

26 (23) "Project sponsor" means a private entity that has
 27 entered into an agreement with a governmental entity to
 28 establish and operate a mitigation bank pursuant to s.
 29 373.4135(8).

30 Section 2. Paragraphs (b), (d), and (e) of subsection (1),
 31 paragraph (b) of subsection (3), and paragraphs (a) and (j) of
 32 subsection (7) of section 373.4134, Florida Statutes, are
 33 amended to read:

34 373.4134 Water quality enhancement areas.—

35 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 36 that:

37 (b) An expansion of existing authority for regional
 38 treatment to include offsite compensatory treatment in water
 39 quality enhancement areas to make enhancement credits available
 40 for purchase by governmental entities or applicants to address
 41 impacts regulated under this part is needed.

42 (d) Water quality enhancement areas are a valuable tool to
 43 assist applicants ~~governmental entities~~ in satisfying the net
 44 improvement performance standard under s. 373.414(1)(b)3. to
 45 ensure significant reductions of pollutant loadings.

46 (e) Water quality enhancement areas that provide water
 47 quality enhancement credits to applicants ~~governmental entities~~
 48 seeking permits under this part and governmental entities
 49 seeking to meet an assigned basin management action plan
 50 allocation or reasonable assurance plan under s. 403.067 are

51 | considered an appropriate and permissible option.

52 | (3) WATER QUALITY ENHANCEMENT AREAS.—

53 | (b) Water quality enhancement credits may be sold ~~only~~ to
 54 | governmental entities seeking to meet an assigned basin
 55 | management action plan allocation or reasonable assurance plan
 56 | or to applicants for the purpose of achieving the net
 57 | improvement performance standard under s. 373.414(1)(b)3. after
 58 | ~~the governmental entity has provided~~ reasonable assurances have
 59 | been provided ~~assurance of meeting department rules~~ for design
 60 | and construction of all onsite stormwater management as required
 61 | by chapter 62-330, Florida Administrative Code.

62 | (7) ENHANCEMENT CREDITS.—

63 | (a) The department or water management district shall
 64 | authorize the sale and use of enhancement credits to applicants
 65 | ~~governmental entities~~ to address adverse water quality impacts
 66 | of activities regulated under this part or to assist
 67 | governmental entities seeking to meet required nonpoint source
 68 | contribution reductions assigned in a basin management action
 69 | plan or reasonable assurance plan under s. 403.067.

70 | (j) Notwithstanding any other law, this section does not
 71 | limit or restrict the authority of the department to deny the
 72 | use of enhancement credits when the department is not reasonably
 73 | assured that the use of the credits will not cause or contribute
 74 | to a violation of water quality standards, even if the project
 75 | being implemented by the governmental entity or applicant is

HB 1073

2024

76 | within the enhancement service area. The department may allow
77 | the use of enhancement credits if the department receives a
78 | request for the use of enhancement credits and determines that
79 | such use will not cause or contribute to a violation of water
80 | quality standards.

81 | Section 3. Subsection (1) of section 373.4135, Florida
82 | Statutes, is amended and subsection (8) is added to that section
83 | to read:

84 | 373.4135 Mitigation banks and offsite regional
85 | mitigation.—

86 | (1) The Legislature finds that the adverse impacts of
87 | activities regulated under this part may be offset by the
88 | creation, maintenance, and use of mitigation banks and offsite
89 | regional mitigation. Mitigation banks and offsite regional
90 | mitigation can enhance the certainty of mitigation and provide
91 | ecological value due to the improved likelihood of environmental
92 | success associated with their proper construction, maintenance,
93 | and management. Therefore, the department and the water
94 | management districts are directed to participate in and
95 | encourage the establishment of private and public mitigation
96 | banks and offsite regional mitigation on public and private
97 | lands. Mitigation banks and offsite regional mitigation should
98 | emphasize the restoration and enhancement of degraded ecosystems
99 | and the preservation of uplands and wetlands as intact
100 | ecosystems rather than alteration of landscapes to create

101 wetlands. This is best accomplished through restoration of
102 ecological communities that were historically present.

103 (a) The Legislature intends that the provisions for
104 establishing mitigation banks apply equally to both public and
105 private entities, except that the rules of the department and
106 water management districts may set forth different measures
107 governing financial responsibility, and different measures
108 governing legal interest, needed to ensure the construction and
109 perpetual protection of a mitigation bank.

