



750012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/17/2024	.	
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The Committee on Environment and Natural Resources (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 373.403, Florida Statutes, is reordered and 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:

(4)~~(1)~~ "Dam" means any artificial or natural barrier, with



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11 appurtenant works, raised to obstruct or impound, or which does
12 obstruct or impound, any of the surface waters of the state.

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

17 ~~(10)~~~~(3)~~ "Impoundment" means any lake, reservoir, pond, or
18 other containment of surface water occupying a bed or depression
19 in the earth's surface and having a discernible shoreline.

20 ~~(18)~~~~(4)~~ "Reservoir" means any artificial or natural holding
21 area which contains or will contain the water impounded by a
22 dam.

23 ~~(23)~~~~(5)~~ "Works" means all artificial structures, including,
24 but not limited to, ditches, canals, conduits, channels,
25 culverts, pipes, and other construction that connects to, draws
26 water from, drains water into, or is placed in or across the
27 waters in the state.

28 ~~(3)~~~~(6)~~ "Closed system" means any reservoir or works located
29 entirely within agricultural lands owned or controlled by the
30 user and which requires water only for the filling,
31 replenishing, and maintaining the water level thereof.

32 ~~(1)~~~~(7)~~ "Alter" means to extend a dam or works beyond
33 maintenance in its original condition, including changes which
34 may increase or diminish the flow or storage of surface water
35 which may affect the safety of such dam or works.

36 ~~(12)~~~~(8)~~ "Maintenance" or "repairs" means remedial work of a
37 nature as may affect the safety of any dam, impoundment,
38 reservoir, or appurtenant work or works, but excludes routine
39 custodial maintenance.



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40 (5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

41 (21)~~(10)~~ "Stormwater management system" means a system
42 ~~which is~~ designed and constructed or implemented to control
43 discharges ~~which are~~ necessitated by rainfall events,
44 incorporating methods to collect, convey, store, absorb,
45 inhibit, treat, use, or reuse water to prevent or reduce
46 flooding, overdrainage, environmental degradation, and water
47 pollution or otherwise affect the quantity and quality of
48 discharges from the system.

49 (20)~~(11)~~ "State water quality standards" means water
50 quality standards adopted pursuant to chapter 403.

51 (22)~~(12)~~ "Watershed" means the land area that ~~which~~
52 contributes to the flow of water into a receiving body of water.

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

59 (9)~~(14)~~ "Filling" means the deposition, by any means, of
60 materials in surface waters or wetlands, as delineated in s.
61 373.421(1).

62 (8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
63 coastal body of water that ~~which~~ has a free connection with the
64 open sea and within which seawater is measurably diluted with
65 fresh water derived from riverine systems.

66 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
67 depression that ~~which~~ is below mean high water and that ~~which~~
68 has permanent or ephemeral communications with the sea, but



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69 ~~which~~ is protected from the sea by some type of naturally
70 existing barrier.

71 (19)~~(17)~~ "Seawall" means a manmade wall or an encroachment,
72 except riprap, which is made to break the force of waves and to
73 protect the shore from erosion.

74 (7)~~(18)~~ "Ecological value" means the value of functions
75 performed by uplands, wetlands, and other surface waters to the
76 abundance, diversity, and habitats of fish, wildlife, and listed
77 species. These functions include, but are not limited to,
78 providing cover and refuge; breeding, nesting, denning, and
79 nursery areas; corridors for wildlife movement; food chain
80 support; and natural water storage, natural flow attenuation,
81 and water quality improvement, which enhances fish, wildlife,
82 and listed species utilization.

83 (13)~~(19)~~ "Mitigation bank" means a project permitted under
84 s. 373.4136 undertaken to provide for the withdrawal of
85 mitigation credits to offset adverse impacts authorized by a
86 permit under this part.

87 (14)~~(20)~~ "Mitigation credit" means a standard unit of
88 measure which represents the increase in ecological value
89 resulting from restoration, enhancement, preservation, or
90 creation activities.

91 (15)~~(21)~~ "Mitigation service area" means the geographic
92 area within which mitigation credits from a mitigation bank may
93 be used to offset adverse impacts of activities regulated under
94 this part.

95 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
96 an area of land off the site of an activity permitted under this
97 part, where an applicant proposes to mitigate the adverse



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98 impacts of only the applicant's specific activity as a
99 requirement of the permit, which provides regional ecological
100 value, and which is not a mitigation bank permitted under s.
101 373.4136.

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

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

117 373.4134 Water quality enhancement areas.—

118 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
119 that:

120 (b) An expansion of existing authority for regional
121 treatment to include offsite compensatory treatment in water
122 quality enhancement areas to make enhancement credits available
123 for purchase by an applicant or a governmental entity ~~entities~~
124 to address impacts regulated under this part is needed.

