



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. Present paragraphs (a) through (e) of  
 33 subsection (2) of section 373.4134, Florida Statutes, are  
 34 redesignated as paragraphs (b) through (f), respectively, a new  
 35 paragraph (a) is added to that subsection, and paragraphs (b),  
 36 (d), and (e) of subsection (1), paragraphs (b) and (c) of  
 37 subsection (3), and paragraphs (a) and (j) of subsection (7) of  
 38 that section are amended, to read:

39 373.4134 Water quality enhancement areas.—

40 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
 41 that:

42 (b) An expansion of existing authority for regional  
 43 treatment to include offsite compensatory treatment in water  
 44 quality enhancement areas to make enhancement credits available  
 45 for purchase by an applicant or a governmental entity ~~entities~~  
 46 to address impacts regulated under ss. 373.403-373.443 ~~this part~~  
 47 is needed.

48 (d) Water quality enhancement areas are a valuable tool to  
 49 assist an applicant ~~governmental entities~~ in providing a  
 50 ~~satisfying the~~ net improvement of the water quality in a

51 receiving waterbody that does not meet standards or in  
 52 satisfying the environmental resource permit performance  
 53 standard under s. 373.414(1)(b)3. to ensure significant  
 54 reductions of pollutant loadings.

55 (e) Water quality enhancement areas that provide water  
 56 quality enhancement credits to applicants ~~governmental entities~~  
 57 seeking permits under ss. 373.403-373.443 ~~this part~~ and to  
 58 governmental entities seeking to meet an assigned basin  
 59 management action plan allocation or reasonable assurance plan  
 60 under s. 403.067 are considered an appropriate and permissible  
 61 option.

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

63 (a) "Applicant" means a governmental entity that seeks to  
 64 purchase water quality enhancement credits to meet an assigned  
 65 basin management action plan allocation or reasonable assurance  
 66 plan or a governmental entity or a private sector entity that  
 67 seeks to purchase water quality enhancement credits for the  
 68 purpose of achieving the net improvement under s.  
 69 373.414(1)(b)3. or satisfying environmental resource permit  
 70 performance standards.

71 (3) WATER QUALITY ENHANCEMENT AREAS.—

72 (b) Water quality enhancement credits may be sold ~~only~~ to  
 73 governmental entities seeking to meet an assigned basin  
 74 management action plan allocation or reasonable assurance plan  
 75 or to applicants for the purpose of achieving net improvement or

76 | meeting environmental resource permit performance standards  
 77 | under s. 373.414(1)(b)3. ~~after the governmental entity has~~  
 78 | ~~provided~~ reasonable assurances have been provided assurance of  
 79 | ~~meeting department rules for the~~ design and construction of all  
 80 | onsite stormwater management, as required by law.

81 | (c) A water quality enhancement area must be used to  
 82 | address contributions of one or more pollutants or other  
 83 | constituents in the watershed, basin, sub-basin, targeted  
 84 | restoration area, waterbody, or section of waterbody, as  
 85 | determined by the department, in which the water quality  
 86 | enhancement area is located that do not meet applicable state  
 87 | water quality standards or environmental resource permit  
 88 | performance standards ~~criteria.~~

89 | (7) ENHANCEMENT CREDITS.—

90 | (a) The department or water management district shall  
 91 | authorize the sale and use of enhancement credits to applicants  
 92 | ~~governmental entities~~ to address adverse water quality impacts  
 93 | of activities regulated under ss. 373.403-373.443 ~~this part~~ or  
 94 | to assist governmental entities seeking to meet required  
 95 | nonpoint source contribution reductions assigned in a basin  
 96 | management action plan or reasonable assurance plan under s.  
 97 | 403.067.

98 | (j) Notwithstanding any other law, this section does not  
 99 | limit or restrict the authority of the department to deny the  
 100 | use of enhancement credits when the department is not reasonably

101 assured that the use of the credits will not cause or contribute  
 102 to a violation of water quality standards, even if the project  
 103 being implemented by the applicant ~~governmental entity~~ is within  
 104 the enhancement service area. The department may allow the use  
 105 of enhancement credits if the department receives a request for  
 106 the use of enhancement credits and determines that such use will  
 107 not cause or contribute to a violation of water quality  
 108 standards.

