

1 A bill to be entitled
2 An act relating to mitigation; amending s. 373.403,
3 F.S.; defining the term "private-sector sponsor";
4 making technical changes; amending s. 373.4134, F.S.;
5 revising legislative findings; defining the term
6 "applicant"; revising the entities to and purposes for
7 which water quality enhancement credits may be sold;
8 requiring the Department of Environmental Protection
9 and water management districts to authorize such sale
10 and use; revising construction; amending s. 373.4135,
11 F.S.; revising legislative findings; authorizing local
12 governments to solicit proposals from private-sector
13 sponsors for mitigation banks on certain public lands;
14 providing requirements for agreements between local
15 governments and private-sector sponsors for such
16 mitigation banks; providing requirements for the
17 department and water management districts in assigning
18 credits to such mitigation banks; providing
19 applicability; providing an exception from rulemaking;
20 amending ss. 330.41, 373.414, and 373.461, F.S.;
21 conforming cross-references; reenacting s.
22 403.9332(1)(a) and (c), F.S., relating to mitigation
23 and enforcement, to incorporate the amendments made to
24 s. 373.4135, F.S., in references thereto; providing an
25 effective date.

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

Section 1. Section 373.403, Florida Statutes, is amended to read:

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

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

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

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

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

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

51 ~~(6)-(13)~~ "Dredging" means excavation, by any means, in
 52 surface waters or wetlands, as delineated in s. 373.421(1). The
 53 term ~~It~~ also means the excavation, or creation, of a water body
 54 which is, or is to be, connected to surface waters or wetlands,
 55 as delineated in s. 373.421(1), directly or via an excavated
 56 water body or series of water bodies.

57 ~~(7)-(18)~~ "Ecological value" means the value of functions
 58 performed by uplands, wetlands, and other surface waters to the
 59 abundance, diversity, and habitats of fish, wildlife, and listed
 60 species. These functions include, but are not limited to,
 61 providing cover and refuge; breeding, nesting, denning, and
 62 nursery areas; corridors for wildlife movement; food chain
 63 support; and natural water storage, natural flow attenuation,
 64 and water quality improvement, which enhances fish, wildlife,
 65 and listed species utilization.

66 ~~(8)-(15)~~ "Estuary" means a semienclosed, naturally existing
 67 coastal body of water that ~~which~~ has a free connection with the
 68 open sea and within which seawater is measurably diluted with
 69 fresh water derived from riverine systems.

70 ~~(9)-(14)~~ "Filling" means the deposition, by any means, of
 71 materials in surface waters or wetlands, as delineated in s.
 72 373.421(1).

73 ~~(10)-(3)~~ "Impoundment" means any lake, reservoir, pond, or
 74 other containment of surface water occupying a bed or depression
 75 in the earth's surface and having a discernible shoreline.

76 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
 77 depression that ~~which~~ is below mean high water and that ~~which~~
 78 has permanent or ephemeral communications with the sea, but that
 79 ~~which~~ is protected from the sea by some type of naturally
 80 existing barrier.

81 (12)~~(8)~~ "Maintenance" or "repairs" means remedial work of
 82 a nature as may affect the safety of any dam, impoundment,
 83 reservoir, or appurtenant work or works, but excludes routine
 84 custodial maintenance.

85 (13)~~(19)~~ "Mitigation bank" means a project permitted under
 86 s. 373.4136 undertaken to provide for the withdrawal of
 87 mitigation credits to offset adverse impacts authorized by a
 88 permit under this part.

89 (14)~~(20)~~ "Mitigation credit" means a standard unit of
 90 measure which represents the increase in ecological value
 91 resulting from restoration, enhancement, preservation, or
 92 creation activities.

93 (15)~~(21)~~ "Mitigation service area" means the geographic
 94 area within which mitigation credits from a mitigation bank may
 95 be used to offset adverse impacts of activities regulated under
 96 this part.

