

By Senator Bennett

21-1553-03

See HB 1291

1                                   A bill to be entitled  
2           An act relating to mitigation banks; amending  
3           s. 373.4136, F.S.; providing that already  
4           established mitigation bank service areas are  
5           not subject to cumulative impact analysis on  
6           the release of credits to certain persons;  
7           amending s. 373.414, F.S.; providing that  
8           proposed mitigation that offsets the adverse  
9           impact in the mitigation bank service area  
10          shall be considered to meet certain cumulative  
11          impact requirements; providing an effective  
12          date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Subsection (6) of section 373.4136, Florida  
17 Statutes, is amended to read:

18           373.4136 Establishment and operation of mitigation  
19 banks.--

20           (6) MITIGATION SERVICE AREA.--The department or water  
21 management district shall establish a mitigation service area  
22 for each mitigation bank permit. The department or water  
23 management district shall notify and consider comments  
24 received on the proposed mitigation service area from each  
25 local government within the proposed mitigation service area.  
26 Except as provided herein, mitigation credits may be withdrawn  
27 and used only to offset adverse impacts in the mitigation  
28 service area. The boundaries of the mitigation service area  
29 shall depend upon the geographic area where the mitigation  
30 bank could reasonably be expected to offset adverse impacts.  
31 Mitigation service areas may overlap, and mitigation service

1 areas for two or more mitigation banks may be approved for a  
2 regional watershed.

3 (a) In determining the boundaries of the mitigation  
4 service area, the department or the water management district  
5 shall consider the characteristics, size, and location of the  
6 mitigation bank and, at a minimum, the extent to which the  
7 mitigation bank:

8 1. Contributes to a regional integrated ecological  
9 network;

10 2. Will significantly enhance the water quality or  
11 restoration of an offsite receiving water body that is  
12 designated as an Outstanding Florida Water, a Wild and Scenic  
13 River, an aquatic preserve, a water body designated in a plan  
14 adopted pursuant to s. 373.456 of the Surface Water  
15 Improvement and Management Act, or a nationally designated  
16 estuarine preserve;

17 3. Will provide for the long-term viability of  
18 endangered or threatened species or species of special  
19 concern;

20 4. Is consistent with the objectives of a regional  
21 management plan adopted or endorsed by the department or water  
22 management districts; and

23 5. Can reasonably be expected to offset specific types  
24 of wetland impacts within a specific geographic area. A  
25 mitigation bank need not be able to offset all expected  
26 impacts within its service area.

27 (b) The department and water management districts  
28 shall use regional watersheds to guide the establishment of  
29 mitigation service areas. Drainage basins established pursuant  
30 to s. 373.414(8) may be used as regional watersheds when they  
31 are established based on the hydrological or ecological

1 characteristics of the basin. A mitigation service area may  
2 extend beyond the regional watershed in which the bank is  
3 located into all or part of other regional watersheds when the  
4 mitigation bank has the ability to offset adverse impacts  
5 outside that regional watershed. Similarly, a mitigation  
6 service area may be smaller than the regional watershed in  
7 which the mitigation bank is located when adverse impacts  
8 throughout the regional watershed cannot reasonably be  
9 expected to be offset by the mitigation bank because of local  
10 ecological or hydrological conditions.

11 (c) Once a mitigation bank service area has been  
12 established by the department or a water management district  
13 for a mitigation bank, such service area shall be accepted by  
14 all water management districts, local governments, and the  
15 department, and is not subject to cumulative impact analysis  
16 on the release of credits to any qualified applicant.

17 (d) If the requirements in s. 373.414(1)(b) and (8)  
18 are met, the following projects or activities regulated under  
19 this part shall be eligible to use a mitigation bank,  
20 regardless of whether they are located within the mitigation  
21 service area:

- 22 1. Projects with adverse impacts partially located  
23 within the mitigation service area.
- 24 2. Linear projects, such as roadways, transmission  
25 lines, distribution lines, pipelines, or railways.
- 26 3. Projects with total adverse impacts of less than 1  
27 acre in size.

28 Section 2. Paragraph (c) is added to subsection (8) of  
29 section 373.414, Florida Statutes, to read:

30 373.414 Additional criteria for activities in surface  
31 waters and wetlands.--

1           (8)  
2           (c) If an applicant proposes mitigation within the  
3 same mitigation service area as the adverse impacts to be  
4 mitigated, the mitigation offsets these adverse impacts, and  
5 the mitigation service area has been established as part of a  
6 mitigation bank created and permitted pursuant to s. 373.4136,  
7 the governing board and the department shall consider the  
8 regulated activity to meet the cumulative impact requirements  
9 of paragraph (a).

10           Section 3. This act shall take effect upon becoming a  
11 law.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31