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LEGISLATIVE ACTION

Senate	.	House
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Senator Bennett moved the following:

1 **Senate Amendment to Amendment (302038) (with title**
2 **amendment)**

3
4 Between lines 1844 and 1845
5 insert:

6 Section 35. Subsection (4) of section 373.4136, Florida
7 Statutes, is amended to read:

8 373.4136 Establishment and operation of mitigation banks.-
9 (4) MITIGATION CREDITS.-After evaluating the information
10 submitted by the applicant for a mitigation bank permit and
11 assessing the proposed mitigation bank pursuant to the criteria
12 in this section, the department or water management district
13 shall award a number of mitigation credits to a proposed



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14 mitigation bank or phase of such mitigation bank. An entity
15 establishing and operating a mitigation bank may apply to modify
16 the mitigation bank permit to seek the award of additional
17 mitigation credits if the mitigation bank results in an
18 additional increase in ecological value over the value
19 contemplated at the time of the original permit issuance, or the
20 most recent modification thereto involving the number of credits
21 awarded. The number of credits awarded shall be based on the
22 degree of improvement in ecological value expected to result
23 from the establishment and operation of the mitigation bank as
24 determined using the uniform mitigation assessment method
25 adopted under s. 373.414(18). ~~a functional assessment~~
26 ~~methodology. In determining the degree of improvement in~~
27 ~~ecological value, each of the following factors, at a minimum,~~
28 ~~shall be evaluated:~~

29 ~~(a) The extent to which target hydrologic regimes can be~~
30 ~~achieved and maintained.~~

31 ~~(b) The extent to which management activities promote~~
32 ~~natural ecological conditions, such as natural fire patterns.~~

33 ~~(c) The proximity of the mitigation bank to areas with~~
34 ~~regionally significant ecological resources or habitats, such as~~
35 ~~national or state parks, Outstanding National Resource Waters~~
36 ~~and associated watersheds, Outstanding Florida Waters and~~
37 ~~associated watersheds, and lands acquired through governmental~~
38 ~~or nonprofit land acquisition programs for environmental~~
39 ~~conservation; and the extent to which the mitigation bank~~
40 ~~establishes corridors for fish, wildlife, or listed species to~~
41 ~~those resources or habitats.~~

42 ~~(d) The quality and quantity of wetland or upland~~



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43 ~~restoration, enhancement, preservation, or creation.~~

44 ~~(e) The ecological and hydrological relationship between~~
45 ~~wetlands and uplands in the mitigation bank.~~

46 ~~(f) The extent to which the mitigation bank provides~~
47 ~~habitat for fish and wildlife, especially habitat for species~~
48 ~~listed as threatened, endangered, or of special concern, or~~
49 ~~provides habitats that are unique for that mitigation service~~
50 ~~area.~~

51 ~~(g) The extent to which the lands that are to be preserved~~
52 ~~are already protected by existing state, local, or federal~~
53 ~~regulations or land use restrictions.~~

54 ~~(h) The extent to which lands to be preserved would be~~
55 ~~adversely affected if they were not preserved.~~

56 ~~(i) Any special designation or classification of the~~
57 ~~affected waters and lands.~~

58 Section 36. Subsection (18) of section 373.414, Florida
59 Statutes, is amended to read:

60 373.414 Additional criteria for activities in surface
61 waters and wetlands.-

62 (18) The department in coordination with ~~and~~ each water
63 management district responsible for implementation of the
64 environmental resource permitting program shall develop a
65 uniform mitigation assessment method for wetlands and other
66 surface waters. ~~The department shall adopt the uniform~~
67 ~~mitigation assessment method by rule no later than July 31,~~
68 ~~2002.~~ The rule shall provide an exclusive, uniform and
69 consistent process for determining the amount of mitigation
70 required to offset impacts to wetlands and other surface waters,
71 and, once effective, shall supersede all rules, ordinances, and



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72 variance procedures from ordinances that determine the amount of
73 mitigation needed to offset such impacts. Except when evaluating
74 mitigation bank applications, which must meet the criteria of
75 373.4136(1), F.S., the rule shall only be applied after
76 determining that the mitigation is appropriate to offset the
77 values and functions of wetlands and surface waters to be
78 adversely impacted by the proposed activity. Once the department
79 adopts the uniform mitigation assessment method by rule, the
80 uniform mitigation assessment method shall be binding on the
81 department, the water management districts, local governments,
82 and any other governmental agencies and shall be the sole means
83 to determine the amount of mitigation needed to offset adverse
84 impacts to wetlands and other surface waters and to award and
85 deduct mitigation bank credits. A water management district and
86 any other governmental agency subject to chapter 120 may apply
87 the uniform mitigation assessment method without the need to
88 adopt it pursuant to s. 120.54. It shall be a goal of the
89 department and water management districts that the uniform
90 mitigation assessment method developed be practicable for use
91 within the timeframes provided in the permitting process and
92 result in a consistent process for determining mitigation
93 requirements. It shall be recognized that any such method shall
94 require the application of reasonable scientific judgment. The
95 uniform mitigation assessment method must determine the value of
96 functions provided by wetlands and other surface waters
97 considering the current conditions of these areas, utilization
98 by fish and wildlife, location, uniqueness, and hydrologic
99 connection, ~~and, when applied to mitigation banks, the factors~~
100 ~~listed in s. 373.4136(4).~~ The uniform mitigation assessment