97 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
 98 an area of land off the site of an activity permitted under this
 99 part, where an applicant proposes to mitigate the adverse
 100 impacts of only the applicant's specific activity as a

101 requirement of the permit, which provides regional ecological
 102 value, and which is not a mitigation bank permitted under s.
 103 373.4136.

104 (17) "Private-sector sponsor" means an individual or
 105 entity that establishes and operates a wetland mitigation bank
 106 project and is responsible for compliance with any permit or
 107 authorization, including, but not limited to, funding and
 108 undertaking wetland enhancement, restoration or creation
 109 activities, and the provision of financial assurances, as well
 110 as any required monitoring, reporting, and maintenance of the
 111 mitigation bank.

112 ~~(18)-(4)~~ "Reservoir" means any artificial or natural
 113 holding area which contains or will contain the water impounded
 114 by a dam.

115 ~~(19)-(17)~~ "Seawall" means a manmade wall or an
 116 encroachment, except riprap, which is made to break the force of
 117 waves and to protect the shore from erosion.

118 ~~(20)-(11)~~ "State water quality standards" means water
 119 quality standards adopted pursuant to chapter 403.

120 ~~(21)-(10)~~ "Stormwater management system" means a system
 121 ~~which is~~ designed and constructed or implemented to control
 122 discharges ~~which are~~ necessitated by rainfall events,
 123 incorporating methods to collect, convey, store, absorb,
 124 inhibit, treat, use, or reuse water to prevent or reduce
 125 flooding, overdrainage, environmental degradation, and water

126 | pollution or otherwise affect the quantity and quality of
 127 | discharges from the system.

128 | ~~(22)-(12)~~ "Watershed" means the land area that ~~which~~
 129 | contributes to the flow of water into a receiving body of water.

130 | ~~(23)-(5)~~ "Works" means all artificial structures,
 131 | including, but not limited to, ditches, canals, conduits,
 132 | channels, culverts, pipes, and other construction that connects
 133 | to, draws water from, drains water into, or is placed in or
 134 | across the waters in the state.

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

142 | 373.4134 Water quality enhancement areas.—

143 | (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 144 | that:

145 | (b) An expansion of existing authority for regional
 146 | treatment to include offsite compensatory treatment in water
 147 | quality enhancement areas to make enhancement credits available
 148 | for purchase by an applicant or a governmental entity ~~entities~~
 149 | to address impacts regulated under this part is needed.

150 | (d) Water quality enhancement areas are a valuable tool to

151 assist an applicant ~~governmental entities~~ in satisfying the net
 152 improvement performance standard under s. 373.414(1)(b)3. to
 153 ensure significant reductions of pollutant loadings.

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

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

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

167 (3) WATER QUALITY ENHANCEMENT AREAS.—

168 (b) Water quality enhancement credits may be sold ~~only~~ to
 169 applicants ~~governmental entities~~ seeking to meet an assigned
 170 basin management action plan allocation or reasonable assurance
 171 plan or for the purpose of achieving net improvement performance
 172 standards under s. 373.414(1)(b)3. after ~~the governmental entity~~
 173 ~~has provided~~ reasonable assurances have been provided ~~assurance~~
 174 ~~of meeting department rules~~ for the design and construction of
 175 all onsite stormwater management as required by law.

176 (7) ENHANCEMENT CREDITS.—

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

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

195 Section 3. Subsection (1) of section 373.4135, Florida
 196 Statutes, is amended and subsection (8) is added to that section
 197 to read:

198 373.4135 Mitigation banks and offsite regional
 199 mitigation.—

200 (1) The Legislature finds that the adverse impacts of

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

218 (a) The Legislature intends that the provisions for
219 establishing mitigation banks apply equally to both public and
220 private entities, except that the rules of the department and
221 water management districts may set forth different measures
222 governing financial responsibility, and different measures
223 governing legal interest, needed to ensure the construction and
224 perpetual protection of a mitigation bank.

