

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Brodeur offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 7501 and 7502, insert:

5 Section 50. Subsection (18) of section 373.414, Florida
6 Statutes, is amended to read:

7 373.414 Additional criteria for activities in surface
8 waters and wetlands.—

9 (18) The department in coordination with ~~and~~ each water
10 management district responsible for implementation of the
11 environmental resource permitting program shall develop a
12 uniform mitigation assessment method for wetlands and other
13 surface waters. ~~The department shall adopt the uniform~~
14 ~~mitigation assessment method by rule no later than July 31,~~
15 ~~2002.~~ The rule shall provide an exclusive and consistent process
16 for determining the amount of mitigation required to offset
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17 impacts to wetlands and other surface waters, and, once
18 effective, shall supersede all rules, ordinances, and variance
19 procedures from ordinances that determine the amount of
20 mitigation needed to offset such impacts. Once the department
21 adopts the uniform mitigation assessment method by rule, the
22 uniform mitigation assessment method shall be binding on the
23 department, the water management districts, local governments,
24 and any other governmental agencies and shall be the sole means
25 to determine the amount of mitigation needed to offset adverse
26 impacts to wetlands and other surface waters and to award and
27 deduct mitigation bank credits. A water management district and
28 any other governmental agency subject to chapter 120 may apply
29 the uniform mitigation assessment method without the need to
30 adopt it pursuant to s. 120.54. It shall be a goal of the
31 department and water management districts that the uniform
32 mitigation assessment method developed be practicable for use
33 within the timeframes provided in the permitting process and
34 result in a consistent process for determining mitigation
35 requirements. It shall be recognized that any such method shall
36 require the application of reasonable scientific judgment. The
37 uniform mitigation assessment method must determine the value of
38 functions provided by wetlands and other surface waters
39 considering the current conditions of these areas, utilization
40 by fish and wildlife, location, uniqueness, and hydrologic
41 connection, ~~and, when applied to mitigation banks, the factors~~
42 ~~listed in s. 373.4136(4)~~. The uniform mitigation assessment
43 method shall also account for the expected time-lag associated
44 with offsetting impacts and the degree of risk associated with

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45 the proposed mitigation. The uniform mitigation assessment
46 method shall account for different ecological communities in
47 different areas of the state. In developing the uniform
48 mitigation assessment method, the department and water
49 management districts shall consult with approved local programs
50 under s. 403.182 which have an established mitigation program
51 for wetlands or other surface waters. The department and water
52 management districts shall consider the recommendations
53 submitted by such approved local programs, including any
54 recommendations relating to the adoption by the department and
55 water management districts of any uniform mitigation methodology
56 that has been adopted and used by an approved local program in
57 its established mitigation program for wetlands or other surface
58 waters. Environmental resource permitting rules may establish
59 categories of permits or thresholds for minor impacts under
60 which the use of the uniform mitigation assessment method will
61 not be required. The application of the uniform mitigation
62 assessment method is not subject to s. 70.001. In the event the
63 rule establishing the uniform mitigation assessment method is
64 deemed to be invalid, the applicable rules related to
65 establishing needed mitigation in existence prior to the
66 adoption of the uniform mitigation assessment method, including
67 those adopted by a county which is an approved local program
68 under s. 403.182, and the method described in paragraph (b) for
69 existing mitigation banks, shall be authorized for use by the
70 department, water management districts, local governments, and
71 other state agencies.

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72 (a) In developing the uniform mitigation assessment
73 method, the department shall seek input from the United States
74 Army Corps of Engineers in order to promote consistency in the
75 mitigation assessment methods used by the state and federal
76 permitting programs.

77 (b) An entity which has received a mitigation bank permit
78 prior to the adoption of the uniform mitigation assessment
79 method shall have impact sites assessed, for the purpose of
80 deducting bank credits, using the credit assessment method,
81 including any functional assessment methodology, which was in
82 place when the bank was permitted; unless the entity elects to
83 have its credits redetermined, and thereafter have its credits
84 deducted, using the uniform mitigation assessment method.

