

1 A bill to be entitled
2 An act relating to mitigation; reordering and amending
3 s. 373.403, F.S.; defining the term "private-sector
4 sponsor"; making technical changes; amending s.
5 373.4134, F.S.; revising legislative findings;
6 defining the term "applicant"; revising the entities
7 to and purposes for which water quality enhancement
8 credits may be sold; requiring the Department of
9 Environmental Protection or water management districts
10 to authorize the sale and use of such credits to
11 applicants, rather than to governmental entities, to
12 address adverse water quality impacts of certain
13 activities; revising construction; amending s.
14 373.4135, F.S.; revising legislative findings;
15 authorizing governmental entities to solicit certain
16 proposals for mitigation bank projects on public land;
17 providing requirements for the proposals and for
18 agreements between local governmental and private
19 entities; providing requirements for the agreements;
20 providing requirements for the department and water
21 management districts in assigning mitigation bank
22 credits to the bank; providing applicability;
23 providing construction; amending s. 373.414, F.S.;
24 conforming cross-references; reenacting s.
25 403.9332(1)(a) and (c), F.S., relating to mitigation

26 and enforcement, to incorporate the amendments made to
 27 s. 373.4135, F.S., in references thereto; providing an
 28 effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Section 373.403, Florida Statutes, is reordered
 33 and amended to read:

34 373.403 Definitions.—When appearing in this part or in any
 35 rule, regulation, or order adopted pursuant thereto, the
 36 following terms mean:

37 (4)~~(1)~~ "Dam" means any artificial or natural barrier, with
 38 appurtenant works, raised to obstruct or impound, or which does
 39 obstruct or impound, any of the surface waters of the state.

40 (2) "Appurtenant works" means any artificial improvements
 41 to a dam which might affect the safety of such dam or, when
 42 employed, might affect the holding capacity of such dam or of
 43 the reservoir or impoundment created by such dam.

44 (10)~~(3)~~ "Impoundment" means any lake, reservoir, pond, or
 45 other containment of surface water occupying a bed or depression
 46 in the earth's surface and having a discernible shoreline.

47 (18)~~(4)~~ "Reservoir" means any artificial or natural
 48 holding area which contains or will contain the water impounded
 49 by a dam.

50 (23)~~(5)~~ "Works" means all artificial structures,

51 including, but not limited to, ditches, canals, conduits,
 52 channels, culverts, pipes, and other construction that connects
 53 to, draws water from, drains water into, or is placed in or
 54 across the waters in the state.

55 (3)~~(6)~~ "Closed system" means any reservoir or works
 56 located entirely within agricultural lands owned or controlled
 57 by the user and which requires water only for the filling,
 58 replenishing, and maintaining the water level thereof.

59 (1)~~(7)~~ "Alter" means to extend a dam or works beyond
 60 maintenance in its original condition, including changes which
 61 may increase or diminish the flow or storage of surface water
 62 which may affect the safety of such dam or works.

63 (12)~~(8)~~ "Maintenance" or "repairs" means remedial work of
 64 a nature as may affect the safety of any dam, impoundment,
 65 reservoir, or appurtenant work or works, but excludes routine
 66 custodial maintenance.

67 (5)~~(9)~~ "Drainage basin" means a subdivision of a
 68 watershed.

69 (21)~~(10)~~ "Stormwater management system" means a system
 70 ~~which is~~ designed and constructed or implemented to control
 71 discharges ~~which are~~ necessitated by rainfall events,
 72 incorporating methods to collect, convey, store, absorb,
 73 inhibit, treat, use, or reuse water to prevent or reduce
 74 flooding, overdrainage, environmental degradation, and water
 75 pollution or otherwise affect the quantity and quality of

76 discharges from the system.

77 (20)~~(11)~~ "State water quality standards" means water
78 quality standards adopted pursuant to chapter 403.

79 (22)~~(12)~~ "Watershed" means the land area that ~~which~~
80 contributes to the flow of water into a receiving body of water.