109 Section 2. Subsection (1) of section 373.4135, Florida  
 110 Statutes, is amended and subsection (8) is added to that section  
 111 to read:

112 373.4135 Mitigation banks and offsite regional  
 113 mitigation.—

114 (1) The Legislature finds that the adverse impacts of  
 115 activities regulated under this part may be offset by the  
 116 creation, maintenance, and use of mitigation banks and offsite  
 117 regional mitigation. Mitigation banks and offsite regional  
 118 mitigation can enhance the certainty of mitigation and provide  
 119 ecological value due to the improved likelihood of environmental  
 120 success associated with their proper construction, maintenance,  
 121 and management. Therefore, the department and the water  
 122 management districts are directed to ~~participate in and~~  
 123 encourage the establishment of private ~~and public~~ mitigation  
 124 banks and offsite regional mitigation on lands owned by a local  
 125 government, when such lands are located in a credit-deficient

126 | basin as described in paragraph (8) (a) and the proposed  
 127 | mitigation bank or offsite regional mitigation would provide one  
 128 | or more of the habitat type credits listed in subparagraph  
 129 | (8) (a)2. Mitigation banks and offsite regional mitigation should  
 130 | emphasize the restoration and enhancement of degraded ecosystems  
 131 | and the preservation of uplands and wetlands as intact  
 132 | ecosystems rather than alteration of landscapes to create  
 133 | wetlands. This is best accomplished through restoration of  
 134 | ecological communities that were historically present.

135 | (a) The Legislature intends that the provisions for  
 136 | establishing mitigation banks apply equally to both public and  
 137 | private entities, except that the rules of the department and  
 138 | water management districts may set forth different measures  
 139 | governing financial responsibility, and different measures  
 140 | governing legal interest, needed to ensure the construction and  
 141 | perpetual protection of a mitigation bank.

142 | (b) The Legislature recognizes the importance of  
 143 | mitigation banks as an appropriate and allowable mitigation  
 144 | alternative to permittee-responsible mitigation. However, the  
 145 | Legislature also recognizes that certain timing and geographical  
 146 | constraints could result in the unavailability of mitigation  
 147 | bank credits for a certain project upon completion of the  
 148 | project's application. If state and federal mitigation credits  
 149 | are not available to offset the adverse impacts of a project, a  
 150 | local government may allow permittee-responsible mitigation

151 consisting of the restoration or enhancement of lands purchased  
152 and owned by a local government for conservation purposes, and  
153 such mitigation must conform to the permitting requirements of  
154 s. 373.4136. Except when a local government has allowed a public  
155 or private mitigation project to be created on land it has  
156 purchased for conservation purposes pursuant to this paragraph,  
157 a governmental entity may not create or provide mitigation for a  
158 project other than its own unless the governmental entity uses  
159 land that was not previously purchased for conservation and  
160 unless the governmental entity provides the same financial  
161 assurances as required for mitigation banks permitted under s.  
162 373.4136. This paragraph does not apply to:

163 1. Mitigation banks permitted before December 31, 2011,  
164 under s. 373.4136;

165 2. Offsite regional mitigation areas established before  
166 December 31, 2011, under subsection (6) or, when credits are not  
167 available at a mitigation bank permitted under s. 373.4136,  
168 mitigation areas created by a local government which were  
169 awarded mitigation credits pursuant to the uniform mitigation  
170 assessment method as provided in chapter 62-345, Florida  
171 Administrative Code, under a permit issued before December 31,  
172 2011;

173 3. Mitigation for transportation projects under ss.  
174 373.4137 and 373.4139;

175 4. Mitigation for impacts from mining activities under s.

176 | 373.41492;

177 |       5. Mitigation provided for single-family lots or  
178 | homeowners under subsection (7);

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

180 |       7. Mitigation provided for electric utility impacts  
181 | certified under part II of chapter 403; or

182 |       8. Mitigation provided on sovereign submerged lands under  
183 | subsection (6).

