied to mitigation banks,~~in addition~~
23 ~~to~~ the factors listed in s. 373.4136(4). The uniform ~~wetland~~
24 mitigation assessment method shall also account for the
25 expected time-lag associated with offsetting impacts and the
26 degree of risk associated with the proposed mitigation. The
27 uniform ~~wetland~~ mitigation assessment method shall account for
28 different ecological communities in different areas of the
29 state. In developing the uniform ~~wetland~~ mitigation assessment
30 method, the department and water management districts shall
31 consult with approved local programs under s. 403.182 which

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

25 (a) In developing the uniform ~~wetland~~ mitigation
26 assessment method, the department shall seek input from the
27 United States Army Corps of Engineers in order to promote
28 consistency in the mitigation assessment methods used by the
29 state and federal permitting programs.

30 (b) An entity which has received a mitigation bank
31 permit prior to the adoption of the uniform ~~wetland~~ mitigation

1 assessment method shall have impact sites assessed, for the
2 purpose of deducting bank credits, using the credit assessment
3 method, including any functional assessment methodology, which
4 was in place when the bank was permitted; unless the entity
5 elects to have its credits redetermined, and thereafter have
6 its credits deducted, using the uniform ~~wetland~~ mitigation
7 assessment method.

8 ~~(19) The Office of Program Policy Analysis and~~
9 ~~Government Accountability shall study the cumulative impact~~
10 ~~consideration required by subsection (8) and issue a report by~~
11 ~~July 1, 2001. The study shall address the justification for~~
12 ~~the cumulative impact consideration, changes that can provide~~
13 ~~clarity and certainty in the cumulative impact consideration,~~
14 ~~and whether a practicable, consistent, and equitable~~
15 ~~methodology can be developed for considering cumulative~~
16 ~~impacts within the environmental resource permitting program.~~

17 Section 5. Paragraph (g) is added to subsection (1) of
18 section 378.212, Florida Statutes, to read:

19 378.212 Variances.--

20 (1) Upon application, the secretary may grant a
21 variance from the provisions of this part or the rules adopted
22 pursuant thereto. Variances and renewals thereof may be
23 granted for any one of the following reasons:

24 (g) To accommodate reclamation that provides water
25 supply development or water resource development consistent
26 with the regional water supply plan approved pursuant to s.
27 373.0361, provided regional water resources are not adversely
28 affected.

29 Section 6. Subsection (11) of section 403.067, Florida
30 Statutes, is amended to read:

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1 403.067 Establishment and implementation of total
2 maximum daily loads.--

3 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

4 (a) The department shall not implement, without prior
5 legislative approval, any additional regulatory authority
6 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
7 130, if such implementation would result in water quality
8 discharge regulation of activities not currently subject to
9 regulation.

10 (b) Interim measures, best management practices, or
11 other measures may be developed and voluntarily implemented
12 pursuant to paragraph (7)(c) or paragraph (7)(d) for any water
13 body or segment for which a total maximum daily load or
14 allocation has not been established. The implementation of
15 such pollution control programs may be considered by the
16 department in the determination made pursuant to subsection
17 (4).

18 Section 7. Paragraph (b) of subsection (3) of section
19 403.1835, Florida Statutes, is amended to read:

20 403.1835 Water pollution control financial
21 assistance.--

22 (3) The department may provide financial assistance
23 through any program authorized under s. 603 of the Federal
24 Water Pollution Control Act (Clean Water Act), Pub. L. No.
25 92-500, as amended, including, but not limited to, making
26 grants and loans, providing loan guarantees, purchasing loan
27 insurance or other credit enhancements, and buying or
28 refinancing local debt. This financial assistance must be
29 administered in accordance with this section and applicable
30 federal authorities. The department shall administer all
31 programs operated from funds secured through the activities of

1 the Florida Water Pollution Control Financing Corporation
2 under s. 403.1837, to fulfill the purposes of this section.

3 (b) The department may make or request the corporation
4 to make loans, grants, and deposits to other entities eligible
5 to participate in the financial assistance programs authorized
6 under the Federal Water Pollution Control Act, or as a result
7 of other federal action, which entities may pledge any revenue
8 available to them to repay any funds borrowed. Notwithstanding
9 s. 18.10, the department may make deposits to financial
10 institutions that earn less than the prevailing rate for
11 United States Treasury securities with corresponding
12 maturities for the purpose of enabling such financial
13 institutions to make below-market interest rate loans to
14 entities qualified to receive loans under this section and the
15 rules of the department.

16 Section 8. In order to aid in the development of a
17 better understanding of the unique surface and ground water
18 resources of this state, the water management districts shall
19 develop an information program designed to provide information
20 on existing hydrologic conditions of major surface and ground
21 water sources in this state and suggestions for good
22 conservation practices within those areas. The program shall
23 be developed no later than December 31, 2002. Beginning
24 January 1, 2003, and on a regular basis no less than every 6
25 months thereafter, the information developed pursuant to this
26 section shall be distributed to every member of the Senate and
27 the House of Representatives and to local print and broadcast
28 news organizations. Each water management district shall be
29 responsible for the distribution of this information within
30 its established geographic area.

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1 Section 9. The Legislature finds that within the area
2 identified in the Lower East Coast Regional Water Supply Plan
3 approved by the South Florida Water Management District
4 pursuant to s. 373.0361, the groundwater levels can benefit
5 from augmentation. The Legislature finds that the discharge
6 of reclaimed water into canals for transport and subsequent
7 reuse may provide an environmentally acceptable means to
8 augment water supplies and enhance natural systems; however,
9 the Legislature also recognizes that there are water quality
10 and water quantity issues that must be better understood and
11 resolved. In addition, there are cost savings possible by
12 collocating enclosed conduits for conveyance of water for
13 reuse in this area within canal right-of-way that should be
14 investigated. Toward that end, the Department of
15 Environmental Protection, in consultation with the South
16 Florida Water Management District, Southeast Florida
17 utilities, affected local governments, including local
18 governments with principal responsibility for the operation
19 and maintenance of a water control system capable of conveying
20 reclaimed wastewater for reuse, representatives of the
21 environmental and engineering communities, public health
22 professionals, and individuals having expertise in water
23 quality, shall conduct a study to investigate the feasibility
24 of discharging reclaimed wastewater into canals as an
25 environmentally acceptable means of augmenting groundwater
26 supplies, enhancing natural systems, and conveying reuse water
27 within enclosed conduits within the canal right-of-way. The
28 study shall include an assessment of the water quality, water
29 supply, public health, technical, and legal implications
30 related to the canal discharge and collocation concepts. The
31 department shall issue a preliminary written report containing

1 draft findings and recommendations for public comment by
2 November 1, 2002. The department shall provide a written
3 report on the results of its study to the Governor and the
4 substantive committees of the House of Representatives and the
5 Senate by January 31, 2003. Nothing in this section shall be
6 used to alter the purpose of the Comprehensive Everglades
7 Restoration Plan or the implementation of the Water Resources
8 Development Act of 2000.

9 Section 10. Section 373.498, Florida Statutes, is
10 repealed.

11 Section 11. This act shall take effect upon becoming a
12 law.

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