

By the Committee on Natural Resources; and Senator Brown-Waite

312-2312-02

1 A bill to be entitled
2 An act relating to environmental protection;
3 amending s. 373.406, F.S.; providing a permit
4 exemption for certain mining activities;
5 amending s. 373.414, F.S.; requiring that the
6 Department of Environmental Protection adopt a
7 uniform mitigation assessment method by rule by
8 a specified date; amending s. 403.08725, F.S.;
9 extending the time by which the United States
10 Environmental Protection Agency may approve the
11 state's implementation plan for controlling air
12 pollution from citrus juice processing
13 facilities; amending s. 403.813, F.S.;
14 clarifying the maintenance dredging permit
15 exemption to allow for the discharge of return
16 water from spoil material; providing an
17 exemption from permitting requirements for
18 certain floating vessel platforms or floating
19 boat lifts of limited size that are not used
20 for commercial purposes; authorizing the
21 Department of Environmental Protection to adopt
22 by rule a general permit for certain nonexempt
23 floating vessel platforms or floating boat
24 lifts; providing for use of certain state lands
25 under such general permits; providing an
26 exemption from local regulation; providing an
27 exemption for certain county road repair;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Subsection (11) is added to section
2 373.406, Florida Statutes, to read:

3 373.406 Exemptions.--The following exemptions shall
4 apply:

5 (11) Any district or the department may adopt rules to
6 exempt from regulation under this part any system for a mining
7 or mining related activity that is described in or covered by
8 an exemption confirmation letter issued by the district
9 pursuant to applicable rules implementing this part which were
10 in effect at the time the letter was issued, if the exemption
11 will not be harmful to the water resources. Such rules may
12 include provisions for the duration of this exemption.

13 Section 2. Subsections (18) and (19) of section
14 373.414, Florida Statutes, are amended to read:

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

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

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

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

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

28 (b) An entity which has received a mitigation bank
29 permit prior to the adoption of the uniform ~~wetland~~ mitigation
30 assessment method shall have impact sites assessed, for the
31 purpose of deducting bank credits, using the credit assessment

1 method, including any functional assessment methodology, which
2 was in place when the bank was permitted; unless the entity
3 elects to have its credits redetermined, and thereafter have
4 its credits deducted, using the uniform ~~wetland~~ mitigation
5 assessment method.

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

15 Section 3. Subsection (9) of section 403.08725,
16 Florida Statutes, is amended to read:

17 403.08725 Citrus juice processing facilities.--

18 (9) ENVIRONMENTAL PROTECTION AGENCY APPROVAL.--No
19 later than February 1, 2001, the department shall submit this
20 act to the United States Environmental Protection Agency as a
21 revision of Florida's state implementation plan and as a
22 revision of Florida's approved state Title V program. If the
23 United States Environmental Protection Agency fails to approve
24 this act as a revision of Florida's state implementation plan
25 within 3 ~~2~~ years after submittal, this act shall not apply
26 with respect to construction requirements for facilities
27 subject to regulation under the act, and the facilities
28 subject to regulation thereunder must comply with all
29 construction permitting requirements, including those for
30 prevention of significant deterioration, and must make
31 application for construction permits for any construction or

1 modification at the facility which was not undertaken in
2 compliance with all permitting requirements of Florida's state
3 implementation plan, within 3 months thereafter. If the United
4 States Environmental Protection Agency fails to approve this
5 act as a revision of Florida's approved state Title V program
6 within 3 ~~2~~ years after submittal, this act shall not apply
7 with respect to operation requirements, and all facilities
8 subject to regulation under the act must immediately comply
9 with all Title V program requirements and must make
10 application for Title V operation permits within 3 months
11 thereafter.

12 Section 4. Subsection (2) of section 403.813, Florida
13 Statutes, is amended, and subsection (3) of that section is
14 reenacted, to read:

15 403.813 Permits issued at district centers;
16 exceptions.--

17 (2) No permit under this chapter, chapter 373, chapter
18 61-691, Laws of Florida, or chapter 25214 or chapter 25270,
19 1949, Laws of Florida, shall be required for activities
20 associated with the following types of projects; however,
21 except as otherwise provided in this subsection, nothing in
22 this subsection relieves an applicant from any requirement to
23 obtain permission to use or occupy lands owned by the Board of
24 Trustees of the Internal Improvement Trust Fund or any water
25 management district in its governmental or proprietary
26 capacity or from complying with applicable local pollution
27 control programs authorized under this chapter or other
28 requirements of county and municipal governments:

29 (a) The installation of overhead transmission lines,
30 with support structures which are not constructed in waters of
31 the state and which do not create a navigational hazard.