184 |       (c) It is the further intent of the Legislature that  
185 | mitigation banks and offsite regional mitigation be considered  
186 | appropriate and a permissible mitigation option under the  
187 | conditions specified by the rules of the department and water  
188 | management districts.

189 |       (d) Offsite mitigation, including offsite regional  
190 | mitigation, may be located outside the regional watershed in  
191 | which the adverse impacts of an activity regulated under this  
192 | part are located, if such adverse impacts are offset by the  
193 | offsite mitigation.

194 |       (e) The department or water management district may allow  
195 | the use of a mitigation bank or offsite regional mitigation  
196 | alone or in combination with other forms of mitigation to offset  
197 | adverse impacts of activities regulated under this part.

198 |       (f) When an applicant seeking ~~for~~ a permit under ~~the~~  
199 | ~~provisions of~~ this part other than this section and s. 373.4136  
200 | submits more than one mitigation proposal to the department or a



201 water management district, the department or water management  
202 district shall, in evaluating each proposal, ensure that such  
203 proposal adequately offsets the adverse impacts.

204 (8) It is the intent of the Legislature to allow limited  
205 use of local government land, including lands acquired for  
206 conservation, for private sector mitigation banks, provided that  
207 the private mitigation banks are located in credit-deficient  
208 basins and would produce the habitat type credits that are  
209 unavailable or insufficient in such basins. As used in this  
210 subsection, the term "local government" includes a county,  
211 municipality, or special district as those terms are defined in  
212 s. 165.031. This subsection does not apply to lands owned by the  
213 state or a water management district.

214 (a) A basin is considered to be a credit-deficient basin  
215 if it is a drainage basin or a corresponding hydrologic unit  
216 code, and has all of the following features:

217 1. At least one mitigation bank has been permitted and  
218 established on lands not owned by a governmental entity and that  
219 mitigation bank no longer has one of the habitat type credits  
220 listed in subparagraph 2. available for purchase.

221 2. There is a documented shortage of either forested  
222 freshwater, nonforested freshwater, forested saltwater, or  
223 nonforested saltwater habitat type credits.

224 3. Pending mitigation bank applications on private land or  
225 pending credit releases from mitigation banks on nongovernmental  
226 land are unlikely to alleviate the credit shortage.

227 (b) A local government with land in a credit-deficient  
228 basin may, through the public procurement processes identified  
229 in chapter 287 or other established competitive procurement  
230 processes, consider a proposal from a private entity applicant  
231 for the right to establish a mitigation bank on the local  
232 government land, including such lands purchased for conservation  
233 purposes, provided acquisition encumbrances do not exist to the  
234 contrary.

235 (c) If such a mitigation bank is to be established and  
236 operated on local government land, the local government and  
237 private applicant must enter into a use agreement that meets the  
238 requirements of this paragraph and that requires the private  
239 applicant to establish and operate the mitigation bank in  
240 conformance with the permitting requirements of s. 373.4136 and  
241 the rules adopted thereunder. The use agreement must:

242 1. Include a requirement that the local government  
243 landowner assume the role of long-term steward of the property,  
244 and state that the landowner will grant a conservation easement  
245 or substantially similar recordable instrument pursuant to s.  
246 704.06 in favor of the permitting agency, if a conservation  
247 easement or substantially similar recordable instrument  
248 acceptable to the permitting agency does not already exist; and

249        2. Include a requirement for the private applicant to do  
250 all of the following:

251        a. Provide bid and performance security instruments for a  
252 minimum of 5 percent of the total bid amount to ensure that a  
253 use agreement with the local government is executed and a  
254 mitigation bank permit is applied for by the private applicant.

255        b. Operate and maintain the mitigation bank until final  
256 permit success criteria are met, as permitted by the department  
257 or water management district.

