

By Senator Garcia

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A bill to be entitled
An act relating to surface waters; amending s.
373.414, F.S.; requiring the Department of
Environmental Protection to incorporate habitat
equivalency analysis in the uniform mitigation
assessment method; defining the term "habitat
equivalency analysis"; amending s. 403.811, F.S.;
requiring that permits for dredging and filling
include certain requirements; requiring the department
to adopt rules; requiring permitted entities to bear
the full cost and responsibility for any damage or
destruction caused by dredging, filling, or related
activities; amending s. 403.93345, F.S.; revising
legislative findings; providing a legislative
designation; reenacting s. 373.4137(2)(b) and (4),
F.S., relating to mitigation requirements for
specified transportation projects, to incorporate the
amendment made to s. 373.414, F.S., in a reference
thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (18) of section
373.414, Florida Statutes, is amended to read:

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

(18) The department and each water management district
responsible for implementation of the environmental resource
permitting program shall develop a uniform mitigation assessment

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method for wetlands and other surface waters. The department shall adopt the uniform mitigation assessment method by rule no later than July 31, 2002. The rule shall provide an exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters, and, once effective, shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts. Once the department adopts the uniform mitigation assessment method by rule, the uniform mitigation assessment method shall be binding on the department, the water management districts, local governments, and any other governmental agencies and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. A water management district and any other governmental agency subject to chapter 120 may apply the uniform mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection, and, when applied to mitigation banks, the factors

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59 listed in s. 373.4136(4). The uniform mitigation assessment
60 method shall also account for the expected time-lag associated
61 with offsetting impacts and the degree of risk associated with
62 the proposed mitigation. The uniform mitigation assessment
63 method shall account for different ecological communities in
64 different areas of the state. In developing the uniform
65 mitigation assessment method, the department and water
66 management districts shall consult with approved local programs
67 under s. 403.182 which have an established mitigation program
68 for wetlands or other surface waters. The department and water
69 management districts shall consider the recommendations
70 submitted by such approved local programs, including any
71 recommendations relating to the adoption by the department and
72 water management districts of any uniform mitigation methodology
73 that has been adopted and used by an approved local program in
74 its established mitigation program for wetlands or other surface
75 waters. Environmental resource permitting rules may establish
76 categories of permits or thresholds for minor impacts under
77 which the use of the uniform mitigation assessment method will
78 not be required. The application of the uniform mitigation
79 assessment method is not subject to s. 70.001. In the event the
80 rule establishing the uniform mitigation assessment method is
81 deemed to be invalid, the applicable rules related to
82 establishing needed mitigation in existence prior to the
83 adoption of the uniform mitigation assessment method, including
84 those adopted by a county which is an approved local program
85 under s. 403.182, and the method described in paragraph (b) for
86 existing mitigation banks, shall be authorized for use by the
87 department, water management districts, local governments, and

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other state agencies.

(a) In developing the uniform mitigation assessment method, the department shall:

1. Seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

2. Incorporate habitat equivalency analysis. As used in this paragraph, the term "habitat equivalency analysis" means a type of methodology used to determine how much restoration is necessary to compensate for adverse impacts.

Section 2. Section 403.811, Florida Statutes, is amended to read:

403.811 Dredge and fill permits issued pursuant to this chapter and s. 373.414.—

(1) Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

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117 (2) Permits for dredging and filling must include a
118 requirement that dredging and turbidity monitoring be performed
119 by separate and distinct entities. The department shall adopt
120 rules to implement this subsection.

121 (3) Permitted entities shall bear the full cost of and
122 responsibility for any damage or destruction caused by dredging,
123 filling, or related activities.

124 Section 3. Present subsections (5) through (12) of section
125 403.93345, Florida Statutes, are redesignated as subsections (6)
126 through (13), respectively, and a new subsection (5) is added,
127 and present subsection (4) is amended to read:

128 403.93345 Coral reef protection.—

129 (4)(a) The Legislature finds that coral reefs are valuable
130 natural resources that contribute ecologically, aesthetically,
131 and economically to the state. Therefore, the Legislature
132 declares it is in the best interest of the state to clarify the
133 department's powers and authority to protect coral reefs through
134 timely and efficient recovery of monetary damages resulting from
135 vessel groundings and anchoring-related injuries.