1 (b) The installation and repair of mooring pilings and
2 dolphins associated with private docking facilities or piers
3 and the installation of private docks, piers and recreational
4 docking facilities, or piers and recreational docking
5 facilities of local governmental entities when the local
6 governmental entity's activities will not take place in any
7 manatee habitat, any of which docks:

8 1. Has 500 square feet or less of over-water surface
9 area for a dock which is located in an area designated as
10 Outstanding Florida Waters or 1,000 square feet or less of
11 over-water surface area for a dock which is located in an area
12 which is not designated as Outstanding Florida Waters;

13 2. Is constructed on or held in place by pilings or is
14 a floating dock which is constructed so as not to involve
15 filling or dredging other than that necessary to install the
16 pilings;

17 3. Shall not substantially impede the flow of water or
18 create a navigational hazard;

19 4. Is used for recreational, noncommercial activities
20 associated with the mooring or storage of boats and boat
21 paraphernalia; and

22 5. Is the sole dock constructed pursuant to this
23 exemption as measured along the shoreline for a distance of 65
24 feet, unless the parcel of land or individual lot as platted
25 is less than 65 feet in length along the shoreline, in which
26 case there may be one exempt dock allowed per parcel or lot.

27
28 Nothing in this paragraph shall prohibit the department from
29 taking appropriate enforcement action pursuant to this chapter
30 to abate or prohibit any activity otherwise exempt from
31 permitting pursuant to this paragraph if the department can

1 demonstrate that the exempted activity has caused water
2 pollution in violation of this chapter.

3 (c) The installation and maintenance to design
4 specifications of boat ramps on artificial bodies of water
5 where navigational access to the proposed ramp exists or the
6 installation of boat ramps open to the public in any waters of
7 the state where navigational access to the proposed ramp
8 exists and where the construction of the proposed ramp will be
9 less than 30 feet wide and will involve the removal of less
10 than 25 cubic yards of material from the waters of the state,
11 and the maintenance to design specifications of such ramps;
12 however, the material to be removed shall be placed upon a
13 self-contained upland site so as to prevent the escape of the
14 spoil material into the waters of the state.

15 (d) The replacement or repair of existing docks and
16 piers, except that no fill material is to be used and provided
17 that the replacement or repaired dock or pier is in the same
18 location and of the same configuration and dimensions as the
19 dock or pier being replaced or repaired.

20 (e) The restoration of seawalls at their previous
21 locations or upland of, or within 1 foot waterward of, their
22 previous locations. However, this shall not affect the
23 permitting requirements of chapter 161, and department rules
24 shall clearly indicate that this exception does not constitute
25 an exception from the permitting requirements of chapter 161.

26 (f) The performance of maintenance dredging of
27 existing manmade canals, channels, intake and discharge
28 structures, and previously dredged portions of natural water
29 bodies within drainage rights-of-way or drainage easements
30 which have been recorded in the public records of the county,
31 where the spoil material is to be removed and deposited on a

1 self-contained, upland spoil site which will prevent the
2 escape of the spoil material into the waters of the state,
3 provided that no more dredging is to be performed than is
4 necessary to restore the canals, channels, and intake and
5 discharge structures, and previously dredged portions of
6 natural water bodies, to original design specifications or
7 configurations, provided that the work is conducted in
8 compliance with s. 370.12(2)(d), provided that no significant
9 impacts occur to previously undisturbed natural areas, and
10 provided that control devices for return flow and best
11 management practices for erosion and sediment control are
12 utilized to prevent bank erosion and scouring and to prevent
13 turbidity, dredged material, and toxic or deleterious
14 substances from discharging into adjacent waters during
15 maintenance dredging. Further, for maintenance dredging of
16 previously dredged portions of natural water bodies within
17 recorded drainage rights-of-way or drainage easements, an
18 entity that seeks an exemption must notify the department or
19 water management district, as applicable, at least 30 days
20 prior to dredging and provide documentation of original design
21 specifications or configurations where such exist. This
22 exemption applies to all canals and previously dredged
23 portions of natural water bodies within recorded drainage
24 rights-of-way or drainage easements constructed prior to April
25 3, 1970, and to those canals and previously dredged portions
26 of natural water bodies constructed on or after April 3, 1970,
27 pursuant to all necessary state permits. This exemption does
28 not apply to the removal of a natural or manmade barrier
29 separating a canal or canal system from adjacent waters. When
30 no previous permit has been issued by the Board of Trustees of
31 the Internal Improvement Trust Fund or the United States Army