110 (b) The Legislature recognizes the importance of
111 mitigation banks as an appropriate and allowable mitigation
112 alternative to permittee-responsible mitigation. However, the
113 Legislature also recognizes that certain timing and geographical
114 constraints could result in the unavailability of mitigation
115 bank credits for a certain project upon completion of the
116 project's application. If state and federal mitigation credits
117 are not available to offset the adverse impacts of a project, a
118 local government may allow permittee-responsible mitigation
119 consisting of the restoration or enhancement of lands purchased
120 and owned by a local government for conservation purposes, and
121 such mitigation must conform to the permitting requirements of
122 s. 373.4136. Except when a local government has allowed a public
123 or private permittee-responsible mitigation project to be
124 created on land it has purchased for conservation purposes
125 pursuant to this paragraph, a governmental entity may not create

126 or provide mitigation for a project other than its own unless
127 the governmental entity uses land that was not previously
128 purchased for conservation and unless the governmental entity
129 provides the same financial assurances as required for
130 mitigation banks permitted under s. 373.4136. This paragraph
131 does not apply to:

132 1. Mitigation banks permitted before December 31, 2011,
133 under s. 373.4136;

134 2. Offsite regional mitigation areas established before
135 December 31, 2011, under subsection (6) or, when credits are not
136 available at a mitigation bank permitted under s. 373.4136,
137 mitigation areas created by a local government which were
138 awarded mitigation credits pursuant to the uniform mitigation
139 assessment method as provided in chapter 62-345, Florida
140 Administrative Code, under a permit issued before December 31,
141 2011;

142 3. Mitigation for transportation projects under ss.
143 373.4137 and 373.4139;

144 4. Mitigation for impacts from mining activities under s.
145 373.41492;

146 5. Mitigation provided for single-family lots or
147 homeowners under subsection (7);

148 6. Entities authorized in chapter 98-492, Laws of Florida;

149 7. Mitigation provided for electric utility impacts
150 certified under part II of chapter 403; or

151 8. Mitigation provided on sovereign submerged lands under
 152 subsection (6).

153 (c) It is the further intent of the Legislature that
 154 mitigation banks and offsite regional mitigation be considered
 155 appropriate and a permittable mitigation option under the
 156 conditions specified by the rules of the department and water
 157 management districts.

158 (d) Offsite mitigation, including offsite regional
 159 mitigation, may be located outside the regional watershed in
 160 which the adverse impacts of an activity regulated under this
 161 part are located, if such adverse impacts are offset by the
 162 offsite mitigation.

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

167 (f) When an applicant for a permit under the provisions of
 168 this part other than this section and s. 373.4136 submits more
 169 than one mitigation proposal to the department or a water
 170 management district, the department or water management district
 171 shall, in evaluating each proposal, ensure that such proposal
 172 adequately offsets the adverse impacts.

173 (8) A governmental entity must consider unsolicited
 174 proposals or may solicit proposals from private entities for
 175 mitigation bank projects on public lands pursuant to the process

176 set forth in s. 255.065 or other established public procurement
177 process.

178 (a) For a mitigation bank established and operated by a
179 private entity on public land, the governmental entity and
180 private entity shall enter into an agreement requiring the
181 private entity to:

182 1. Serve as the project sponsor.

183 2. Comply with the permitting requirements of s. 373.4136.

184 3. Comply with any permits or authorizations for all
185 mitigation bank functions, including, but not limited to,
186 funding for wetland creation, enhancement, or restoration
187 activities, financial assurances, and any required monitoring,
188 reporting, and maintenance.

189 4. Pay a usage fee to the governmental entity that
190 reflects the market value of the public land as determined by a
191 competitive process pursuant to state law or other method of
192 assurance that fully accounts for the cost of using the public
193 land in the pricing of mitigation credits.

194 (b) In determining the number of mitigation bank credits
195 assigned to the mitigation bank, the department or water
196 management district shall consider the conservation status of
197 the public land in the location factor pursuant to the uniform
198 mitigation assessment method.

199 (c) This subsection applies to drainage basins or
200 corresponding hydrologic units when the applicant demonstrates

HB 1073

2024

201 | to the department or water management district that state or
202 | federal in-kind mitigation credits are not available.

203 | Section 4. This act shall take effect July 1, 2024.