



490056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2024	.	
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The Committee on Community Affairs (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present paragraphs (a) through (e) of subsection (2) of section 373.4134, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, a new paragraph (a) is added to that subsection, and paragraphs (b), (d), and (e) of subsection (1), paragraph (b) of subsection (3), and paragraphs (a) and (j) of subsection (7) of that section are amended, to



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11 read:

12 373.4134 Water quality enhancement areas.—

13 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
14 that:

15 (b) An expansion of existing authority for regional  
16 treatment to include offsite compensatory treatment in water  
17 quality enhancement areas to make enhancement credits available  
18 for purchase by an applicant ~~governmental entities~~ to address  
19 impacts regulated under this part is needed.

20 (d) Water quality enhancement areas are a valuable tool to  
21 assist an applicant ~~governmental entities~~ in satisfying the net  
22 improvement performance standard under s. 373.414(1)(b)3. to  
23 ensure significant reductions of pollutant loadings.

24 (e) Water quality enhancement areas that provide water  
25 quality enhancement credits to applicants ~~governmental entities~~  
26 seeking permits under this part and to governmental entities  
27 seeking to meet an assigned basin management action plan  
28 allocation or reasonable assurance plan under s. 403.067 are  
29 considered an appropriate and permissible option.

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

31 (a) "Applicant" means a governmental or private sector  
32 entity that wishes to purchase water quality enhancement credits  
33 to meet an assigned basin management action plan allocation or  
34 reasonable assurance plan or for the purpose of achieving the  
35 net improvement performance standard under s. 373.414(1)(b)3.

36 (3) WATER QUALITY ENHANCEMENT AREAS.—

37 (b) Water quality enhancement credits may be sold ~~only~~ to  
38 applicants ~~governmental entities~~ seeking to meet an assigned  
39 basin management action plan allocation or reasonable assurance



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40 plan or for the purpose of achieving net improvement performance  
41 standards under s. 373.414(1)(b)3. after ~~the governmental entity~~  
42 ~~has provided~~ reasonable assurances have been provided for the  
43 ~~assurance of meeting department rules for design and~~  
44 construction of all onsite stormwater management, as required by  
45 law.

46 (7) ENHANCEMENT CREDITS.—

47 (a) The department or water management district shall  
48 authorize the sale and use of enhancement credits to applicants  
49 ~~governmental entities~~ to address adverse water quality impacts  
50 of activities regulated under this part or to assist  
51 governmental entities seeking to meet required nonpoint source  
52 contribution reductions assigned in a basin management action  
53 plan or reasonable assurance plan under s. 403.067.

54 (j) Notwithstanding any other law, this section does not  
55 limit or restrict the authority of the department to deny the  
56 use of enhancement credits when the department is not reasonably  
57 assured that the use of the credits will not cause or contribute  
58 to a violation of water quality standards, even if the project  
59 being implemented by the applicant ~~governmental entity~~ is within  
60 the enhancement service area. The department may allow the use  
61 of enhancement credits if the department receives a request for  
62 the use of enhancement credits and determines that such use will  
63 not cause or contribute to a violation of water quality  
64 standards.

65 Section 2. Subsection (1) of section 373.4135, Florida  
66 Statutes, is amended, and subsection (8) is added to that  
67 section, to read:

68 373.4135 Mitigation banks and offsite regional mitigation.—



69 (1) The Legislature finds that the adverse impacts of  
70 activities regulated under this part may be offset by the  
71 creation, maintenance, and use of mitigation banks and offsite  
72 regional mitigation. Mitigation banks and offsite regional  
73 mitigation can enhance the certainty of mitigation and provide  
74 ecological value due to the improved likelihood of environmental  
75 success associated with their proper construction, maintenance,  
76 and management. Therefore, the department and the water  
77 management districts are directed to ~~participate in and~~  
78 encourage the establishment of private ~~and public~~ mitigation  
79 banks and offsite regional mitigation on lands owned by a local  
80 government, when such lands are located in a credit-deficient  
81 basin as defined in paragraph (8) (a) and the proposed mitigation  
82 bank or offsite regional mitigation would provide one or more of  
83 the deficient habitat type credits described in subparagraph  
84 (8) (a) 2. Mitigation banks and offsite regional mitigation should  
85 emphasize the restoration and enhancement of degraded ecosystems  
86 and the preservation of uplands and wetlands as intact  
87 ecosystems rather than alteration of landscapes to create  
88 wetlands. This is best accomplished through restoration of  
89 ecological communities that were historically present.

90 (a) The Legislature intends that the provisions for  
91 establishing mitigation banks apply equally to both public and  
92 private entities, except that the rules of the department and  
93 water management districts may set forth different measures  
94 governing financial responsibility, and different measures  
95 governing legal interest, needed to ensure the construction and  
96 perpetual protection of a mitigation bank.