81 (6)~~(13)~~ "Dredging" means excavation, by any means, in
82 surface waters or wetlands, as delineated in s. 373.421(1). The
83 term ~~It~~ also means the excavation, or creation, of a water body
84 which is, or is to be, connected to surface waters or wetlands,
85 as delineated in s. 373.421(1), directly or via an excavated
86 water body or series of water bodies.

87 (9)~~(14)~~ "Filling" means the deposition, by any means, of
88 materials in surface waters or wetlands, as delineated in s.
89 373.421(1).

90 (8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
91 coastal body of water that ~~which~~ has a free connection with the
92 open sea and within which seawater is measurably diluted with
93 fresh water derived from riverine systems.

94 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
95 depression that ~~which~~ is below mean high water and that ~~which~~
96 has permanent or ephemeral communications with the sea, but
97 ~~which~~ is protected from the sea by some type of naturally
98 existing barrier.

99 (19)~~(17)~~ "Seawall" means a manmade wall or an
100 encroachment, except riprap, which is made to break the force of

101 waves and to protect the shore from erosion.

102 (7)~~(18)~~ "Ecological value" means the value of functions
 103 performed by uplands, wetlands, and other surface waters to the
 104 abundance, diversity, and habitats of fish, wildlife, and listed
 105 species. These functions include, but are not limited to,
 106 providing cover and refuge; breeding, nesting, denning, and
 107 nursery areas; corridors for wildlife movement; food chain
 108 support; and natural water storage, natural flow attenuation,
 109 and water quality improvement, which enhances fish, wildlife,
 110 and listed species utilization.

111 (13)~~(19)~~ "Mitigation bank" means a project permitted under
 112 s. 373.4136 undertaken to provide for the withdrawal of
 113 mitigation credits to offset adverse impacts authorized by a
 114 permit under this part.

115 (14)~~(20)~~ "Mitigation credit" means a standard unit of
 116 measure which represents the increase in ecological value
 117 resulting from restoration, enhancement, preservation, or
 118 creation activities.

119 (15)~~(21)~~ "Mitigation service area" means the geographic
 120 area within which mitigation credits from a mitigation bank may
 121 be used to offset adverse impacts of activities regulated under
 122 this part.

123 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
 124 an area of land off the site of an activity permitted under this
 125 part, where an applicant proposes to mitigate the adverse

126 impacts of only the applicant's specific activity as a
 127 requirement of the permit, which provides regional ecological
 128 value, and which is not a mitigation bank permitted under s.
 129 373.4136.

130 (17) "Private-sector sponsor" means an individual or
 131 entity that establishes and operates a wetland mitigation bank
 132 project and is responsible for compliance with any permit or
 133 authorization, including, but not limited to, funding and
 134 undertaking wetland enhancement, restoration or creation
 135 activities, and the provision of financial assurances, as well
 136 as any required monitoring, reporting, and maintenance of the
 137 mitigation bank.

138 Section 2. Present paragraphs (a) through (e) of
 139 subsection (2) of section 373.4134, Florida Statutes, are
 140 redesignated as paragraphs (b) through (f), respectively, a new
 141 paragraph (a) is added to that subsection, and paragraphs (b),
 142 (d), and (e) of subsection (1), paragraph (b) of subsection (3),
 143 and paragraphs (a) and (j) of subsection (7) of that section are
 144 amended, to read:

145 373.4134 Water quality enhancement areas.—

146 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 147 that:

148 (b) An expansion of existing authority for regional
 149 treatment to include offsite compensatory treatment in water
 150 quality enhancement areas to make enhancement credits available

151 for purchase by an applicant or a governmental entity ~~entities~~
 152 to address impacts regulated under this part is needed.

153 (d) Water quality enhancement areas are a valuable tool to
 154 assist an applicant ~~governmental entities~~ in satisfying the net
 155 improvement performance standard under s. 373.414(1)(b)3. to
 156 ensure significant reductions of pollutant loadings.