125 (d) Water quality enhancement areas are a valuable tool to
126 assist an applicant ~~governmental entities~~ in satisfying the net



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127 improvement performance standard under s. 373.414(1)(b)3. to
128 ensure significant reductions of pollutant loadings.

129 (e) Water quality enhancement areas that provide water
130 quality enhancement credits to applicants ~~governmental entities~~
131 seeking permits under this part and to governmental entities
132 seeking to meet an assigned basin management action plan
133 allocation or reasonable assurance plan under s. 403.067 are
134 considered an appropriate and permissible option.

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

136 (a) “Applicant” means a governmental entity or private
137 sector entity that wishes to purchase water quality enhancement
138 credits to meet an assigned basin management action plan
139 allocation or reasonable assurance plan or for the purpose of
140 achieving the net improvement performance standard under s.
141 373.414(1)(b)3.

142 (3) WATER QUALITY ENHANCEMENT AREAS.—

143 (b) Water quality enhancement credits may be sold ~~only~~ to
144 governmental entities or applicants seeking to meet an assigned
145 basin management action plan allocation or reasonable assurance
146 plan or for the purpose of achieving net improvement performance
147 standards under s. 373.414(1)(b)3. after ~~the governmental entity~~
148 ~~has provided~~ reasonable assurances have been provided for the
149 ~~assurance of meeting department rules for~~ design and
150 construction of all onsite stormwater management, as required by
151 law.

152 (7) ENHANCEMENT CREDITS.—

153 (a) The department or water management district shall
154 authorize the sale and use of enhancement credits to applicants
155 ~~governmental entities~~ to address adverse water quality impacts



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156 of activities regulated under this part or to assist
157 governmental entities seeking to meet required nonpoint source
158 contribution reductions assigned in a basin management action
159 plan or reasonable assurance plan under s. 403.067.

160 (j) Notwithstanding any other law, this section does not
161 limit or restrict the authority of the department to deny the
162 use of enhancement credits when the department is not reasonably
163 assured that the use of the credits will not cause or contribute
164 to a violation of water quality standards, even if the project
165 being implemented by the applicant ~~governmental entity~~ is within
166 the enhancement service area. The department may allow the use
167 of enhancement credits if the department receives a request for
168 the use of enhancement credits and determines that such use will
169 not cause or contribute to a violation of water quality
170 standards.

171 Section 3. Subsection (1) of section 373.4135, Florida
172 Statutes, is amended, and subsection (8) is added to that
173 section, to read:

174 373.4135 Mitigation banks and offsite regional mitigation.—

175 (1) The Legislature finds that the adverse impacts of
176 activities regulated under this part may be offset by the
177 creation, maintenance, and use of mitigation banks and offsite
178 regional mitigation. Mitigation banks and offsite regional
179 mitigation can enhance the certainty of mitigation and provide
180 ecological value due to the improved likelihood of environmental
181 success associated with their proper construction, maintenance,
182 and management. Therefore, the department and the water
183 management districts are directed to ~~participate in and~~
184 encourage the establishment of private ~~and public~~ mitigation



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185 banks and offsite regional mitigation on private and public
186 lands owned by a local government. Mitigation banks and offsite
187 regional mitigation should emphasize the restoration and
188 enhancement of degraded ecosystems and the preservation of
189 uplands and wetlands as intact ecosystems rather than alteration
190 of landscapes to create wetlands. This is best accomplished
191 through restoration of ecological communities that were
192 historically present.

193 (a) The Legislature intends that the provisions for
194 establishing mitigation banks apply equally to both public and
195 private entities, except that the rules of the department and
196 water management districts may set forth different measures
197 governing financial responsibility, and different measures
198 governing legal interest, needed to ensure the construction and
199 perpetual protection of a mitigation bank.

200 (b) The Legislature recognizes the importance of mitigation
201 banks as an appropriate and allowable mitigation alternative to
202 permittee-responsible mitigation. However, the Legislature also
203 recognizes that certain timing and geographical constraints
204 could result in the unavailability of mitigation bank credits
205 for a certain project upon completion of the project's
206 application. If state and federal mitigation credits are not
207 available to offset the adverse impacts of a project, a local
208 government may allow permittee-responsible mitigation consisting
209 of the restoration or enhancement of lands purchased and owned
210 by a local government for conservation purposes, and such
211 mitigation must conform to the permitting requirements of s.
212 373.4136. Except when a local government has allowed a public or
213 private mitigation project, including permittee-responsible



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214 mitigation, to be created on land it has purchased for
215 conservation purposes pursuant to this paragraph, a governmental
216 entity may not create or provide mitigation for a project other
217 than its own unless the governmental entity uses land that was
218 not previously purchased for conservation and unless the
219 governmental entity provides the same financial assurances as
220 required for mitigation banks permitted under s. 373.4136. This
221 paragraph does not apply to:

222 1. Mitigation banks permitted before December 31, 2011,
223 under s. 373.4136;

224 2. Offsite regional mitigation areas established before
225 December 31, 2011, under subsection (6) or, when credits are not
226 available at a mitigation bank permitted under s. 373.4136,
227 mitigation areas created by a local government which were
228 awarded mitigation credits pursuant to the uniform mitigation
229 assessment method as provided in chapter 62-345, Florida
230 Administrative Code, under a permit issued before December 31,
231 2011;

232 3. Mitigation for transportation projects under ss.
233 373.4137 and 373.4139;

234 4. Mitigation for impacts from mining activities under s.
235 373.41492;

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

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

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

241 8. Mitigation provided on sovereign submerged lands under
242 subsection (6).



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243 (c) It is the further intent of the Legislature that
244 mitigation banks and offsite regional mitigation be considered
245 appropriate and a permittable mitigation option under the
246 conditions specified by the rules of the department and water
247 management districts.

248 (d) Offsite mitigation, including offsite regional
249 mitigation, may be located outside the regional watershed in
250 which the adverse impacts of an activity regulated under this
251 part are located, if such adverse impacts are offset by the
252 offsite mitigation.

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

257 (f) When an applicant seeking ~~for~~ a permit under ~~the~~
258 ~~provisions of~~ this part other than this section and s. 373.4136
259 submits more than one mitigation proposal to the department or a
260 water management district, the department or water management
261 district shall, in evaluating each proposal, ensure that such
262 proposal adequately offsets the adverse impacts.

263 (8) A local government may, through a public procurement
264 process, solicit proposals from private-sector sponsors for a
265 mitigation bank on public lands purchased for conservation
266 purposes. If such a mitigation bank is to be established and
267 operated on public land, the local government and private-sector
268 sponsor must enter into an agreement requiring the private-
269 sector sponsor to establish and operate the mitigation bank to
270 conform to the permitting requirements of s. 373.4136.

271 (a) The agreement must require the private-sector sponsor



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272 to pay a usage fee to the local government which reflects the
273 market value of the public land, as determined by a competitive
274 process in accordance with state law or such other method of
275 assuring that the cost of the use of the public land is fully
276 accounted for in the pricing of mitigation credits.

277 (b) In determining the number of mitigation bank credits
278 assigned to the mitigation bank, the department or water
279 management district shall reflect the conservation status of the
280 land in the location factor set forth in the uniform mitigation
281 assessment method.

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

286 (d) Rulemaking is not required to implement this
287 subsection.

288 Section 4. Paragraph (a) of subsection (2) of section
289 330.41, Florida Statutes, is amended to read:

290 330.41 Unmanned Aircraft Systems Act.—

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

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

298 1. A power generation or transmission facility, substation,
299 switching station, or electrical control center.

300 2. A chemical or rubber manufacturing or storage facility.



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- 301 3. A water intake structure, water treatment facility,
302 wastewater treatment plant, or pump station.
- 303 4. A mining facility.
- 304 5. A natural gas or compressed gas compressor station,
305 storage facility, or natural gas or compressed gas pipeline.
- 306 6. A liquid natural gas or propane gas terminal or storage
307 facility.
- 308 7. Any portion of an aboveground oil or gas pipeline.
- 309 8. A refinery.
- 310 9. A gas processing plant, including a plant used in the
311 processing, treatment, or fractionation of natural gas.
- 312 10. A wireless communications facility, including the
313 tower, antennae, support structures, and all associated ground-
314 based equipment.
- 315 11. A seaport as listed in s. 311.09(1), which need not be
316 completely enclosed by a fence or other physical barrier and
317 need not be marked with a sign or signs indicating that entry is
318 forbidden.
- 319 12. An inland port or other facility or group of facilities
320 serving as a point of intermodal transfer of freight in a
321 specific area physically separated from a seaport.
- 322 13. An airport as defined in s. 330.27.
- 323 14. A spaceport territory as defined in s. 331.303(18).
- 324 15. A military installation as defined in 10 U.S.C. s.
325 2801(c)(4) and an armory as defined in s. 250.01.
- 326 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
327 structures, such as locks, floodgates, or dikes, which are
328 designed to maintain or control the level of navigable
329 waterways.



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330 17. A state correctional institution as defined in s.
331 944.02 or a private correctional facility authorized under
332 chapter 957.

333 18. A secure detention center or facility as defined in s.
334 985.03, or a nonsecure residential facility, a high-risk
335 residential facility, or a maximum-risk residential facility as
336 those terms are described in s. 985.03(44).

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

338 20. A critical infrastructure facility as defined in s.
339 692.201.