85 (c) The department shall ensure statewide coordination and
86 consistency in the interpretation and application of the uniform
87 mitigation assessment method rule by providing programmatic
88 training and guidance to staff of the department, water
89 management districts, and local governments. To ensure that the
90 uniform mitigation assessment method rule is interpreted and
91 applied uniformly, the department's interpretation, guidance,
92 and approach to applying the uniform mitigation assessment
93 method rule shall govern.

94 (d) Applicants shall submit the information needed to
95 perform the assessment required under the uniform mitigation
96 assessment method rule, and may submit the qualitative
97 characterization and quantitative assessment for each assessment
98 area specified by the rule. The reviewing agency shall review

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99 that information and notify the applicant of any inadequacy in
100 the information or application of the assessment method.

101 (e) When conducting qualitative characterization of
102 artificial wetlands and other surface waters, such as borrow
103 pits, ditches, and canals under the uniform mitigation
104 assessment method rule, the native community type to which it is
105 most analogous in function shall be used as a reference. For
106 wetlands or other surface waters that have been altered from
107 their native community type, the historic community type at that
108 location shall be used as a reference, unless the alteration has
109 been of such a degree and extent that a different native
110 community type is now present and self sustaining.

111 (f) When conducting qualitative characterization of upland
112 mitigation assessment areas, the characterization shall include
113 functions that the upland assessment area provides to the fish
114 and wildlife of the associated wetland or other surface waters.
115 These functions shall be considered and accounted for when
116 scoring the upland assessment area for preservation,
117 enhancement, or restoration.

118 (g) Preservation mitigation, as used in the uniform
119 mitigation assessment method, means the protection of important
120 wetland, other surface water, or upland ecosystems that are
121 predominantly in their existing condition and absent
122 restoration, creation, or enhancement, from adverse impacts by
123 placing a conservation easement or other comparable land use
124 restriction over the property or by donation of fee simple
125 interest in the property. Preservation may include a management
126 plan for perpetual protection of the area. The preservation

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127 adjustment factor set forth in rule 62-345.500(3), Florida
128 Administrative Code, shall only apply to preservation
129 mitigation.

130 (h) When assessing a preservation mitigation assessment
131 area under the uniform mitigation assessment method the
132 following shall apply:

133 1. "Without preservation" shall consider the reasonably
134 anticipated loss of functions and values provided by the
135 assessment area, assuming the area is not preserved.

136 2. Each of the considerations of the preservation
137 adjustment factor specified in Rule 62-345.500(3) (a), Florida
138 Administrative Code shall be equally weighted and scored on a
139 scale from 0, no value, to 0.2, optimal value. In addition, the
140 minimum preservation adjustment factor shall be 0.2.

141 (i) The location and landscape support scores, pursuant to
142 Rules 62-345.500, F.A.C. may change in the "with mitigation" or
143 "with impact" condition in both upland and wetland assessment
144 areas, regardless of the initial community structure or water
145 environment scores.

146 (j) When a mitigation plan for creation, restoration, or
147 enhancement includes a preservation mechanism such as a
148 conservation easement, the "with mitigation" assessment of that
149 creation, restoration, or enhancement shall consider, and the
150 scores shall reflect, the benefits of that preservation
151 mechanism, and the benefits of that preservation mechanism shall
152 not be scored separately.

153 (k) Any entity holding a mitigation bank permit that was
154 evaluated under the uniform mitigation assessment method prior

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155 to the effective date of paragraphs (c)-(j), may submit a permit
156 modification request to the relevant permitting agency to have
157 such mitigation bank reassessed pursuant to the provisions set
158 forth in this section, and the relevant permitting agency shall
159 reassess such mitigation bank, if such request is filed with
160 that agency no later than September 30, 2011.

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T I T L E A M E N D M E N T

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Between lines 115 and 116, insert:

166

amending s. 373.414, F.S.; revising uniform mitigation

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assessment method implementation;