1 Corps of Engineers for construction or maintenance dredging of
2 the existing manmade canal or intake or discharge structure,
3 such maintenance dredging shall be limited to a depth of no
4 more than 5 feet below mean low water. The Board of Trustees
5 of the Internal Improvement Trust Fund may fix and recover
6 from the permittee an amount equal to the difference between
7 the fair market value and the actual cost of the maintenance
8 dredging for material removed during such maintenance
9 dredging. However, no charge shall be exacted by the state for
10 material removed during such maintenance dredging by a public
11 port authority. The removing party may subsequently sell such
12 material; however, proceeds from such sale that exceed the
13 costs of maintenance dredging shall be remitted to the state
14 and deposited in the Internal Improvement Trust Fund.

15 (g) The maintenance of existing insect control
16 structures, dikes, and irrigation and drainage ditches,
17 provided that spoil material is deposited on a self-contained,
18 upland spoil site which will prevent the escape of the spoil
19 material into waters of the state. In the case of insect
20 control structures, if the cost of using a self-contained
21 upland spoil site is so excessive, as determined by the
22 Department of Health, pursuant to s. 403.088(1), that it will
23 inhibit proposed insect control, then-existing spoil sites or
24 dikes may be used, upon notification to the department. In
25 the case of insect control where upland spoil sites are not
26 used pursuant to this exemption, turbidity control devices
27 shall be used to confine the spoil material discharge to that
28 area previously disturbed when the receiving body of water is
29 used as a potable water supply, is designated as shellfish
30 harvesting waters, or functions as a habitat for commercially
31 or recreationally important shellfish or finfish. In all

1 cases, no more dredging is to be performed than is necessary
2 to restore the dike or irrigation or drainage ditch to its
3 original design specifications.

4 (h) The repair or replacement of existing functional
5 pipes or culverts the purpose of which is the discharge or
6 conveyance of stormwater. In all cases, the invert elevation,
7 the diameter, and the length of the culvert shall not be
8 changed. However, the material used for the culvert may be
9 different from the original.

10 (i) The construction of private docks and seawalls in
11 artificially created waterways where such construction will
12 not violate existing water quality standards, impede
13 navigation, or affect flood control. This exemption does not
14 apply to the construction of vertical seawalls in estuaries or
15 lagoons unless the proposed construction is within an existing
16 manmade canal where the shoreline is currently occupied in
17 whole or part by vertical seawalls.

18 (j) The construction and maintenance of swales.

19 (k) The installation of aids to navigation and buoys
20 associated with such aids, provided the devices are marked
21 pursuant to s. 327.40.

22 (l) The replacement or repair of existing open-trestle
23 foot bridges and vehicular bridges that are 100 feet or less
24 in length and two lanes or less in width, provided that no
25 more dredging or filling of submerged lands is performed other
26 than that which is necessary to replace or repair pilings and
27 that the structure to be replaced or repaired is the same
28 length, the same configuration, and in the same location as
29 the original bridge. No debris from the original bridge shall
30 be allowed to remain in the waters of the state.

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1 (m) The installation of subaqueous transmission and
2 distribution lines laid on, or embedded in, the bottoms of
3 waters in the state, except in Class I and Class II waters and
4 aquatic preserves, provided no dredging or filling is
5 necessary.

6 (n) The replacement or repair of subaqueous
7 transmission and distribution lines laid on, or embedded in,
8 the bottoms of waters of the state.

