

By Senator Simon

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1 A bill to be entitled
2 An act relating to mitigation areas and assessments;
3 amending s. 373.414, F.S.; specifying conditions under
4 which the degree of risk may not be considered when a
5 uniform mitigation assessment method is being applied;
6 providing that certain encumbrances of real property
7 may not be required for mitigation areas that meet
8 specified criteria; providing an exception; providing
9 an effective date.

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

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13 Section 1. Subsection (18) of section 373.414, Florida
14 Statutes, is amended, and subsection (20) is added to that
15 section, to read:

16 373.414 Additional criteria for activities in surface
17 waters and wetlands.—

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

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30 uniform mitigation assessment method shall be binding on the
31 department, the water management districts, local governments,
32 and any other governmental agencies and shall be the sole means
33 to determine the amount of mitigation needed to offset adverse
34 impacts to wetlands and other surface waters and to award and
35 deduct mitigation bank credits. A water management district and
36 any other governmental agency subject to chapter 120 may apply
37 the uniform mitigation assessment method without the need to
38 adopt it pursuant to s. 120.54. It shall be a goal of the
39 department and water management districts that the uniform
40 mitigation assessment method developed be practicable for use
41 within the timeframes provided in the permitting process and
42 result in a consistent process for determining mitigation
43 requirements. It shall be recognized that any such method shall
44 require the application of reasonable scientific judgment. The
45 uniform mitigation assessment method must determine the value of
46 functions provided by wetlands and other surface waters
47 considering the current conditions of these areas, utilization
48 by fish and wildlife, location, uniqueness, and hydrologic
49 connection, and, when applied to mitigation banks, the factors
50 listed in s. 373.4136(4). The uniform mitigation assessment
51 method shall also account for the expected time-lag associated
52 with offsetting impacts and the degree of risk associated with
53 the proposed mitigation; provided, however, that if financial
54 responsibility for mitigation is provided by one of the
55 mechanisms listed in subparagraphs (19)(b)1.-6., the degree of
56 risk may not be considered. The uniform mitigation assessment
57 method shall account for different ecological communities in
58 different areas of the state. In developing the uniform

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59 mitigation assessment method, the department and water
60 management districts shall consult with approved local programs
61 under s. 403.182 which have an established mitigation program
62 for wetlands or other surface waters. The department and water
63 management districts shall consider the recommendations
64 submitted by such approved local programs, including any
65 recommendations relating to the adoption by the department and
66 water management districts of any uniform mitigation methodology
67 that has been adopted and used by an approved local program in
68 its established mitigation program for wetlands or other surface
69 waters. Environmental resource permitting rules may establish
70 categories of permits or thresholds for minor impacts under
71 which the use of the uniform mitigation assessment method will
72 not be required. The application of the uniform mitigation
73 assessment method is not subject to s. 70.001. In the event the
74 rule establishing the uniform mitigation assessment method is
75 deemed to be invalid, the applicable rules related to
76 establishing needed mitigation in existence prior to the
77 adoption of the uniform mitigation assessment method, including
78 those adopted by a county which is an approved local program
79 under s. 403.182, and the method described in paragraph (b) for
80 existing mitigation banks, shall be authorized for use by the
81 department, water management districts, local governments, and
82 other state agencies.

83 (a) In developing the uniform mitigation assessment method,
84 the department shall seek input from the United States Army
85 Corps of Engineers in order to promote consistency in the
86 mitigation assessment methods used by the state and federal
87 permitting programs.

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88 (b) An entity which has received a mitigation bank permit
89 prior to the adoption of the uniform mitigation assessment
90 method shall have impact sites assessed, for the purpose of
91 deducting bank credits, using the credit assessment method,
92 including any functional assessment methodology, which was in
93 place when the bank was permitted; unless the entity elects to
94 have its credits redetermined, and thereafter have its credits
95 deducted, using the uniform mitigation assessment method.

96 (20) For mitigation areas created pursuant to permits
97 issued under this section after January 1, 2022, and for which
98 mitigation has not been determined to be successful by the
99 department or water management districts as of July 1, 2024, the
100 following applies:

101 (a) No conservation easement or other similar form of
102 encumbrance of real property may be required as a condition of
103 approval of the permit or mitigation plan; and

104 (b) The mitigation credits attributable to the mitigation
105 area will be determined without regard to the presence or
106 absence of a conservation easement or other similar form of
107 encumbrance of real property.

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109 This subsection does not apply to any mitigation bank permitted
110 under s. 373.4136.

111 Section 2. This act shall take effect July 1, 2024.