225 (b) The Legislature recognizes the importance of

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

- 247 1. Mitigation banks permitted before December 31, 2011,
248 under s. 373.4136;
- 249 2. Offsite regional mitigation areas established before
250 December 31, 2011, under subsection (6) or, when credits are not

251 available at a mitigation bank permitted under s. 373.4136,
 252 mitigation areas created by a local government which were
 253 awarded mitigation credits pursuant to the uniform mitigation
 254 assessment method as provided in chapter 62-345, Florida
 255 Administrative Code, under a permit issued before December 31,
 256 2011;

257 3. Mitigation for transportation projects under ss.
 258 373.4137 and 373.4139;

259 4. Mitigation for impacts from mining activities under s.
 260 373.41492;

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

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

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

266 8. Mitigation provided on sovereign submerged lands under
 267 subsection (6).

268 (c) It is the further intent of the Legislature that
 269 mitigation banks and offsite regional mitigation be considered
 270 appropriate and a permissible mitigation option under the
 271 conditions specified by the rules of the department and water
 272 management districts.

273 (d) Offsite mitigation, including offsite regional
 274 mitigation, may be located outside the regional watershed in
 275 which the adverse impacts of an activity regulated under this

276 part are located, if such adverse impacts are offset by the
 277 offsite mitigation.

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

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

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

296 (a) The agreement must require the private-sector sponsor
 297 to pay a usage fee to the local government which reflects the
 298 market value of the public land, as determined by a competitive
 299 process in accordance with state law or such other method of
 300 assuring that the cost of the use of the public land is fully

301 accounted for in the pricing of mitigation credits.

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

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

311 (d) Rulemaking is not required to implement this
312 subsection.

313 Section 4. Paragraph (a) of subsection (2) of section
314 330.41, Florida Statutes, is amended to read:

315 330.41 Unmanned Aircraft Systems Act.—

316 (2) DEFINITIONS.—As used in this act, the term:

317 (a) "Critical infrastructure facility" means any of the
318 following, if completely enclosed by a fence or other physical
319 barrier that is obviously designed to exclude intruders, or if
320 clearly marked with a sign or signs which indicate that entry is
321 forbidden and which are posted on the property in a manner
322 reasonably likely to come to the attention of intruders:

- 323 1. A power generation or transmission facility,
324 substation, switching station, or electrical control center.
325 2. A chemical or rubber manufacturing or storage facility.

- 326 3. A water intake structure, water treatment facility,
 327 wastewater treatment plant, or pump station.
- 328 4. A mining facility.
- 329 5. A natural gas or compressed gas compressor station,
 330 storage facility, or natural gas or compressed gas pipeline.
- 331 6. A liquid natural gas or propane gas terminal or storage
 332 facility.
- 333 7. Any portion of an aboveground oil or gas pipeline.
- 334 8. A refinery.
- 335 9. A gas processing plant, including a plant used in the
 336 processing, treatment, or fractionation of natural gas.
- 337 10. A wireless communications facility, including the
 338 tower, antennae, support structures, and all associated ground-
 339 based equipment.
- 340 11. A seaport as listed in s. 311.09(1), which need not be
 341 completely enclosed by a fence or other physical barrier and
 342 need not be marked with a sign or signs indicating that entry is
 343 forbidden.
- 344 12. An inland port or other facility or group of
 345 facilities serving as a point of intermodal transfer of freight
 346 in a specific area physically separated from a seaport.
- 347 13. An airport as defined in s. 330.27.
- 348 14. A spaceport territory as defined in s. 331.303(18).
- 349 15. A military installation as defined in 10 U.S.C. s.
 350 2801(c)(4) and an armory as defined in s. 250.01.

351 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
 352 structures, such as locks, floodgates, or dikes, which are
 353 designed to maintain or control the level of navigable
 354 waterways.

355 17. A state correctional institution as defined in s.
 356 944.02 or a private correctional facility authorized under
 357 chapter 957.

358 18. A secure detention center or facility as defined in s.
 359 985.03, or a nonsecure residential facility, a high-risk
 360 residential facility, or a maximum-risk residential facility as
 361 those terms are described in s. 985.03(44).

362 19. A county detention facility as defined in s. 951.23.

363 20. A critical infrastructure facility as defined in s.
 364 692.201.

