

By Representative Mahon

1                                   A bill to be entitled  
2           An act relating to wetland mitigation; creating  
3           s. 373.4139, F.S.; providing definitions;  
4           authorizing the mitigation of wetland and  
5           surface water impacts resulting from the Better  
6           Jacksonville Plan through the acquisition of  
7           lands for preservation and through wetland  
8           restoration, enhancement, and creation projects  
9           of regional environmental benefit; providing  
10          legislative intent with respect to such  
11          mitigation; specifying areas to be afforded  
12          preference as mitigation areas; authorizing the  
13          City of Jacksonville and the St. Johns River  
14          Water Management District to jointly determine  
15          other areas to be afforded preference as  
16          mitigation lands; providing sources of funds  
17          for wetland and surface water mitigation;  
18          providing procedure with respect to land  
19          acquisition; requiring the preparation of an  
20          inventory of wetland and surface water  
21          resources to be impacted; providing for annual  
22          updating of the inventory; specifying inventory  
23          contents; requiring the district to develop a  
24          mitigation plan annually; requiring annual  
25          approval of a conceptual plan for mitigating  
26          impacts contained in the inventory by the  
27          governing board of the district; providing that  
28          approval of the conceptual plan creates a  
29          presumption that the mitigation contained  
30          therein satisfies the mitigation permitting  
31          requirements of ch. 373, F.S.; requiring the

1 district to forward copies of the conceptual  
2 plan to, and seek to obtain formal concurrence  
3 of, specified federal agencies; providing  
4 procedure and requirements with respect to  
5 wetland and surface water mitigation;  
6 specifying powers of the district with regard  
7 to permitting; providing funding requirements;  
8 requiring specified deposits by permittees;  
9 authorizing the district and the City of  
10 Jacksonville to enter into certain agreements;  
11 authorizing the district to enter into certain  
12 contracts; providing specified powers of the  
13 district; providing procedure in the event that  
14 conceptual mitigation plans are not approved or  
15 adopted; authorizing exclusion of certain  
16 projects from the conceptual plan; providing  
17 construction; amending s. 373.4135, F.S.;  
18 providing nonapplicability to the provisions of  
19 s. 373.4139 with respect to the required  
20 establishment of specified environmental  
21 creation, preservation, enhancement, and  
22 restoration projects; providing an effective  
23 date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 373.4139, Florida Statutes, is  
28 created to read:

29 373.4139 Better Jacksonville Plan mitigation.--

30 (1) As used in this section:

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1           (a) "Better Jacksonville Plan" means that program of  
2 Duval County improvements described in Chapter 761,  
3 Jacksonville Ordinance Code, which was approved by referendum  
4 on October 3, 2000, including, at the discretion of the  
5 sponsoring authority, any Jacksonville Transportation  
6 Authority project or Jacksonville Electric Authority utility  
7 project, within Duval County or adjacent counties, constructed  
8 in conjunction with any Better Jacksonville Plan project.

9           (b) "City" means the City of Jacksonville.

10           (c) "District" means the St. Johns River Water  
11 Management District.

12           (2) The Legislature finds that infrastructure  
13 improvements associated with the Better Jacksonville Plan are  
14 of regional benefit. It is the intent of the Legislature that  
15 wetland and surface water impacts resulting from the Better  
16 Jacksonville Plan, or portions thereof, may be mitigated  
17 through the acquisition of lands for preservation and through  
18 wetland restoration, enhancement, or creation projects of  
19 corresponding regional environmental benefit.

20           (a) For the purposes of this section, the Legislature  
21 finds that the following areas shall be afforded preference as  
22 mitigation areas:

23           1. The Timucuan Historic and Ecological Preserve.

24           2. The Pumpkin Hill Creek State Buffer Preserve.

25           3. The Nassau-St. Johns River Aquatic Preserves.

26           4. The Cedar Swamp Conservation and Recreation Lands  
27 project.

28           5. The Cecil Field Conservation Corridor and nearby  
29 watersheds.

30           6. The Julington-Durbin Creeks Conservation and  
31 Recreation Lands project and tributaries.