136 (b) The Legislature further finds that coral reefs, if
137 healthy and effectively managed, can help mitigate the risks and
138 related loss and damage from floods, climate change, and natural
139 disasters. The Legislature recognizes that studies have shown
140 that healthy coral reefs can protect coastal properties from
141 such climate change-related risks and disaster events, including
142 storms, high wave events, sea level rise, and flooding. The
143 Federal Emergency Management Agency (FEMA) is responsible for
144 responding to natural disasters and providing technical and
145 financial hazard mitigation support, primarily distributed as

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146 grant funding through FEMA's hazard mitigation assistance
147 programs. Coral reef restoration for risk reduction, known as
148 CR4, is an active restoration strategy with the aim of
149 increasing the structural integrity and complexity of coral reef
150 ecosystems to attenuate wave energy and reduce coastal flooding.
151 Legislative recognition of coral reefs as critical natural
152 infrastructure and a nature-based solution demonstrates
153 political support for nature-based solutions.

154 (c) It is the intent of the Legislature that the department
155 be recognized as the state's lead trustee for coral reef
156 resources located within waters of the state or on sovereignty
157 submerged lands unless preempted by federal law. This section
158 does not divest other state agencies and political subdivisions
159 of the state of their interests in protecting coral reefs.

160 (5) The Legislature designates coral reefs as critical
161 natural infrastructure and as a nature-based solution that helps
162 mitigate climate change-related risks and disaster events,
163 including, exposure to storms, high wave events, sea level rise,
164 and flooding.

165 Section 4. For the purpose of incorporating the amendment
166 made by this act to section 373.414, Florida Statutes, in a
167 reference thereto, paragraph (b) of subsection (2) and
168 subsection (4) of section 373.4137, Florida Statutes, are
169 reenacted to read:

170 373.4137 Mitigation requirements for specified
171 transportation projects.—

172 (2) Environmental impact inventories for transportation
173 projects proposed by the Department of Transportation or a
174 transportation authority established pursuant to chapter 348 or

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chapter 349 shall be developed as follows:

(b) The environmental impact inventory must include a description of habitat impacts, including location, acreage, and type; the anticipated mitigation needed based on the functional loss as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. 373.414(18); identification of the proposed mitigation option; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project.

(4) Before March 1 of each year, each water management district shall develop a mitigation plan to offset only the impacts of transportation projects in the environmental impact inventory for which a water management district is implementing mitigation that meets the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must be developed in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks. In developing such plans, the water management districts shall use sound ecosystem management practices to address significant water resource needs and consider activities of the Department of Environmental Protection and the water management districts, such as surface

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water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration, or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the activities comply with the mitigation requirements adopted under this part, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must identify each site where the water management district will mitigate for a transportation project. For each mitigation site, the water management district shall provide the scope of the mitigation services; provide the functional gain as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. 373.414(18); describe how the mitigation offsets the impacts of each transportation project as permitted; and provide a schedule for the mitigation services. The water management districts shall maintain records of costs incurred and payments received for providing these services. Records must include, but are not limited to, planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332. To the extent moneys paid to a water management district by the Department of Transportation or a participating transportation authority are greater than the amount spent by the water management districts in providing the mitigation services to offset the permitted transportation project impacts, these moneys must be refunded to the Department of Transportation or participating transportation authority. The mitigation plan

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shall be submitted to the water management district governing board or its designee for review and approval. At least 14 days before approval by the governing board, the water management district shall provide a copy of the draft mitigation plan to the Department of Environmental Protection and any person who has requested a copy. Subsequent to the governing board approval, the mitigation plan shall be submitted to the Department of Environmental Protection for approval. The plan may not be implemented until it is submitted to, and approved in part or in its entirety by, the Department of Environmental Protection.

(a) Specific projects may be excluded from the mitigation plan, in whole or in part, and are not subject to this section upon the election of the Department of Transportation, a transportation authority if applicable, or the appropriate water management district. The Department of Transportation or a participating transportation authority may not exclude a transportation project from the mitigation plan if mitigation is scheduled for implementation by the water management district in the current fiscal year unless the transportation project is removed from the Department of Transportation's work program or transportation authority funding plan, the mitigation cannot be timely permitted to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or the proposed mitigation does not meet state and federal requirements. If a project is removed from the work program or the mitigation plan, costs spent by the water management district before removal are eligible for reimbursement by the Department of Transportation or

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participating transportation authority.

(b) When determining which projects to include in or exclude from the mitigation plan, the Department of Transportation shall investigate using credits from a permitted mitigation bank before those projects are submitted for inclusion in a water management district mitigation plan. The Department of Transportation shall exclude a project from the mitigation plan if the investigation undertaken pursuant to this paragraph results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency, timeliness in project delivery, cost-effectiveness, and transfer of liability for success and long-term maintenance.

Section 5. This act shall take effect July 1, 2026.