

By Senator DiCeglie

18-01253A-23

20231702__

1 A bill to be entitled
2 An act relating to mitigation credits; amending s.
3 373.4136, F.S.; authorizing the Department of
4 Environmental Protection and water management
5 districts to release mitigation credits to certain
6 mitigation banks under specified conditions; requiring
7 the department and water management districts to
8 authorize the use of mitigation credits available
9 within surrounding basins or specified regions;
10 conforming provisions to changes made by the act;
11 providing circumstances under which mitigation credits
12 are deemed unavailable in a basin; requiring
13 affidavits from mitigation banks before certain
14 mitigation credits are released; authorizing certain
15 projects to use mitigation banks regardless of whether
16 the projects are located within the mitigation service
17 area; requiring the department to begin rulemaking on
18 a specified date; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (5) and paragraph (d) of subsection
23 (6) of section 373.4136, Florida Statutes, are amended to read:
24 373.4136 Establishment and operation of mitigation banks.—
25 (5) SCHEDULE FOR CREDIT RELEASE.—After awarding mitigation
26 credits to a mitigation bank, the department or the water
27 management district shall set forth a schedule for the release
28 of those credits in the mitigation bank permit. A mitigation
29 credit that has been released may be sold or used to offset

18-01253A-23

20231702__

30 adverse impacts from an activity regulated under this part.

31 (a) The department or the water management district shall
32 allow a portion of the mitigation credits awarded to a
33 mitigation bank to be released for sale or use before ~~prior to~~
34 meeting all of the performance criteria specified in the
35 mitigation bank permit. The department or the water management
36 district shall allow the release of all ~~of a mitigation bank's~~
37 awarded mitigation credits only after the bank meets the
38 mitigation success criteria specified in the permit. If
39 mitigation credits are not available in sufficient quantities to
40 be sold or used to offset imminent and otherwise allowable
41 adverse impacts within a mitigation service area, the department
42 or water management district may release credits to a mitigation
43 bank before the bank meets the mitigation success criteria
44 specified in the mitigation bank permit if the bank has been
45 successfully constructed and there is a high degree of
46 confidence that the required ecological performance standards
47 will be met.

48 (b) The number of credits and schedule for release shall be
49 determined by the department or water management district based
50 upon the performance criteria for the mitigation bank and the
51 success criteria for each mitigation activity. The release
52 schedule for a specific mitigation bank or phase thereof shall
53 be related to the actions required to implement the bank, such
54 as site protection, site preparation, earthwork, removal of
55 wastes, planting, removal or control of nuisance and exotic
56 species, installation of structures, and annual monitoring and
57 management requirements for success. In determining the specific
58 release schedule for a bank, the department or water management

18-01253A-23

20231702__

59 district shall consider, at a minimum, the following factors:

60 1. Whether the mitigation consists solely of preservation
61 or includes other types of mitigation.

62 2. The length of time anticipated to be required before a
63 determination of success can be achieved.

64 3. The ecological value to be gained from each action
65 required to implement the bank.

66 4. The financial expenditure required for each action to
67 implement the bank.

68 ~~(c) Notwithstanding the provisions of this subsection, no~~
69 ~~credit shall be released for freshwater wetland creation until~~
70 ~~the success criteria included in the mitigation bank permit are~~
71 ~~met.~~

72 (c)(d) The withdrawal of mitigation credits from a
73 mitigation bank shall be accomplished as a minor modification of
74 the mitigation bank permit. A processing fee may ~~shall~~ not be
75 required by the department or water management district for this
76 minor modification.

77 (d) If mitigation credits are not available in a basin, the
78 department or water management district shall allow the use of
79 mitigation credits available within surrounding basins or within
80 the appropriate United States Geological Survey hydrological
81 unit code in the appropriate buffer region.

82 (e) Wetland mitigation credits are deemed unavailable in a
83 basin if the party requesting the credits provides an affidavit
84 to the department or water management district signed by the
85 mitigation banks within the basin attesting that credits are not
86 available. The affidavit must be signed by each mitigation bank
87 within the 30 days preceding the date the request is submitted

18-01253A-23

20231702__

88 to the department or water management district. Mitigation banks
89 without available wetland mitigation credits shall sign an
90 affidavit at the request of the party seeking the credits. If a
91 mitigation bank owner or agent is unable to release wetland
92 mitigation credits within 30 days after a request is made, the
93 mitigation bank is deemed to not have wetland mitigation credits
94 available.

95 (6) MITIGATION SERVICE AREA.—The department or water
96 management district shall establish a mitigation service area
97 for each mitigation bank permit. The department or water
98 management district shall notify and consider comments received
99 on the proposed mitigation service area from each local
100 government within the proposed mitigation service area. Except
101 as provided herein, mitigation credits may be withdrawn and used
102 only to offset adverse impacts in the mitigation service area.
103 The boundaries of the mitigation service area shall depend upon
104 the geographic area where the mitigation bank could reasonably
105 be expected to offset adverse impacts. Mitigation service areas
106 may overlap, and mitigation service areas for two or more
107 mitigation banks may be approved for a regional watershed.

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

112 1. Projects with adverse impacts partially located within
113 the mitigation service area.

114 2. Linear projects, such as roadways, transmission lines,
115 distribution lines, pipelines, railways, or seaports listed in
116 s. 311.09(1).

18-01253A-23

20231702__

117 3. Projects with total adverse impacts of less than 1 acre
118 in size.

119 4. Projects approved by the department or water management
120 district on a case-by-case basis if sufficient quantities of
121 mitigation credits are not available to be sold or used to
122 offset imminent and otherwise allowable adverse impacts within a
123 mitigation service area.

124 Section 2. The Department of Environmental Protection shall
125 begin rulemaking to implement this act on August 1, 2023.

126 Section 3. This act shall take effect July 1, 2023.