9 (o) The construction of private seawalls in wetlands
10 or other surface waters where such construction is between and
11 adjoins at both ends existing seawalls; follows a continuous
12 and uniform seawall construction line with the existing
13 seawalls; is no more than 150 feet in length; and does not
14 violate existing water quality standards, impede navigation,
15 or affect flood control. However, in estuaries and lagoons the
16 construction of vertical seawalls is limited to the
17 circumstances and purposes stated in s. 373.414(5)(b)1.-4.
18 This paragraph does not affect the permitting requirements of
19 chapter 161, and department rules must clearly indicate that
20 this exception does not constitute an exception from the
21 permitting requirements of chapter 161.

22 (p) The restoration of existing insect control
23 impoundment dikes which are less than 100 feet in length. Such
24 impoundments shall be connected to tidally influenced waters
25 for 6 months each year beginning September 1 and ending
26 February 28 if feasible or operated in accordance with an
27 impoundment management plan approved by the department. A
28 dike restoration may involve no more dredging than is
29 necessary to restore the dike to its original design
30 specifications. For the purposes of this paragraph,
31

1 restoration does not include maintenance of impoundment dikes
2 of operating insect control impoundments.

3 (q) The construction, operation, or maintenance of
4 stormwater management facilities which are designed to serve
5 single-family residential projects, including duplexes,
6 triplexes, and quadruplexes, if they are less than 10 acres
7 total land and have less than 2 acres of impervious surface
8 and if the facilities:

9 1. Comply with all regulations or ordinances
10 applicable to stormwater management and adopted by a city or
11 county;

12 2. Are not part of a larger common plan of development
13 or sale; and

14 3. Discharge into a stormwater discharge facility
15 exempted or permitted by the department under this chapter
16 which has sufficient capacity and treatment capability as
17 specified in this chapter and is owned, maintained, or
18 operated by a city, county, special district with drainage
19 responsibility, or water management district; however, this
20 exemption does not authorize discharge to a facility without
21 the facility owner's prior written consent.

22 (r) The removal of aquatic plants, the removal of
23 tussocks, the associated replanting of indigenous aquatic
24 plants, or the associated removal from lakes of organic
25 material when such planting or removal is performed and
26 authorized by permit or exemption granted under s. 369.20 or
27 s. 369.25, if:

28 1. Organic material that exists on the surface of
29 natural mineral soil shall be allowed to be removed to a depth
30 of 3 feet or to the natural mineral soils, whichever is less.

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1 2. All organic material removal pursuant to this
2 subsection shall be deposited in an upland site in a manner
3 that will prevent the reintroduction of the material into
4 waters in the state except when spoil material is permitted to
5 be used to create wildlife islands in freshwater bodies of the
6 state when a governmental entity is permitted pursuant to this
7 section to create such islands as a part of a restoration or
8 enhancement project.

9 3. All activities are performed in a manner consistent
10 with state water quality standards.

11
12 The department may not adopt implementing rules for this
13 paragraph, notwithstanding any other provision of law.

14 (s) Floating vessel platforms or floating boat lifts
15 if such structures:

16 1. Float at all times in the water for the sole
17 purpose of supporting a vessel so that the vessel is out of
18 the water when not in use;

19 2. Are wholly contained within a boat slip previously
20 permitted under ss. 403.91-403.929, 1984 Supplement to the
21 Florida Statutes 1983, as amended, or Part IV of chapter 373,
22 or, when associated with a dock that is exempt under this
23 subsection or a permitted dock with no defined boat slip, do
24 not exceed a combined total of 500 square feet, or 200 square
25 feet in an Outstanding Florida Water;

26 3. Are not used for any commercial purpose or for
27 mooring vessels that remain in the water when not in use, and
28 do not substantially impede the flow of water, create a
29 navigational hazard, or unreasonably infringe upon the
30 riparian rights of adjacent property owners, as defined in s.
31 253.141;

1 4. Are constructed and used so as to minimize adverse
2 impacts to submerged lands, wetlands, shellfish areas, aquatic
3 plant and animal species, and other biological communities,
4 including locating such structures in areas where no
5 seagrasses exist if such areas are present adjacent to the
6 dock; and

7 5. Are not constructed in areas specifically
8 prohibited for boat mooring under conditions of a permit
9 issued in accordance with ss. 403.91-403.929, 1984 Supplement
10 to the Florida Statutes 1983, as amended, or part IV of
11 chapter 373, or other form of authorization issued by a local
12 government.