1           7. The Thomas Creek watershed.  
2           (b) The City of Jacksonville and the St. Johns River  
3 Water Management District may jointly determine areas other  
4 than those enumerated in paragraph (a) that should be afforded  
5 preference as mitigation lands.  
6           (c) For the purposes of this section, priorities for  
7 acquisition for wetland preservation, enhancement, or  
8 restoration shall be given to mitigation lands afforded  
9 preference to the extent that they can offset the adverse  
10 impacts of the Better Jacksonville Plan.  
11           (3) Funds for wetland and surface water mitigation for  
12 impacts resulting from infrastructure improvements associated  
13 with Better Jacksonville Plan projects shall be provided  
14 through the funding mechanisms identified in the Better  
15 Jacksonville Plan. Where feasible, mitigation funds shall be  
16 used in coordination with funds from the Conservation and  
17 Recreation Lands Trust Fund, the Florida Communities Trust,  
18 the St. Johns River Water Management District's land  
19 acquisition program, the Jacksonville Preservation and  
20 Environmental Capital Property Fund, or from other appropriate  
21 sources, and shall be coordinated with the Better Jacksonville  
22 Plan Financial Administration Committee when applicable.  
23           (4) Whenever land acquisition is required to mitigate  
24 Better Jacksonville Plan wetland impacts, the St. Johns River  
25 Water Management District shall consult the Mayor's Oversight  
26 Commission for the Preservation Project, created by City of  
27 Jacksonville Mayoral Executive Order 99-2, in determining  
28 which lands should be acquired and the order of purchase of  
29 such lands.  
30           (5) The Better Jacksonville Plan Project  
31 Administration Committee shall prepare by January 1, 2002, an

1 inventory of wetland and surface water resources to be  
2 impacted directly, secondarily, and cumulatively by the  
3 construction, alteration, operation, or maintenance of  
4 projects in the Better Jacksonville Plan. Said resources shall  
5 include buffers which protect wetlands from the secondary  
6 impacts associated with adjacent upland activities. This  
7 inventory shall be updated annually on January 1 of each year  
8 beginning January 1, 2003. Each annual update shall reflect  
9 the anticipated wetland and surface water impacts of all  
10 incomplete Better Jacksonville Plan projects based on the best  
11 and most current information available. The inventory and each  
12 annual update shall list the acreage, type, and location of  
13 the resources anticipated to be impacted, as well as an  
14 assessment of the functions presently served by such  
15 resources, within and adjacent to the preliminary  
16 rights-of-way of an incomplete Better Jacksonville Plan  
17 project. In designing a project, impacts shall be reduced or  
18 eliminated through practicable design modifications in  
19 accordance with this part and its implementing regulations.

20 (6) Prior to July 1 of each year, the district, in  
21 consultation with the Better Jacksonville Plan Project  
22 Administration Committee or its designee, the United States  
23 Army Corps of Engineers, the United States Fish and Wildlife  
24 Service, and other appropriate agencies and interested parties  
25 shall develop a mitigation plan for the primary purpose of  
26 compliance with 33 U.S.C. s. 1344 and the mitigation  
27 requirements of this chapter.

28 (7) Beginning on July 1, 2002, and by July 1 of each  
29 year thereafter, the governing board of the St. Johns River  
30 Water Management District shall approve a conceptual plan for  
31 mitigating the impacts contained in the inventory. The plan

1 may be amended as needed to anticipate schedule changes or  
2 additional projects.

3 (a) Approval of the conceptual mitigation plan by the  
4 governing board of the St. Johns River Water Management  
5 District shall create a presumption that the mitigation in the  
6 approved plan satisfies the wetland and surface water  
7 mitigation permitting requirements of this chapter for those  
8 permit applications submitted to the district to authorize  
9 Better Jacksonville Plan projects, provided that the impacts  
10 proposed are consistent with those reflected in the inventory  
11 submitted in accordance with subsection (5) and the impacts  
12 have been reduced and eliminated pursuant to general law.

13 (b) Upon approval of the conceptual mitigation plan,  
14 the St. Johns River Water Management District shall forward a  
15 copy of the plan to all appropriate federal agencies,  
16 including the United States Army Corps of Engineers. The  
17 district shall seek to obtain formal concurrence of the  
18 approved mitigation plans from the federal agencies  
19 responsible for granting permits for the construction of  
20 projects associated with the Better Jacksonville Plan.