97 (b) The Legislature recognizes the importance of mitigation



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98 banks as an appropriate and allowable mitigation alternative to  
99 permittee-responsible mitigation. However, the Legislature also  
100 recognizes that certain timing and geographical constraints  
101 could result in the unavailability of mitigation bank credits  
102 for a certain project upon completion of the project's  
103 application. If state and federal mitigation credits are not  
104 available to offset the adverse impacts of a project, a local  
105 government may allow permittee-responsible mitigation consisting  
106 of the restoration or enhancement of lands purchased and owned  
107 by a local government for conservation purposes, and such  
108 mitigation must conform to the permitting requirements of s.  
109 373.4136. Except when a local government has allowed a public or  
110 private mitigation project to be created on land it has  
111 purchased for conservation purposes pursuant to this paragraph,  
112 a governmental entity may not create or provide mitigation for a  
113 project other than its own unless the governmental entity uses  
114 land that was not previously purchased for conservation and  
115 unless the governmental entity provides the same financial  
116 assurances as required for mitigation banks permitted under s.  
117 373.4136. This paragraph does not apply to:

118 1. Mitigation banks permitted before December 31, 2011,  
119 under s. 373.4136;

120 2. Offsite regional mitigation areas established before  
121 December 31, 2011, under subsection (6) or, when credits are not  
122 available at a mitigation bank permitted under s. 373.4136,  
123 mitigation areas created by a local government which were  
124 awarded mitigation credits pursuant to the uniform mitigation  
125 assessment method as provided in chapter 62-345, Florida  
126 Administrative Code, under a permit issued before December 31,



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127 2011;

128 3. Mitigation for transportation projects under ss.  
129 373.4137 and 373.4139;

130 4. Mitigation for impacts from mining activities under s.  
131 373.41492;

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

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

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

137 8. Mitigation provided on sovereign submerged lands under  
138 subsection (6).

139 (c) It is the further intent of the Legislature that  
140 mitigation banks and offsite regional mitigation be considered  
141 appropriate and a permissible mitigation option under the  
142 conditions specified by the rules of the department and water  
143 management districts.

144 (d) Offsite mitigation, including offsite regional  
145 mitigation, may be located outside the regional watershed in  
146 which the adverse impacts of an activity regulated under this  
147 part are located, if such adverse impacts are offset by the  
148 offsite mitigation.

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

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



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156 water management district, the department or water management  
157 district shall, in evaluating each proposal, ensure that such  
158 proposal adequately offsets the adverse impacts.

159 (8) It is the intent of the Legislature to allow limited  
160 use of local government land, including lands acquired for  
161 conservation, for private sector mitigation banks, provided that  
162 the private mitigation banks are located in credit-deficient  
163 basins and would produce the habitat type credits that are  
164 unavailable or insufficient in such basins. As used in this  
165 subsection, the term "local government" includes a county,  
166 municipality, or special district as those terms are defined in  
167 s. 165.031.

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

171 1. At least one mitigation bank has been permitted and  
172 established on lands not owned by a governmental entity, and  
173 that mitigation bank no longer has one of the habitat type  
174 credits listed in subparagraph 2. available for purchase;

175 2. There is a documented shortage of either forested  
176 freshwater, non-forested freshwater, forested saltwater, or non-  
177 forested saltwater habitat type credits; and

178 3. Pending mitigation bank applications on private land or  
179 pending credit releases from mitigation banks on nongovernmental  
180 land are unlikely to alleviate the credit shortage.

181 (b) A local government with land in a credit-deficient  
182 basin may, through the public procurement processes identified  
183 in chapter 287 or other established competitive procurement  
184 processes, consider a proposal from a private entity applicant



185 for the right to establish a mitigation bank on the local  
186 government land, including such lands purchased for conservation  
187 purposes, provided acquisition encumbrances do not exist to the  
188 contrary.

189 (c) If such a mitigation bank is to be established and  
190 operated on local government land, the local government and  
191 private applicant must enter into a use agreement that meets the  
192 requirements of this paragraph and that requires the private  
193 applicant to establish and operate the mitigation bank in  
194 conformance with the permitting requirements of s. 373.4136, and  
195 the rules adopted thereunder. The use agreement must:

196 1. Include a requirement that the local government  
197 landowner assume the role of long-term steward of the property,  
198 and state that the landowner will grant a conservation easement  
199 or substantially similar recordable instrument pursuant to s.  
200 704.06, in favor of the permitting agency, if a conservation  
201 easement or substantially similar recordable instrument  
202 acceptable to the permitting agency does not already exist; and

203 2. Include a requirement for the private applicant to do  
204 all of the following:

205 a. Provide bid and performance security instruments for a  
206 minimum of 5 percent of the total bid amount, to ensure that a  
207 use agreement with the local government is executed and a  
208 mitigation bank permit is applied for by the private applicant.

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

212 c. Agree to establish financial assurance for long-term  
213 management in an amount agreeable to the local government





214 landowner and as provided for in rules adopted pursuant to this  
215 section and s. 373.4136, for use by the local government as the  
216 long-term steward of the land, after the mitigation bank final  
217 environmental resource permit success criteria are met. The  
218 private sector applicant may also use an endowment to provide  
219 financial assurances.