157 (e) Water quality enhancement areas that provide water
 158 quality enhancement credits to applicants ~~governmental entities~~
 159 seeking permits under this part and to governmental entities
 160 seeking to meet an assigned basin management action plan
 161 allocation or reasonable assurance plan under s. 403.067 are
 162 considered an appropriate and permissible option.

163 (2) DEFINITIONS.—As used in this section, the term:

164 (a) "Applicant" means a governmental entity or private
 165 sector entity that wishes to purchase water quality enhancement
 166 credits to meet an assigned basin management action plan
 167 allocation or reasonable assurance plan or for the purpose of
 168 achieving the net improvement performance standard under s.
 169 373.414(1)(b)3.

170 (3) WATER QUALITY ENHANCEMENT AREAS.—

171 (b) Water quality enhancement credits may be sold ~~only~~ to
 172 governmental entities or applicants seeking to meet an assigned
 173 basin management action plan allocation or reasonable assurance
 174 plan or for the purpose of achieving net improvement performance
 175 standards under s. 373.414(1)(b)3. after ~~the governmental entity~~

176 | ~~has provided~~ reasonable assurances have been provided for the
 177 | ~~assurance of meeting department rules for~~ design and
 178 | construction of all onsite stormwater management, as required by
 179 | law.

180 | (7) ENHANCEMENT CREDITS.—

181 | (a) The department or water management district shall
 182 | authorize the sale and use of enhancement credits to applicants
 183 | ~~governmental entities~~ to address adverse water quality impacts
 184 | of activities regulated under this part or to assist
 185 | governmental entities seeking to meet required nonpoint source
 186 | contribution reductions assigned in a basin management action
 187 | plan or reasonable assurance plan under s. 403.067.

188 | (j) Notwithstanding any other law, this section does not
 189 | limit or restrict the authority of the department to deny the
 190 | use of enhancement credits when the department is not reasonably
 191 | assured that the use of the credits will not cause or contribute
 192 | to a violation of water quality standards, even if the project
 193 | being implemented by the applicant ~~governmental entity~~ is within
 194 | the enhancement service area. The department may allow the use
 195 | of enhancement credits if the department receives a request for
 196 | the use of enhancement credits and determines that such use will
 197 | not cause or contribute to a violation of water quality
 198 | standards.

199 | Section 3. Subsection (1) of section 373.4135, Florida
 200 | Statutes, is amended, and subsection (8) is added to that

201 section, to read:

202 373.4135 Mitigation banks and offsite regional
 203 mitigation.—

204 (1) The Legislature finds that the adverse impacts of
 205 activities regulated under this part may be offset by the
 206 creation, maintenance, and use of mitigation banks and offsite
 207 regional mitigation. Mitigation banks and offsite regional
 208 mitigation can enhance the certainty of mitigation and provide
 209 ecological value due to the improved likelihood of environmental
 210 success associated with their proper construction, maintenance,
 211 and management. Therefore, the department and the water
 212 management districts are directed to ~~participate in and~~
 213 encourage the establishment of private ~~and public~~ mitigation
 214 banks and offsite regional mitigation on private and public
 215 lands owned by a local government. Mitigation banks and offsite
 216 regional mitigation should emphasize the restoration and
 217 enhancement of degraded ecosystems and the preservation of
 218 uplands and wetlands as intact ecosystems rather than alteration
 219 of landscapes to create wetlands. This is best accomplished
 220 through restoration of ecological communities that were
 221 historically present.

222 (a) The Legislature intends that the provisions for
 223 establishing mitigation banks apply equally to both public and
 224 private entities, except that the rules of the department and
 225 water management districts may set forth different measures

226 governing financial responsibility, and different measures
 227 governing legal interest, needed to ensure the construction and
 228 perpetual protection of a mitigation bank.