21 (8) Wetland and surface water mitigation required as a  
22 result of construction, alteration, operation, or maintenance  
23 associated with Better Jacksonville Plan projects for which  
24 permits are required under this part shall be accomplished in  
25 the following manner:

26 (a) The City of Jacksonville or the specific project  
27 program manager or his or her agent shall apply to the St.  
28 Johns River Water Management District for construction permits  
29 subject to the district's authority. The district shall be  
30 solely responsible for review and final action on such permits  
31 as required by this chapter or chapter 403. No local

1 environmental permits shall be required for construction of  
2 the project. Should any federal permitting authority require  
3 modification of a mitigation plan to gain that authority's  
4 approval, the district shall have the authority to make  
5 appropriate modifications, insofar as the total funding amount  
6 budgeted by the district for wetland mitigation of the project  
7 will allow. Should any federal agency require modification to  
8 a Better Jacksonville Plan project to meet federal wetlands  
9 permitting criteria, the Better Jacksonville Plan permittee  
10 shall be responsible for funding any increased cost. The St.  
11 Johns River Water Management District shall not be required to  
12 expend funds for wetland mitigation in excess of those  
13 provided.

14 (b) The St. Johns River Water Management District  
15 shall review permit applications for Better Jacksonville Plan  
16 projects in accordance with its permitting responsibilities  
17 under this chapter. Following approval of the plan, any  
18 mitigation required for wetland or surface water impacts  
19 associated with any Better Jacksonville Plan project shall be  
20 addressed through a permit condition requiring that the  
21 permittee deposit \$81,727 for each acre of impact with the St.  
22 Johns River Water Management District within 30 days after the  
23 permit is issued. Upon depositing the acreage fee, the  
24 permittee's wetland mitigation obligations under this chapter  
25 for that project shall be deemed satisfied. Beginning on July  
26 1, 2003, and each July 1 thereafter, the cost per acre shall  
27 be adjusted by the percentage change in the average of the  
28 consumer price index issued by the United States Department of  
29 Labor for the most recent 12-month period. The district shall  
30 condition permits such that construction shall not commence  
31 until such funds have been deposited with the district. Upon

1 the receipt of the mitigation funds, the district shall be  
2 responsible for implementing the required wetland mitigation.

3 (c) The City of Jacksonville and the district may  
4 enter into agreements whereby the city may implement  
5 mitigation, place funds in escrow for future impacts, or  
6 provide the district funds to implement mitigation for future  
7 impacts associated with Better Jacksonville Plan projects.

8 (d) In addition to using Better Jacksonville Plan  
9 funds to carry out district-sponsored wetland mitigation  
10 projects, the district may contract with other public or  
11 private entities to supply mitigation or use Better  
12 Jacksonville Plan funds to purchase wetland mitigation credits  
13 in public or private mitigation banks, provided such banks  
14 have all proper permits and such mitigation is identified in  
15 the approved conceptual plan.

16 (e) Notwithstanding the division of permitting  
17 responsibilities set forth in the Operating Agreement  
18 Concerning Regulation under this part, dated October 27, 1998,  
19 between the Department of Environmental Protection and the St.  
20 Johns River Water Management District, adopted as Rule  
21 62-113.100, Florida Administrative Code, the district shall  
22 have the authority and responsibility to make all permitting  
23 decisions and to take all enforcement actions related to such  
24 permitting decisions for all permits required under this part  
25 for Better Jacksonville Plan projects.

26 (f) The St. Johns River Water Management District  
27 shall have full authority to acquire those lands and implement  
28 the mitigation identified in the mitigation plan.

29 (g) The St. Johns River Water Management District  
30 shall serve as acquisition agent in acquiring lands necessary  
31 to implement the mitigation plan once it is approved, unless

1 the district and the City of Jacksonville agree otherwise.  
2 Unless the City of Jacksonville agrees to arrange for  
3 appraisals of lands to be acquired for wetland mitigation, the  
4 St. Johns River Water Management District may contract or  
5 otherwise enter into agreements with the agency responsible  
6 for the right-of-way acquisition for the Better Jacksonville  
7 Plan for appraisals of mitigation projects. Such appraisals  
8 may be made by the agency responsible for right-of-way  
9 acquisition either in conjunction with, or separate from,  
10 appraisals of property necessary for right-of-way acquisition.  
11 Title to lands which are acquired by the St. Johns River Water  
12 Management District as mitigation lands shall be held by the  
13 district and may be transferred, if appropriate for management  
14 purposes, to another public or governmental agency. Management  
15 plans for mitigation lands shall be prepared and implemented  
16 by the agency holding title to the lands in consultation with  
17 the Better Jacksonville Plan Project Administration Committee  
18 or other entity designated by the City of Jacksonville. The  
19 management plans shall be in accordance with the criteria of  
20 this chapter and federal permit requirements.

