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1 A bill to be entitled
2 An act relating to management and storage of surface
3 waters; amending s. 373.4135, F.S.; revising legislative
4 intent relating to certain rules of the Department of
5 Environmental Protection and water management districts
6 relating to mitigation banks and offsite regional
7 mitigation; amending s. 373.414, F.S.; revising criteria
8 for issuing permits for projects affecting surface waters
9 and wetlands; requiring the department to provide training
10 and guidance for applying the uniform mitigation
11 assessment method; requiring the department to provide a
12 formal determination process by rule to assess property
13 for the establishment of proposed mitigation banks;
14 providing procedures and requirements; authorizing water
15 management districts to take action on petitions for such
16 determinations; providing a fee; providing for revocation;
17 providing for final agency action and application of ch.
18 120, F.S.; providing for application of specified permit
19 processing requirements; authorizing formal determinations
20 to be petitioned in conjunction with other determinations;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Paragraph (b) of subsection (1) of section
26 373.4135, Florida Statutes, is amended to read:

27 373.4135 Mitigation banks and offsite regional
28 mitigation.—

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29 (1) The Legislature finds that the adverse impacts of
30 activities regulated under this part may be offset by the
31 creation, maintenance, and use of mitigation banks and offsite
32 regional mitigation. Mitigation banks and offsite regional
33 mitigation can enhance the certainty of mitigation and provide
34 ecological value due to the improved likelihood of environmental
35 success associated with their proper construction, maintenance,
36 and management. Therefore, the department and the water
37 management districts are directed to participate in and
38 encourage the establishment of private and public mitigation
39 banks and offsite regional mitigation. Mitigation banks and
40 offsite regional mitigation should emphasize the restoration and
41 enhancement of degraded ecosystems and the preservation of
42 uplands and wetlands as intact ecosystems rather than alteration
43 of landscapes to create wetlands. This is best accomplished
44 through restoration of ecological communities that were
45 historically present.

46 (b) It is the further intent of the Legislature that
47 mitigation banks and offsite regional mitigation be considered
48 appropriate and a permittable mitigation option under the
49 conditions specified by the rules of the department and water
50 management districts and that such rules shall include a
51 preference for the use of mitigation banks consistent with the
52 provisions of 33 C.F.R. s. 332.3(b)(2).

53 Section 2. Subsection (18) of section 373.414, Florida
54 Statutes, is amended to read:

55 373.414 Additional criteria for activities in surface
56 waters and wetlands.—

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57 (18) The department and each water management district
58 responsible for implementation of the environmental resource
59 permitting program shall develop a uniform mitigation assessment
60 method for wetlands and other surface waters. The department
61 shall adopt the uniform mitigation assessment method by rule no
62 later than July 31, 2002. The rule shall provide an exclusive
63 and consistent process for determining the amount of mitigation
64 required to offset impacts to wetlands and other surface waters,
65 and, once effective, shall supersede all rules, ordinances, and
66 variance procedures from ordinances that determine the amount of
67 mitigation needed to offset such impacts. Once the department
68 adopts the uniform mitigation assessment method by rule, the
69 uniform mitigation assessment method shall be binding on the
70 department, the water management districts, local governments,
71 and any other governmental agencies and shall be the sole means
72 to determine the amount of mitigation needed to offset adverse
73 impacts to wetlands and other surface waters and to award and
74 deduct mitigation bank credits. A water management district and
75 any other governmental agency subject to chapter 120 may apply
76 the uniform mitigation assessment method without the need to
77 adopt it pursuant to s. 120.54. It shall be a goal of the
78 department and water management districts that the uniform
79 mitigation assessment method developed be practicable for use
80 within the timeframes provided in the permitting process and
81 result in a consistent process for determining mitigation
82 requirements. It shall be recognized that any such method shall
83 require the application of reasonable scientific judgment. The
84 uniform mitigation assessment method must determine the value of

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85 functions provided by wetlands and other surface waters
86 considering the current conditions of these areas, utilization
87 by fish and wildlife, location, uniqueness, and hydrologic
88 connection, and, when applied to mitigation banks, the factors
89 listed in s. 373.4136(4). The uniform mitigation assessment
90 method shall also account for the expected time-lag associated
91 with offsetting impacts and the degree of risk associated with
92 the proposed mitigation. The uniform mitigation assessment
93 method shall account for different ecological communities in
94 different areas of the state. In developing the uniform
95 mitigation assessment method, the department and water
96 management districts shall consult with approved local programs
97 under s. 403.182 which have an established mitigation program
98 for wetlands or other surface waters. The department and water
99 management districts shall consider the recommendations
100 submitted by such approved local programs, including any
101 recommendations relating to the adoption by the department and
102 water management districts of any uniform mitigation methodology
103 that has been adopted and used by an approved local program in
104 its established mitigation program for wetlands or other surface
105 waters. Environmental resource permitting rules may establish
106 categories of permits or thresholds for minor impacts under
107 which the use of the uniform mitigation assessment method will
108 not be required. The application of the uniform mitigation
109 assessment method is not subject to s. 70.001. In the event the
110 rule establishing the uniform mitigation assessment method is
111 deemed to be invalid, the applicable rules related to
112 establishing needed mitigation in existence prior to the