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101 method shall also account for the expected time-lag associated
102 with offsetting impacts and the degree of risk associated with
103 the proposed mitigation. The uniform mitigation assessment
104 method shall account for different ecological communities in
105 different areas of the state. In developing the uniform
106 mitigation assessment method, the department and water
107 management districts shall consult with approved local programs
108 under s. 403.182 which have an established mitigation program
109 for wetlands or other surface waters. The department and water
110 management districts shall consider the recommendations
111 submitted by such approved local programs, including any
112 recommendations relating to the adoption by the department and
113 water management districts of any uniform mitigation methodology
114 that has been adopted and used by an approved local program in
115 its established mitigation program for wetlands or other surface
116 waters. Environmental resource permitting rules may establish
117 categories of permits or thresholds for minor impacts under
118 which the use of the uniform mitigation assessment method will
119 not be required. The application of the uniform mitigation
120 assessment method is not subject to s. 70.001. In the event the
121 rule establishing the uniform mitigation assessment method is
122 deemed to be invalid, the applicable rules related to
123 establishing needed mitigation in existence prior to the
124 adoption of the uniform mitigation assessment method, including
125 those adopted by a county which is an approved local program
126 under s. 403.182, and the method described in paragraph (b) for
127 existing mitigation banks, shall be authorized for use by the
128 department, water management districts, local governments, and
129 other state agencies.



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130 (a) In developing the uniform mitigation assessment method,
131 the department shall seek input from the United States Army
132 Corps of Engineers in order to promote consistency in the
133 mitigation assessment methods used by the state and federal
134 permitting programs.

135 (b) An entity which has received a mitigation bank permit
136 prior to the adoption of the uniform mitigation assessment
137 method shall have impact sites assessed, for the purpose of
138 deducting bank credits, using the credit assessment method,
139 including any functional assessment methodology, which was in
140 place when the bank was permitted; unless the entity elects to
141 have its credits redetermined, and thereafter have its credits
142 deducted, using the uniform mitigation assessment method.

143 (c) The department shall ensure statewide coordination and
144 consistency in the interpretation and application of the uniform
145 mitigation assessment method rule by providing programmatic
146 training and guidance to staff of the department, water
147 management districts, and local governments. To ensure that the
148 uniform mitigation assessment method rule is interpreted and
149 applied uniformly, the department's interpretation, guidance,
150 and approach to applying the uniform mitigation assessment
151 method rule shall govern.

152 (d) Applicants shall submit the information needed to perform
153 the assessment required under the uniform mitigation assessment
154 method rule, and may submit the qualitative characterization and
155 quantitative assessment for each assessment area specified by
156 the rule. The reviewing agency shall review that information and
157 notify the applicant of any inadequacy in the information or
158 application of the assessment method.



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159 (e) When conducting qualitative characterization of artificial
160 wetlands and other surface waters, such as borrow pits, ditches,
161 and canals under the uniform mitigation assessment method rule,
162 the native community type to which it is most analogous in
163 function shall be used as a reference. For wetlands or other
164 surface waters that have been altered from their native
165 community type, the historic community type at that location
166 shall be used as a reference, unless the alteration has been of
167 such a degree and extent that a different native community type
168 is now present and self sustaining.

169 (f) When conducting qualitative characterization of upland
170 mitigation assessment areas, the characterization shall include
171 functions that the upland assessment area provides to the fish
172 and wildlife of the associated wetland or other surface waters.
173 These functions shall be considered when scoring the upland
174 assessment area for preservation, enhancement, or restoration.
175 Any increase in these functions resulting from activities in an
176 upland mitigation assessment area shall be accounted for in the
177 upland assessment area scoring.

178 (g) The term "preservation mitigation," as used in the uniform
179 mitigation assessment method, means the protection of important
180 wetland, other surface water or upland ecosystems predominantly
181 in their existing condition and absent restoration, creation or
182 enhancement from adverse impacts by placing a conservation
183 easement or other comparable land use restriction over the
184 property or by donation of fee simple interest in the property.
185 Preservation may include a management plan for perpetual
186 protection of the area. The preservation adjustment factor set
187 forth in rule 62-345.500(3), Florida Administrative Code, shall



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188 only apply to preservation mitigation.
189 (h) When assessing a preservation mitigation assessment area
190 under the uniform mitigation assessment method the following
191 shall apply:
192 1. "Without preservation" shall consider the reasonably
193 anticipated loss of functions and values provided by the
194 assessment area, assuming the area is not preserved.
195 2. Each of the considerations of the preservation adjustment
196 factor specified in Rule 62-345.500(3)(a), Florida
197 Administrative Code shall be equally weighted and scored on a
198 scale from 0, no value, to 0.2, optimal value. In addition, the
199 minimum preservation adjustment factor shall be 0.2.
200 (i) The location and landscape support scores, pursuant to rule
201 62-345.500, Florida Administrative Code, may change in the "with
202 mitigation" or "with impact" condition in both upland and
203 wetland assessment areas, regardless of the initial community
204 structure or water environment scores.
205 (j) When a mitigation plan for creation, restoration, or
206 enhancement includes a preservation mechanism, such as a
207 conservation easement, the "with mitigation" assessment of that
208 creation, restoration, or enhancement shall consider, and the
209 scores shall reflect, the benefits of that preservation
210 mechanism, and the benefits of that preservation mechanism may
211 not be scored separately.
212 (k) Any entity holding a mitigation bank permit that was
213 evaluated under the uniform mitigation assessment rule before
214 the effective date of paragraphs (c) - (j) may submit a permit
215 modification request to the relevant permitting agency to have
216 such mitigation bank reassessed pursuant to the provisions set



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217 forth in this section, and the relevant permitting agency shall
218 reassess such mitigation bank, if such request is filed with
219 that agency no later than September 30, 2011.

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

222 And the title is amended as follows:

223 Between lines 3804 and 3805

224 insert:

225 amending s. 373.4136, F.S.; revising evaluation
226 methods for mitigation credits; amending s. 373.414,
227 F.S.; revising the uniform mitigation assessment
228 methology;