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

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

226 (f) Public funds may not be used to fund the financial  
227 assurances for construction and implementation of the mitigation  
228 bank or for the establishment of the long-term management  
229 financial assurances.

230 (g) In determining the number of mitigation bank credits to  
231 be awarded to a mitigation bank established pursuant to this  
232 subsection, the proposed mitigation bank's location in or  
233 adjacent to the local government conservation lands may not  
234 increase the uniform mitigation assessment method location  
235 factor assessment and scoring value, even if the conservation  
236 status of the mitigation bank land is improved due to such  
237 location.

238 (h) Credit deficiency is confirmed at the time the use  
239 agreement is executed by the parties. Once confirmed, the  
240 mitigation bank application may proceed, even if the deficiency  
241 is relieved.

242 (i) While not required, the department, in coordination



243 with the water management districts, may adopt rules to  
244 implement this subsection.

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

249 403.9332 Mitigation and enforcement.—

250 (1) (a) Any area in which 5 percent or more of the trimmed  
251 mangrove trees have been trimmed below 6 feet in height, except  
252 as provided in s. 403.9326(1) (c), (d), (f), (g), and (h),  
253 destroyed, defoliated, or removed as a result of trimming  
254 conducted under s. 403.9326 or s. 403.9327 must be restored or  
255 mitigated. Restoration must be accomplished by replanting  
256 mangroves, in the same location and of the same species as each  
257 mangrove destroyed, defoliated, removed, or trimmed, to achieve  
258 within 5 years a canopy area equivalent to the area destroyed,  
259 removed, defoliated, or trimmed; or mitigation must be  
260 accomplished by replanting offsite, in areas suitable for  
261 mangrove growth, mangroves to achieve within 5 years a canopy  
262 area equivalent to the area destroyed, removed, defoliated, or  
263 trimmed. Where all or a portion of the restoration or mitigation  
264 is not practicable, as determined by the department or delegated  
265 local government, the impacts resulting from the destruction,  
266 defoliation, removal, or trimming of the mangroves must be  
267 offset by donating a sufficient amount of money to offset the  
268 impacts, which must be used for the restoration, enhancement,  
269 creation, or preservation of mangrove wetlands within a  
270 restoration, enhancement, creation, or preservation project  
271 approved by the department or delegated local government; or by



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272 purchasing credits from a mitigation bank created under s.  
273 373.4135 at a mitigation ratio of 2-to-1 credits to affected  
274 area. The donation must be equivalent to the cost, as verified  
275 by the department or delegated local government, of creating  
276 mangrove wetlands at a 2-to-1, created versus affected ratio,  
277 based on canopy area. The donation may not be less than \$4 per  
278 square foot of created wetland area.

279 (c) If mangroves are to be trimmed or altered under a  
280 permit issued under s. 403.9328, the department or delegated  
281 local government may require mitigation. The department or  
282 delegated local government shall establish reasonable mitigation  
283 requirements that must include, as an option, the use of  
284 mitigation banks created under s. 373.4135, where appropriate.  
285 The department's mitigation requirements must ensure that  
286 payments received as mitigation are sufficient to offset impacts  
287 and are used for mangrove creation, preservation, protection, or  
288 enhancement.

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

290  
291 ===== T I T L E A M E N D M E N T =====

292 And the title is amended as follows:

293 Delete everything before the enacting clause  
294 and insert:

295 A bill to be entitled  
296 An act relating to mitigation; amending s. 373.4134,  
297 F.S.; revising legislative findings; defining the term  
298 "applicant"; revising the entities to whom and  
299 purposes for which water quality enhancement credits  
300 may be sold; requiring the Department of Environmental



301 Protection or water management districts to authorize  
302 the sale and use of such credits to applicants, rather  
303 than to governmental entities, to address adverse  
304 water quality impacts of certain activities; revising  
305 construction; amending s. 373.4135, F.S.; revising  
306 legislative findings; providing legislative intent;  
307 defining the term "local government"; providing  
308 circumstances under which basins are considered to be  
309 credit-deficient basins; authorizing local governments  
310 with land in credit-deficient basins to consider bids  
311 from private-sector applicants to establish mitigation  
312 banks on such lands; requiring use agreements that  
313 meet certain requirements for such mitigation banks;  
314 prohibiting the use of public funds to fund financial  
315 assurances for certain purposes; providing that  
316 specified factors may not increase the uniform  
317 mitigation assessment method location factor  
318 assessment and scoring value in determining the number  
319 of mitigation bank credits to be awarded; providing  
320 that credit deficiency is confirmed at the time of  
321 filing a permit application; authorizing the  
322 department, in coordination with the water management  
323 districts, to adopt rules; reenacting s.  
324 403.9332(1)(a) and (c), F.S., relating to mitigation  
325 and enforcement, to incorporate the amendments made to  
326 s. 373.4135, F.S., in references thereto; providing an  
327 effective date.