13
14 Structures that qualify for this exemption are relieved from
15 any requirement to obtain permission to use or occupy lands
16 owned by the Board of Trustees of the Internal Improvement
17 Trust Fund and are not subject to any more stringent
18 regulation by any local government. The exemption provided in
19 this paragraph is in addition to the exemption provided in
20 paragraph (b). By January 1, 2003, the department shall adopt
21 a general permit by rule for those floating vessel platforms
22 that do not qualify for the exemptions provided in this
23 paragraph, but do not cause significant adverse impacts to
24 occur individually or cumulatively. The issuance of a general
25 permit also constitutes permission to use or occupy lands
26 owned by the Board of Trustees of the Internal Improvement
27 Trust Fund. Upon the adoption of the rule creating the general
28 permit, a local government may not impose a more stringent
29 regulation on floating vessel platforms covered by the general
30 permit.

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1 (t) The repair, stabilization, or paving of existing
2 county maintained roads and the repair or replacement of
3 bridges that are part of the roadway, within the Northwest
4 Florida Water Management District, provided:

5 1. The road and associated bridge were in existence
6 and in use as a public road or bridge, and were maintained by
7 the county as a public road or bridge on or before January 1,
8 2002;

9 2. The construction activity does not realign the road
10 or expand the number of existing traffic lanes of the existing
11 road; however, the work may include the provision of safety
12 shoulders, clearance of vegetation, and other work reasonably
13 necessary to repair, stabilize, pave, or repave the road,
14 provided that the work is constructed by generally accepted
15 engineering standards;

16 3. The construction activity does not expand the
17 existing width of an existing vehicular bridge in excess of
18 that reasonably necessary to properly connect the bridge with
19 the road being repaired, stabilized, paved, or repaved to
20 safely accommodate the traffic expected on the road, which may
21 include expanding the width of the bridge to match the
22 existing connected road. However, no debris from the original
23 bridge shall be allowed to remain in waters of the state,
24 including wetlands;

25 4. Best management practices for erosion control shall
26 be employed as necessary to prevent water quality violations;

27 5. Roadside swales or other effective means of
28 stormwater treatment must be incorporated as part of the
29 project; and

30 6. No more dredging or filling of wetlands or water of
31 the state is performed than that which is reasonably necessary

1 to repair, stabilize, pave, or repave the road or to repair or
2 replace the bridge, in accordance with generally accepted
3 engineering standards.

4
5 The department shall submit a report to the Governor and the
6 Legislature by March 1, 2004, to evaluate the effects of this
7 exemption and make recommendations for the exemption to apply
8 statewide.

9 (3) The provisions of subsection (2) are superseded by
10 general permits established pursuant to ss. 373.118 and
11 403.814 which include the same activities. Until such time as
12 general permits are established, or should general permits be
13 suspended or repealed, the exemptions under subsection (2)
14 shall remain or shall be reestablished in full force and
15 effect.

16 Section 5. This act shall take effect upon becoming a
17 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 510

4 The committee substitute retains the provisions of the
5 original bill and adds the following provisions:

- 6 1. Extends the time EPA has to approve Florida's revision
7 to its Title V program with regard to citrus juice
8 processing facilities from 2 years to 3 years.
- 9 2. Provides that any water management district or the
10 Department of Environmental Protection may adopt rules
11 to exempt from a permit certain mining activities.
- 12 3. Clarifies the permit exemption for maintenance dredging
13 activities to allow for better management of return flow
14 waters.
- 15 4. Provides a permit exemption for the repair,
16 stabilization, or paving of existing county maintained
17 roads, and the repair or replacement of bridges that are
18 part of the roadway within the Northwest Florida Water
19 Management District if certain conditions are met.
20 Provides for a report to the Governor and Legislature.
- 21 5. Clarifies requirements for Department of Environmental
22 Protection and water management district rules relating
23 to the amount of mitigation required and variance
24 procedures. Local ordinances on such matters are
25 superseded.