21 (h) In the event that the district fails to timely  
22 adopt the conceptual mitigation plans as herein contemplated,  
23 or in the event that such plans are not approved by the  
24 appropriate federal agencies, the City of Jacksonville may  
25 apply to the appropriate agencies for permits, which  
26 applications may be accompanied by conventional mitigation  
27 plans, and proceed as if this section did not exist. Nothing  
28 in this section shall, in any way, prevent the City of  
29 Jacksonville from electing not to build a project of the  
30 Better Jacksonville Plan.

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1       (i) Specific projects may be excluded from the  
2 conceptual mitigation plan and shall not be subject to this  
3 section upon the finding by either the City of Jacksonville or  
4 the district that the inclusion of such projects would hamper  
5 the efficiency or timeliness of the mitigation planning and  
6 permitting process or if the district is unable to identify  
7 wetland mitigation that would offset the impact of the  
8 project.

9       (9) This section shall not be construed to eliminate  
10 the need for the City of Jacksonville to comply with the  
11 requirement to implement practicable design modifications,  
12 including realignment of projects, to reduce or eliminate the  
13 impacts of its projects on wetlands and other surface waters  
14 as required by rules adopted pursuant to this part, or to  
15 diminish the authority under this part to regulate other  
16 impacts, including water quantity or water quality impacts, or  
17 impacts regulated under this part that are not identified in  
18 the inventory described in subsection (5).

19       Section 2. Paragraph (h) is added to subsection (6) of  
20 section 373.4135, Florida Statutes, to read:

21       373.4135 Mitigation banks and offsite regional  
22 mitigation.--

23       (6) An environmental creation, preservation,  
24 enhancement, or restoration project, including regional  
25 offsite mitigation areas, for which money is donated or paid  
26 as mitigation, that is sponsored by the department, a water  
27 management district, or a local government and provides  
28 mitigation for five or more applicants for permits under this  
29 part, or for 35 or more acres of adverse impacts, shall be  
30 established and operated under a memorandum of agreement. The  
31 memorandum of agreement shall be between the governmental

1 entity proposing the mitigation project and the department or  
2 water management district, as appropriate. Such memorandum of  
3 agreement need not be adopted by rule. For the purposes of  
4 this subsection, one creation, preservation, enhancement, or  
5 restoration project shall mean one or more parcels of land  
6 with similar ecological communities that are intended to be  
7 created, preserved, enhanced, or restored under a common  
8 scheme.

9 (h) The provisions of this subsection shall not apply  
10 to mitigation areas established to implement the provisions of  
11 s. 373.4139.

12 Section 3. This act shall take effect upon becoming a  
13 law.

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HOUSE SUMMARY

Authorizes the mitigation of wetland and surface water impacts resulting from the Better Jacksonville Plan, as defined in the act, through the acquisition of lands for preservation and through wetland restoration, enhancement, and creation projects of regional environmental benefit. Provides legislative intent with respect to such mitigation. Specifies areas to be afforded preference as mitigation areas. Authorizes the City of Jacksonville and the St. Johns River Water Management District to jointly determine other areas to be afforded preference as mitigation lands. Defines "Better Jacksonville Plan" for purposes of the act. Provides sources of funds for wetland and surface water mitigation. Provides procedure with respect to land acquisition. Requires preparation of an inventory of wetland and surface water resources to be impacted. Provides for annual updating of the inventory and specifies inventory contents. Requires the district to develop a mitigation plan annually. Requires annual approval of a conceptual plan for mitigating impacts contained in the inventory by the governing board of the district. Provides that approval of the mitigation plan, and of the conceptual plan, creates a presumption that the mitigation contained therein satisfies the mitigation permitting requirements of ch. 373, F.S. Requires the district to forward copies of the conceptual plan to, and seek to obtain formal concurrence of, specified federal agencies. Provides procedure and requirements with respect to wetland and surface water mitigation. Specifies powers of the district with regard to permitting. Provides funding requirements. Requires specified deposits by permittees. Authorizes the district and the City of Jacksonville to enter into certain agreements. Authorizes the district to enter into certain contracts. Provides specified powers of the district. Provides procedure in the event that conceptual mitigation plans are not approved or adopted. Authorizes exclusion of certain projects from the conceptual plan.