340 Section 5. Paragraph (a) of subsection (8) of section
341 373.414, Florida Statutes, is amended to read:

342 373.414 Additional criteria for activities in surface
343 waters and wetlands.—

344 (8) (a) The governing board or the department, in deciding
345 whether to grant or deny a permit for an activity regulated
346 under this part shall consider the cumulative impacts upon
347 surface water and wetlands, as delineated in s. 373.421(1),
348 within the same drainage basin as defined in s. 373.403 ~~s.~~
349 ~~373.403(9)~~, of:

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

351 2. Projects which are existing or activities regulated
352 under this part which are under construction or projects for
353 which permits or determinations pursuant to s. 373.421 ~~or s.~~
354 ~~403.914~~ have been sought.

355 3. Activities which are under review, approved, or vested
356 pursuant to s. 380.06, or other activities regulated under this
357 part which may reasonably be expected to be located within
358 surface waters or wetlands, as delineated in s. 373.421(1), in



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359 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
360 based upon the comprehensive plans, adopted pursuant to chapter
361 163, of the local governments having jurisdiction over the
362 activities, or applicable land use restrictions and regulations.

363 Section 6. Paragraph (c) of subsection (2) of section
364 373.461, Florida Statutes, is amended to read:

365 373.461 Lake Apopka improvement and management.—

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

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

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

373 403.9332 Mitigation and enforcement.—

374 (1) (a) Any area in which 5 percent or more of the trimmed
375 mangrove trees have been trimmed below 6 feet in height, except
376 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),
377 destroyed, defoliated, or removed as a result of trimming
378 conducted under s. 403.9326 or s. 403.9327 must be restored or
379 mitigated. Restoration must be accomplished by replanting
380 mangroves, in the same location and of the same species as each
381 mangrove destroyed, defoliated, removed, or trimmed, to achieve
382 within 5 years a canopy area equivalent to the area destroyed,
383 removed, defoliated, or trimmed; or mitigation must be
384 accomplished by replanting offsite, in areas suitable for
385 mangrove growth, mangroves to achieve within 5 years a canopy
386 area equivalent to the area destroyed, removed, defoliated, or
387 trimmed. Where all or a portion of the restoration or mitigation



388 is not practicable, as determined by the department or delegated
389 local government, the impacts resulting from the destruction,
390 defoliation, removal, or trimming of the mangroves must be
391 offset by donating a sufficient amount of money to offset the
392 impacts, which must be used for the restoration, enhancement,
393 creation, or preservation of mangrove wetlands within a
394 restoration, enhancement, creation, or preservation project
395 approved by the department or delegated local government; or by
396 purchasing credits from a mitigation bank created under s.
397 373.4135 at a mitigation ratio of 2-to-1 credits to affected
398 area. The donation must be equivalent to the cost, as verified
399 by the department or delegated local government, of creating
400 mangrove wetlands at a 2-to-1, created versus affected ratio,
401 based on canopy area. The donation may not be less than \$4 per
402 square foot of created wetland area.

403 (c) If mangroves are to be trimmed or altered under a
404 permit issued under s. 403.9328, the department or delegated
405 local government may require mitigation. The department or
406 delegated local government shall establish reasonable mitigation
407 requirements that must include, as an option, the use of
408 mitigation banks created under s. 373.4135, where appropriate.
409 The department's mitigation requirements must ensure that
410 payments received as mitigation are sufficient to offset impacts
411 and are used for mangrove creation, preservation, protection, or
412 enhancement.

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

414
415 ===== T I T L E A M E N D M E N T =====

416 And the title is amended as follows:



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417 Delete everything before the enacting clause
418 and insert:

419 A bill to be entitled
420 An act relating to mitigation; reordering and amending
421 s. 373.403, F.S.; defining the term "private-sector
422 sponsor"; making technical changes; s. 373.4134, F.S.;
423 revising legislative findings; defining the term
424 "applicant"; revising the entities to and purposes for
425 which water quality enhancement credits may be sold;
426 requiring the Department of Environmental Protection
427 or water management districts to authorize the sale
428 and use of such credits to applicants, rather than to
429 governmental entities, to address adverse water
430 quality impacts of certain activities; revising
431 construction; amending s. 373.4135, F.S.; revising
432 legislative findings; authorizing governmental
433 entities to solicit certain proposals for mitigation
434 bank projects on public land; providing requirements
435 for the proposals and for agreements between local
436 governmental and private entities; providing
437 requirements for the agreements; providing
438 requirements for the department and water management
439 districts in assigning mitigation bank credits to the
440 bank; providing applicability; providing construction;
441 amending ss. 330.41, 373.414, and 373.461, F.S.;
442 conforming cross-references; reenacting s.
443 403.9332(1)(a) and (c), F.S., relating to mitigation
444 and enforcement, to incorporate the amendments made to
445 s. 373.4135, F.S., in references thereto; providing an



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effective date.