

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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88 other state agencies.

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

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

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

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

101 403.811 Dredge and fill permits issued pursuant to this
102 chapter and s. 373.414.—

103 (1) Permits or other orders addressing dredging and filling
104 in, on, or over waters of the state issued pursuant to this
105 chapter or s. 373.414(9) before the effective date of rules
106 adopted under s. 373.414(9) and permits or other orders issued
107 in accordance with s. 373.414(13), (14), (15), or (16) shall
108 remain valid through the duration specified in the permit or
109 order, unless revoked by the agency issuing the permit. The
110 agency issuing the permit or other order may seek to enjoin the
111 violation of, or to enforce compliance with, the permit or other
112 order as provided in ss. 403.121, 403.131, 403.141, and 403.161.
113 A violation of a permit or other order addressing dredging or
114 filling issued pursuant to this chapter is punishable by a civil
115 penalty as provided in s. 403.141 or a criminal penalty as
116 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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175 chapter 349 shall be developed as follows:

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

187 (4) Before March 1 of each year, each water management
188 district shall develop a mitigation plan to offset only the
189 impacts of transportation projects in the environmental impact
190 inventory for which a water management district is implementing
191 mitigation that meets the requirements of this section, 33
192 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management
193 district mitigation plan must be developed in consultation with
194 the Department of Environmental Protection, the United States
195 Army Corps of Engineers, the Department of Transportation,
196 participating transportation authorities established pursuant to
197 chapter 348 or chapter 349, other appropriate federal, state,
198 and local governments, and other interested parties, including
199 entities operating mitigation banks. In developing such plans,
200 the water management districts shall use sound ecosystem
201 management practices to address significant water resource needs
202 and consider activities of the Department of Environmental
203 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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233 shall be submitted to the water management district governing
234 board or its designee for review and approval. At least 14 days
235 before approval by the governing board, the water management
236 district shall provide a copy of the draft mitigation plan to
237 the Department of Environmental Protection and any person who
238 has requested a copy. Subsequent to the governing board
239 approval, the mitigation plan shall be submitted to the
240 Department of Environmental Protection for approval. The plan
241 may not be implemented until it is submitted to, and approved in
242 part or in its entirety by, the Department of Environmental
243 Protection.

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

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262 participating transportation authority.

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

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