229 (b) The Legislature recognizes the importance of
 230 mitigation banks as an appropriate and allowable mitigation
 231 alternative to permittee-responsible mitigation. However, the
 232 Legislature also recognizes that certain timing and geographical
 233 constraints could result in the unavailability of mitigation
 234 bank credits for a certain project upon completion of the
 235 project's application. If state and federal mitigation credits
 236 are not available to offset the adverse impacts of a project, a
 237 local government may allow permittee-responsible mitigation
 238 consisting of the restoration or enhancement of lands purchased
 239 and owned by a local government for conservation purposes, and
 240 such mitigation must conform to the permitting requirements of
 241 s. 373.4136. Except when a local government has allowed a public
 242 or private mitigation project, including permittee-responsible
 243 mitigation, to be created on land it has purchased for
 244 conservation purposes pursuant to this paragraph, a governmental
 245 entity may not create or provide mitigation for a project other
 246 than its own unless the governmental entity uses land that was
 247 not previously purchased for conservation and unless the
 248 governmental entity provides the same financial assurances as
 249 required for mitigation banks permitted under s. 373.4136. This
 250 paragraph does not apply to:

- 251 1. Mitigation banks permitted before December 31, 2011,
 252 under s. 373.4136;
- 253 2. Offsite regional mitigation areas established before
 254 December 31, 2011, under subsection (6) or, when credits are not
 255 available at a mitigation bank permitted under s. 373.4136,
 256 mitigation areas created by a local government which were
 257 awarded mitigation credits pursuant to the uniform mitigation
 258 assessment method as provided in chapter 62-345, Florida
 259 Administrative Code, under a permit issued before December 31,
 260 2011;
- 261 3. Mitigation for transportation projects under ss.
 262 373.4137 and 373.4139;
- 263 4. Mitigation for impacts from mining activities under s.
 264 373.41492;
- 265 5. Mitigation provided for single-family lots or
 266 homeowners under subsection (7);
- 267 6. Entities authorized in chapter 98-492, Laws of Florida;
- 268 7. Mitigation provided for electric utility impacts
 269 certified under part II of chapter 403; or
- 270 8. Mitigation provided on sovereign submerged lands under
 271 subsection (6).
- 272 (c) It is the further intent of the Legislature that
 273 mitigation banks and offsite regional mitigation be considered
 274 appropriate and a permittable mitigation option under the
 275 conditions specified by the rules of the department and water

276 management districts.

277 (d) Offsite mitigation, including offsite regional
 278 mitigation, may be located outside the regional watershed in
 279 which the adverse impacts of an activity regulated under this
 280 part are located, if such adverse impacts are offset by the
 281 offsite mitigation.

282 (e) The department or water management district may allow
 283 the use of a mitigation bank or offsite regional mitigation
 284 alone or in combination with other forms of mitigation to offset
 285 adverse impacts of activities regulated under this part.

286 (f) When an applicant seeking ~~for~~ a permit under ~~the~~
 287 ~~provisions of~~ this part other than this section and s. 373.4136
 288 submits more than one mitigation proposal to the department or a
 289 water management district, the department or water management
 290 district shall, in evaluating each proposal, ensure that such
 291 proposal adequately offsets the adverse impacts.

292 (8) A local government may, through a public procurement
 293 process, solicit proposals from private-sector sponsors for a
 294 mitigation bank on public lands purchased for conservation
 295 purposes. If such a mitigation bank is to be established and
 296 operated on public land, the local government and private-sector
 297 sponsor must enter into an agreement requiring the private-
 298 sector sponsor to establish and operate the mitigation bank to
 299 conform to the permitting requirements of s. 373.4136.

300 (a) The agreement must require the private-sector sponsor

301 to pay a usage fee to the local government which reflects the
 302 market value of the public land, as determined by a competitive
 303 process in accordance with state law or such other method of
 304 assuring that the cost of the use of the public land is fully
 305 accounted for in the pricing of mitigation credits.

306 (b) In determining the number of mitigation bank credits
 307 assigned to the mitigation bank, the department or water
 308 management district shall reflect the conservation status of the
 309 land in the location factor set forth in the uniform mitigation
 310 assessment method.