258        c. Agree to establish financial assurance for long-term  
259 management in an amount agreeable to the local government  
260 landowner and as provided for in rules adopted pursuant to this  
261 section and s. 373.4136 for use by the local government as the  
262 long-term steward of the land after the mitigation bank final  
263 environmental resource permit success criteria are met. The  
264 private sector applicant may also use an endowment to provide  
265 financial assurances.

266        d. Acknowledge that denial of the state mitigation bank  
267 permit application will terminate the use agreement.

268        e. Acknowledge that failure to obtain the mitigation bank  
269 permit within 2 years after the use agreement execution date  
270 will terminate the use agreement, unless it is extended for good  
271 cause by the local government.

272        (d) Public funds may not be used to fund the financial  
273 assurances for construction and implementation of the mitigation

274 bank or for the establishment of the long-term management  
275 financial assurances.

276 (e) In determining the number of mitigation bank credits  
277 to be awarded to a mitigation bank established pursuant to this  
278 subsection, the proposed mitigation bank's location in or  
279 adjacent to the local government conservation lands may not  
280 increase the uniform mitigation assessment method location  
281 factor assessment and scoring value, even if the conservation  
282 status of the mitigation bank land is improved due to such  
283 location.

284 (f) Credit deficiency is confirmed at the time the use  
285 agreement is executed by the parties. Once confirmed, the  
286 mitigation bank application may proceed, even if the deficiency  
287 is relieved.

288 (g) While not required, the department, in coordination  
289 with the water management districts, may adopt rules to  
290 implement this subsection.

291 Section 3. For the purpose of incorporating the amendment  
292 made by this act to section 373.4135, Florida Statutes, in  
293 references thereto, paragraphs (a) and (c) of subsection (1) of  
294 section 403.9332, Florida Statutes, are reenacted to read:

295 403.9332 Mitigation and enforcement.—

296 (1)(a) Any area in which 5 percent or more of the trimmed  
297 mangrove trees have been trimmed below 6 feet in height, except  
298 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),

299 | destroyed, defoliated, or removed as a result of trimming  
300 | conducted under s. 403.9326 or s. 403.9327 must be restored or  
301 | mitigated. Restoration must be accomplished by replanting  
302 | mangroves, in the same location and of the same species as each  
303 | mangrove destroyed, defoliated, removed, or trimmed, to achieve  
304 | within 5 years a canopy area equivalent to the area destroyed,  
305 | removed, defoliated, or trimmed; or mitigation must be  
306 | accomplished by replanting offsite, in areas suitable for  
307 | mangrove growth, mangroves to achieve within 5 years a canopy  
308 | area equivalent to the area destroyed, removed, defoliated, or  
309 | trimmed. Where all or a portion of the restoration or mitigation  
310 | is not practicable, as determined by the department or delegated  
311 | local government, the impacts resulting from the destruction,  
312 | defoliation, removal, or trimming of the mangroves must be  
313 | offset by donating a sufficient amount of money to offset the  
314 | impacts, which must be used for the restoration, enhancement,  
315 | creation, or preservation of mangrove wetlands within a  
316 | restoration, enhancement, creation, or preservation project  
317 | approved by the department or delegated local government; or by  
318 | purchasing credits from a mitigation bank created under s.  
319 | 373.4135 at a mitigation ratio of 2-to-1 credits to affected  
320 | area. The donation must be equivalent to the cost, as verified  
321 | by the department or delegated local government, of creating  
322 | mangrove wetlands at a 2-to-1, created versus affected ratio,  
323 | based on canopy area. The donation may not be less than \$4 per

CS/CS/HB 1073

2024

324 square foot of created wetland area.

325 (c) If mangroves are to be trimmed or altered under a  
326 permit issued under s. 403.9328, the department or delegated  
327 local government may require mitigation. The department or  
328 delegated local government shall establish reasonable mitigation  
329 requirements that must include, as an option, the use of  
330 mitigation banks created under s. 373.4135, where appropriate.  
331 The department's mitigation requirements must ensure that  
332 payments received as mitigation are sufficient to offset impacts  
333 and are used for mangrove creation, preservation, protection, or  
334 enhancement.

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