365 Section 5. Paragraph (a) of subsection (8) of section
 366 373.414, Florida Statutes, is amended to read:

367 373.414 Additional criteria for activities in surface
 368 waters and wetlands.—

369 (8)(a) The governing board or the department, in deciding
 370 whether to grant or deny a permit for an activity regulated
 371 under this part shall consider the cumulative impacts upon
 372 surface water and wetlands, as delineated in s. 373.421(1),
 373 within the same drainage basin as defined in s. 373.403 ~~s.~~
 374 ~~373.403(9)~~, of:

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

376 2. Projects which are existing or activities regulated
 377 under this part which are under construction or projects for
 378 which permits or determinations pursuant to s. 373.421 ~~or s.~~
 379 ~~403.914~~ have been sought.

380 3. Activities which are under review, approved, or vested
 381 pursuant to s. 380.06, or other activities regulated under this
 382 part which may reasonably be expected to be located within
 383 surface waters or wetlands, as delineated in s. 373.421(1), in
 384 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
 385 based upon the comprehensive plans, adopted pursuant to chapter
 386 163, of the local governments having jurisdiction over the
 387 activities, or applicable land use restrictions and regulations.

388 Section 6. Paragraph (c) of subsection (2) of section
 389 373.461, Florida Statutes, is amended to read:

390 373.461 Lake Apopka improvement and management.—

391 (2) DEFINITIONS.—As used in this section:

392 (c) "Stormwater management system" has the meaning set
 393 forth in s. 373.403 ~~s. 373.403(10)~~.

394 Section 7. For the purpose of incorporating the amendment
 395 made by this act to section 373.4135, Florida Statutes, in
 396 references thereto, paragraphs (a) and (c) of subsection (1) of
 397 section 403.9332, Florida Statutes, are reenacted to read:

398 403.9332 Mitigation and enforcement.—

399 (1)(a) Any area in which 5 percent or more of the trimmed
 400 mangrove trees have been trimmed below 6 feet in height, except

401 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),
402 destroyed, defoliated, or removed as a result of trimming
403 conducted under s. 403.9326 or s. 403.9327 must be restored or
404 mitigated. Restoration must be accomplished by replanting
405 mangroves, in the same location and of the same species as each
406 mangrove destroyed, defoliated, removed, or trimmed, to achieve
407 within 5 years a canopy area equivalent to the area destroyed,
408 removed, defoliated, or trimmed; or mitigation must be
409 accomplished by replanting offsite, in areas suitable for
410 mangrove growth, mangroves to achieve within 5 years a canopy
411 area equivalent to the area destroyed, removed, defoliated, or
412 trimmed. Where all or a portion of the restoration or mitigation
413 is not practicable, as determined by the department or delegated
414 local government, the impacts resulting from the destruction,
415 defoliation, removal, or trimming of the mangroves must be
416 offset by donating a sufficient amount of money to offset the
417 impacts, which must be used for the restoration, enhancement,
418 creation, or preservation of mangrove wetlands within a
419 restoration, enhancement, creation, or preservation project
420 approved by the department or delegated local government; or by
421 purchasing credits from a mitigation bank created under s.
422 373.4135 at a mitigation ratio of 2-to-1 credits to affected
423 area. The donation must be equivalent to the cost, as verified
424 by the department or delegated local government, of creating
425 mangrove wetlands at a 2-to-1, created versus affected ratio,

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426 based on canopy area. The donation may not be less than \$4 per
427 square foot of created wetland area.

428 (c) If mangroves are to be trimmed or altered under a
429 permit issued under s. 403.9328, the department or delegated
430 local government may require mitigation. The department or
431 delegated local government shall establish reasonable mitigation
432 requirements that must include, as an option, the use of
433 mitigation banks created under s. 373.4135, where appropriate.
434 The department's mitigation requirements must ensure that
435 payments received as mitigation are sufficient to offset impacts
436 and are used for mangrove creation, preservation, protection, or
437 enhancement.

438 Section 8. This act shall take effect July 1, 2024.