

104TH CONGRESS
2D SESSION

H. R. 4211

To direct the Secretary of the Army to conduct a study of mitigation banks,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1996

Mr. McCOLLUM introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To direct the Secretary of the Army to conduct a study
of mitigation banks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Florida Wetlands Miti-
5 gation Banking Study Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Mitigating the environmental impacts of
9 necessary development actions on the Nation’s wet-
10 lands and other aquatic resources is a central

1 premise of Federal wetlands programs. While miti-
2 gation is required to prevent loss of the Nation’s
3 wetland resources, mitigation should be undertaken
4 in a manner that is flexible, efficient, reliable, and
5 effective.

6 (2) Mitigation banking is wetland resource res-
7 toration, enhancement, creation, and in exceptional
8 circumstances preservation, undertaken to provide
9 mitigation “credits” to offset unavoidable wetland
10 losses.

11 (3) Mitigation banks often provide greater flexi-
12 bility, efficiency, reliability, and effectiveness in
13 meeting mitigation requirements than on-site mitiga-
14 tion can and often have significant environmental
15 advantages over individual mitigation projects, such
16 as—

17 (A) maintaining the integrity of a larger
18 aquatic ecosystem by consolidating compen-
19 satory mitigation into a single large parcel;

20 (B) bringing together financial resources,
21 planning, and scientific expertise not practicable
22 to bring to many project-specific compensatory
23 mitigation proposals;

24 (C) reducing permit processing times and
25 providing more cost-effective compensatory

1 mitigation opportunities for projects that qual-
2 ify;

3 (D) improving regulatory oversight by fo-
4 cusing regulatory agency resources more effec-
5 tively; and

6 (E) contributing toward attainment of the
7 goal of no net loss of the Nation’s wetlands by
8 providing opportunities to compensate for au-
9 thorized impacts when mitigation might not
10 otherwise be appropriate or practicable.

11 (4) The State of Florida has developed one of
12 the most advanced regulatory frameworks in the Na-
13 tion for authorizing the establishment and use of
14 mitigation banks. Florida’s statutes and regulations
15 governing mitigation banks contain provisions for
16 evaluating the suitability of mitigation banks, deter-
17 mining the number of mitigation “credits” to be
18 awarded a mitigation bank, and ensuring the success
19 and perpetual protection and management of mitiga-
20 tion banks. As a result, a number of mitigation
21 banks have been successfully established and used in
22 Florida.

23 (5) In determining whether Federal legislation
24 or further administrative action is necessary to en-
25 courage the establishment of mitigation banks, to

1 allow for the use of mitigation banks to meet the re-
2 quirements of applicable Federal statutes and regu-
3 lations, and to ensure the proper location, success,
4 and perpetual protection and management of mitiga-
5 tion banks, a study of the authorization and use of
6 mitigation banks in Florida is necessary and useful.

7 **SEC. 3. MITIGATION BANKING STUDY.**

8 (a) IN GENERAL.—The Secretary of the Army shall
9 conduct a study of mitigation banking in the State of Flor-
10 ida for the purpose of evaluating the potential and prob-
11 lems of mitigation banking. By July 1, 1997, the Sec-
12 retary shall submit a written report on the results of the
13 study to the President, the Committee on Environment
14 and Public Works of the Senate, and the Committee on
15 Transportation and Infrastructure of the House of Rep-
16 resentatives.

17 (b) CONSULTATION.—In conducting this mitigation
18 banking study and preparing the report under this section,
19 the Secretary shall consult with the following:

20 (1) The Environmental Protection Agency.

21 (2) The Natural Resources Conservation Serv-
22 ice of the Department of Agriculture.

23 (3) The Fish and Wildlife Service of the De-
24 partment of the Interior.

1 (4) The National Marine Fisheries Service of
2 the Department of Commerce.

3 (5) The Florida Department of Environmental
4 Protection.

5 (6) The Northwest Florida Water Management
6 District.

7 (7) The Suwannee River Water Management
8 District.

9 (8) The St. Johns River Water Management
10 District.

11 (9) The Southwest Florida Water Management
12 District.

13 (10) The South Florida Water Management
14 District.

15 (c) MATTERS TO BE ADDRESSED.—The Secretary's
16 mitigation bank study and report under this section shall
17 address all subjects relating to the effective and respon-
18 sible establishment, use, and perpetual protection and
19 management of mitigation banks and shall specifically ad-
20 dress the following issues:

21 (1) Whether Federal legislation is necessary to
22 encourage the responsible establishment, use, and
23 perpetual protection and management of mitigation
24 banks.

1 (2) The manner in which mitigation banks
2 should be authorized.

3 (3) The legal restrictions which should be
4 placed on lands within a mitigation bank to ensure
5 the perpetual protection of that mitigation bank.

6 (4) The financial responsibility that entities es-
7 tablishing a mitigation bank should provide to en-
8 sure the success and perpetual protection and man-
9 agement of that mitigation bank.

10 (5) The manner in which wetland and upland
11 areas within a mitigation bank should be evaluated
12 in the award of mitigation “credits” to a mitigation
13 bank.

14 (6) The manner in which mitigation “credits”
15 from a mitigation bank can be used as compensation
16 for unavoidable impacts to wetlands and other
17 aquatic resources.

18 (7) The manner in which the service area of a
19 mitigation bank should be established.

20 (8) The relationship of mitigation banks to pub-
21 lic acquisition or restoration programs designed to
22 restore or enhance the environment.

23 (9) The manner in which the siting of mitiga-
24 tions banks can be directed to assure compatibility
25 with adjacent land uses and furtherance of local or

1 regional goals for the restoration or protection of
2 watersheds, floodplains, particular habitat types or
3 functions, and water quality.

4 (10) The procedure by which Federal and any
5 State authorizations of the establishment and use of
6 mitigation banks can be coordinated to reduce dupli-
7 cation and increase governmental efficiency.

8 (d) PUBLIC COMMENT.—Prior to submitting the re-
9 port, the Secretary shall provide notice and an opportunity
10 for public comment on the report. The Secretary shall also
11 solicit comments on the report from other States by sub-
12 mitting a copy of the report to the Interstate Counsel on
13 Water Policy for comment.

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