311 (c) This subsection applies to drainage basins or
 312 corresponding hydrologic units if the private-sector sponsor
 313 demonstrates to the department or water management district that
 314 in-kind credits are not available.

315 (d) Rulemaking is not required to implement this
 316 subsection.

317 Section 4. Paragraph (a) of subsection (8) of section
 318 373.414, Florida Statutes, is amended to read:

319 373.414 Additional criteria for activities in surface
 320 waters and wetlands.—

321 (8) (a) The governing board or the department, in deciding
 322 whether to grant or deny a permit for an activity regulated
 323 under this part shall consider the cumulative impacts upon
 324 surface water and wetlands, as delineated in s. 373.421 (1),
 325 within the same drainage basin as defined in s. 373.403 ~~s.~~

326 ~~373.403(9)~~, of:

327 1. The activity for which the permit is sought.

328 2. Projects which are existing or activities regulated
 329 under this part which are under construction or projects for
 330 which permits or determinations pursuant to s. 373.421 ~~or s.~~
 331 ~~403.914~~ have been sought.

332 3. Activities which are under review, approved, or vested
 333 pursuant to s. 380.06, or other activities regulated under this
 334 part which may reasonably be expected to be located within
 335 surface waters or wetlands, as delineated in s. 373.421(1), in
 336 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
 337 based upon the comprehensive plans, adopted pursuant to chapter
 338 163, of the local governments having jurisdiction over the
 339 activities, or applicable land use restrictions and regulations.

340 Section 5. For the purpose of incorporating the amendment
 341 made by this act to section 373.4135, Florida Statutes, in
 342 references thereto, paragraphs (a) and (c) of subsection (1) of
 343 section 403.9332, Florida Statutes, are reenacted to read:

344 403.9332 Mitigation and enforcement.—

345 (1)(a) Any area in which 5 percent or more of the trimmed
 346 mangrove trees have been trimmed below 6 feet in height, except
 347 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),
 348 destroyed, defoliated, or removed as a result of trimming
 349 conducted under s. 403.9326 or s. 403.9327 must be restored or
 350 mitigated. Restoration must be accomplished by replanting

351 mangroves, in the same location and of the same species as each
 352 mangrove destroyed, defoliated, removed, or trimmed, to achieve
 353 within 5 years a canopy area equivalent to the area destroyed,
 354 removed, defoliated, or trimmed; or mitigation must be
 355 accomplished by replanting offsite, in areas suitable for
 356 mangrove growth, mangroves to achieve within 5 years a canopy
 357 area equivalent to the area destroyed, removed, defoliated, or
 358 trimmed. Where all or a portion of the restoration or mitigation
 359 is not practicable, as determined by the department or delegated
 360 local government, the impacts resulting from the destruction,
 361 defoliation, removal, or trimming of the mangroves must be
 362 offset by donating a sufficient amount of money to offset the
 363 impacts, which must be used for the restoration, enhancement,
 364 creation, or preservation of mangrove wetlands within a
 365 restoration, enhancement, creation, or preservation project
 366 approved by the department or delegated local government; or by
 367 purchasing credits from a mitigation bank created under s.
 368 373.4135 at a mitigation ratio of 2-to-1 credits to affected
 369 area. The donation must be equivalent to the cost, as verified
 370 by the department or delegated local government, of creating
 371 mangrove wetlands at a 2-to-1, created versus affected ratio,
 372 based on canopy area. The donation may not be less than \$4 per
 373 square foot of created wetland area.

374 (c) If mangroves are to be trimmed or altered under a
 375 permit issued under s. 403.9328, the department or delegated

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376 | local government may require mitigation. The department or
377 | delegated local government shall establish reasonable mitigation
378 | requirements that must include, as an option, the use of
379 | mitigation banks created under s. 373.4135, where appropriate.
380 | The department's mitigation requirements must ensure that
381 | payments received as mitigation are sufficient to offset impacts
382 | and are used for mangrove creation, preservation, protection, or
383 | enhancement.

384 | Section 6. This act shall take effect July 1, 2024.