

105TH CONGRESS  
1ST SESSION

# H. R. 227

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. MCCOLLUM (for himself and Mr. MICA) introduced the following bill;  
which was referred to the Committee on Transportation and Infrastructure

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## 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 1997”.

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. However,  
2       mitigation should be undertaken in a manner that is  
3       flexible, efficient, reliable, and effective.

4           (2) Mitigation banking is wetland resource res-  
5       toration, enhancement, creation, and preservation,  
6       undertaken to provide mitigation “credits” to offset  
7       unavoidable wetland losses.

8           (3) Mitigation banks often provide greater flexi-  
9       bility, efficiency, reliability, and effectiveness in  
10      meeting mitigation requirements by—

11           (A) maintaining the integrity of a larger  
12      aquatic ecosystem by consolidating compen-  
13      satory mitigation into a single large parcel;

14           (B) bringing together financial resources,  
15      planning, and scientific expertise not practicable  
16      to bring to many project-specific compensatory  
17      mitigation proposals;

18           (C) reducing permit processing times and  
19      providing more cost-effective compensatory  
20      mitigation opportunities for projects that qual-  
21      ify;

22           (D) improving regulatory oversight by fo-  
23      cusing regulatory agency resources more effec-  
24      tively; and

1           (E) contributing toward attainment of the  
2           goal of no net loss of the Nation’s wetlands by  
3           providing opportunities to compensate for au-  
4           thorized impacts when mitigation might not  
5           otherwise be appropriate or practicable.

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

18          (5) In determining whether Federal legislation  
19          or further administrative action is necessary to allow  
20          for the successful establishment of mitigation banks,  
21          to allow for the use of mitigation banks to meet the  
22          requirements of applicable Federal statutes and reg-  
23          ulations, and to ensure the proper location, success,

1 and perpetual protection and management of mitiga-  
2 tion banks, a study of the authorization and use of  
3 mitigation banks in Florida is necessary and useful.

4 **SEC. 3. MITIGATION BANKING STUDY.**

5 (a) IN GENERAL.—The Secretary of the Army shall  
6 conduct a study of mitigation banking in the State of Flor-  
7 ida for the purpose of evaluating the potential and prob-  
8 lems of mitigation banking. Not later than 2 years after  
9 the date of the enactment of this Act, the Secretary shall  
10 submit a written report on the results of the study to the  
11 President, the Committee on Environment and Public  
12 Works of the Senate, and the Committee on Transpor-  
13 tation and Infrastructure of the House of Representatives.

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

17 (1) The Environmental Protection Agency.

18 (2) The Natural Resources Conservation Serv-  
19 ice of the Department of Agriculture.

20 (3) The Fish and Wildlife Service of the De-  
21 partment of the Interior.

22 (4) The National Marine Fisheries Service of  
23 the Department of Commerce.

24 (5) The Florida Department of Environmental  
25 Protection.

1           (6) The Northwest Florida Water Management  
2     District.

3           (7) The Suwannee River Water Management  
4     District.

5           (8) The St. Johns River Water Management  
6     District.

7           (9) The Southwest Florida Water Management  
8     District.

9           (10) The South Florida Water Management  
10    District.

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

17           (1) Whether Federal legislation is necessary to  
18     allow for the responsible establishment, use, and per-  
19     petual protection and management of mitigation  
20     banks.

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

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

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

5           (5) The manner in which wetland and upland  
6           areas within a mitigation bank should be evaluated  
7           in the award of mitigation “credits” to a mitigation  
8           bank.

9           (6) The manner in which mitigation “credits”  
10          from a mitigation bank can be used.

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

13          (8) The relationship of mitigation banks to pub-  
14          lic acquisition or restoration programs designed to  
15          restore or enhance the environment.

16          (9) The manner in which the siting of mitiga-  
17          tions banks can be directed to assure compatibility  
18          with adjacent land uses and furtherance of local or  
19          regional goals for the restoration or protection of  
20          watersheds, floodplains, particular habitat types or  
21          functions, and water quality.

22          (10) The procedure by which Federal and any  
23          State authorizations of the establishment and use of  
24          mitigation banks can be coordinated to reduce dupli-  
25          cation and increase governmental efficiency.

1       (d) PUBLIC COMMENT.—Prior to submitting the re-  
2 port, the Secretary shall provide notice and an opportunity  
3 for public comment on the report. The Secretary shall also  
4 solicit comments on the report from other States by sub-  
5 mitting a copy of the report to the Interstate Counsel on  
6 Water Policy for comment.

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