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113 adoption of the uniform mitigation assessment method, including
114 those adopted by a county which is an approved local program
115 under s. 403.182, and the method described in paragraph (b) for
116 existing mitigation banks, shall be authorized for use by the
117 department, water management districts, local governments, and
118 other state agencies. The department shall provide training and
119 guidance for the application of the uniform mitigation
120 assessment method and shall be available to address questions
121 regarding such application.

122 (a) In developing the uniform mitigation assessment
123 method, the department shall seek input from the United States
124 Army Corps of Engineers in order to promote consistency in the
125 mitigation assessment methods used by the state and federal
126 permitting programs.

127 (b) An entity which has received a mitigation bank permit
128 prior to the adoption of the uniform mitigation assessment
129 method shall have impact sites assessed, for the purpose of
130 deducting bank credits, using the credit assessment method,
131 including any functional assessment methodology, which was in
132 place when the bank was permitted; unless the entity elects to
133 have its credits redetermined, and thereafter have its credits
134 deducted, using the uniform mitigation assessment method.

135 (c) The department shall provide a formal determination
136 process by rule to assess a parcel of land pursuant to the
137 uniform mitigation assessment method for potential establishment
138 of a mitigation bank. The rule shall specify the information
139 that must be provided and may require authorization to enter
140 upon the property. The rule shall also establish procedures for

141 applying for, processing, and issuing a formal determination.
142 Once the department has adopted the rule, a water management
143 district may receive and take final agency action on petitions
144 for such determinations without the need to adopt the rule
145 pursuant to s. 120.54. By interagency agreement, the department
146 and each water management district shall determine which agency
147 shall implement the determination process within the district.
148 Upon adoption of the rule, any person with the written consent
149 of the property owner, an entity that has the power of eminent
150 domain, or any other person who has legal or equitable interest
151 in the property may petition the district for a formal
152 determination. If a petitioner does not provide information
153 regarding potential impacts or mitigation activities for the
154 property, the water management district or the department shall
155 only assess the current condition of the property or the
156 condition of the property without the proposed mitigation. A
157 water management district may authorize its executive director
158 to issue formal determinations. The water management district or
159 the department may establish by rule a fee to cover the costs of
160 processing and acting upon the petition. A water management
161 district or the department may publish, or require the
162 petitioner to publish at the petitioner's expense, notice of the
163 intended agency action on a petition for a formal determination
164 in a newspaper of general circulation within the affected area.
165 1. A formal determination for an assessment of the current
166 condition of a property or the condition of the property without
167 the proposed mitigation is binding for a period not to exceed 5
168 years as long as physical conditions on the property do not

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169 change, other than changes that have been authorized by a permit
170 pursuant to this part, so as to alter the ecological conditions
171 of the uplands, wetlands, or other surface waters assessed
172 pursuant to this paragraph. A formal determination for an
173 assessment of the condition of a property with the proposed
174 mitigation is binding for a period not to exceed 5 years as long
175 as the mitigation has not changed.

176 2. Within 60 days prior to the expiration of a formal
177 determination, the holder of the determination, with the written
178 consent of the property owner, an entity that has the power of
179 eminent domain, or any other person who has legal or equitable
180 interest in the property, may petition for a new formal
181 determination for the same parcel of property. Such
182 determination approving the same uniform mitigation assessment
183 in the previous formal determination shall be issued as long as
184 physical conditions on the property have not changed, other than
185 changes that have been authorized by a permit pursuant to this
186 part, so as to alter the ecological conditions of the uplands,
187 wetlands, or other surface waters and the uniform mitigation
188 assessment methodology authorized by this subsection has not
189 been amended since the previous formal determination or the
190 proposed impacts or mitigation for the assessed property have
191 not changed. The holder of a determination may also apply to
192 modify the determination to reflect changed physical conditions
193 on the property or new or modified proposed impacts or
194 mitigation. The application fee for such a subsequent petition
195 shall be less than the application fee for the original
196 determination.

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197 3. A water management district or the department may
198 revoke a formal determination if it finds that the petitioner
199 has submitted inaccurate information.

200 4. A formal determination obtained under this paragraph is
201 final agency action and is in lieu of a declaratory statement of
202 jurisdiction obtainable under s. 120.565. Sections 120.569,
203 120.57, and 373.4141 apply to formal determinations under this
204 paragraph.

205 5. A formal determination of the extent of surface waters
206 and wetlands pursuant to s. 373.421 may be petitioned in
207 conjunction with a formal determination under this paragraph.

208 Section 3. This act shall take effect July 1, 2010.