

By Senator Brodeur

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

28
29 Be It Enacted by the Legislature of the State of Florida:

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

(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.

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

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

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

(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.

(1)~~(7)~~ "Alter" means to extend a dam or works beyond

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59 maintenance in its original condition, including changes which
60 may increase or diminish the flow or storage of surface water
61 which may affect the safety of such dam or works.

62 (12)~~(8)~~ "Maintenance" or "repairs" means remedial work of a
63 nature as may affect the safety of any dam, impoundment,
64 reservoir, or appurtenant work or works, but excludes routine
65 custodial maintenance.

66 (5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

67 (21)~~(10)~~ "Stormwater management system" means a system
68 ~~which is~~ designed and constructed or implemented to control
69 discharges ~~which are~~ necessitated by rainfall events,
70 incorporating methods to collect, convey, store, absorb,
71 inhibit, treat, use, or reuse water to prevent or reduce
72 flooding, overdrainage, environmental degradation, and water
73 pollution or otherwise affect the quantity and quality of
74 discharges from the system.

75 (20)~~(11)~~ "State water quality standards" means water
76 quality standards adopted pursuant to chapter 403.

77 (22)~~(12)~~ "Watershed" means the land area that ~~which~~
78 contributes to the flow of water into a receiving body of water.

79 (6)~~(13)~~ "Dredging" means excavation, by any means, in
80 surface waters or wetlands, as delineated in s. 373.421(1). The
81 term ~~It~~ also means the excavation, or creation, of a water body
82 which is, or is to be, connected to surface waters or wetlands,
83 as delineated in s. 373.421(1), directly or via an excavated
84 water body or series of water bodies.

85 (9)~~(14)~~ "Filling" means the deposition, by any means, of
86 materials in surface waters or wetlands, as delineated in s.
87 373.421(1).

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88 (8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
89 coastal body of water that ~~which~~ has a free connection with the
90 open sea and within which seawater is measurably diluted with
91 fresh water derived from riverine systems.

92 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
93 depression that ~~which~~ is below mean high water and that ~~which~~
94 has permanent or ephemeral communications with the sea, but
95 ~~which~~ is protected from the sea by some type of naturally
96 existing barrier.

97 (18)~~(17)~~ "Seawall" means a manmade wall or encroachment,
98 except riprap, which is made to break the force of waves and to
99 protect the shore from erosion.

100 (19) "Sponsor" means an individual or entity that
101 establishes and operates a wetland mitigation bank project and
102 is responsible for compliance with any permits or
103 authorizations, including, but not limited to, funding and
104 undertaking wetland enhancement, restoration or creation
105 activities, and the provision of financial assurances, as well
106 as any required monitoring, reporting, and maintenance of the
107 mitigation bank.

108 (7)~~(18)~~ "Ecological value" means the value of functions
109 performed by uplands, wetlands, and other surface waters to the
110 abundance, diversity, and habitats of fish, wildlife, and listed
111 species. These functions include, but are not limited to,
112 providing cover and refuge; breeding, nesting, denning, and
113 nursery areas; corridors for wildlife movement; food chain
114 support; and natural water storage, natural flow attenuation,
115 and water quality improvement, which enhances fish, wildlife,
116 and listed species utilization.

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117 (13)~~(19)~~ "Mitigation bank" means a project permitted under
118 s. 373.4136 undertaken to provide for the withdrawal of
119 mitigation credits to offset adverse impacts authorized by a
120 permit under this part.

121 (14)~~(20)~~ "Mitigation credit" means a standard unit of
122 measure which represents the increase in ecological value
123 resulting from restoration, enhancement, preservation, or
124 creation activities.

125 (15)~~(21)~~ "Mitigation service area" means the geographic
126 area within which mitigation credits from a mitigation bank may
127 be used to offset adverse impacts of activities regulated under
128 this part.

129 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
130 an area of land off the site of an activity permitted under this
131 part, where an applicant proposes to mitigate the adverse
132 impacts of only the applicant's specific activity as a
133 requirement of the permit, which provides regional ecological
134 value, and which is not a mitigation bank permitted under s.
135 373.4136.

136 Section 2. Paragraphs (b), (d), and (e) of subsection (1),
137 paragraph (b) of subsection (3), and paragraphs (a) and (j) of
138 subsection (7) of section 373.4134, Florida Statutes, are
139 amended to read:

140 373.4134 Water quality enhancement areas.—

141 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
142 that:

143 (b) An expansion of existing authority for regional
144 treatment to include offsite compensatory treatment in water
145 quality enhancement areas to make enhancement credits available

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146 for purchase by an applicant or a governmental entity ~~entities~~
147 to address impacts regulated under this part is needed.

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

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

158 (3) WATER QUALITY ENHANCEMENT AREAS.—

159 (b) Water quality enhancement credits may be sold ~~only~~ to
160 governmental entities seeking to meet an assigned basin
161 management action plan allocation or reasonable assurance plan
162 or to applicants for the purpose of achieving the net
163 improvement performance standard under s. 373.414(1)(b)3. after
164 ~~the governmental entity has provided reasonable assurances have~~
165 been provided for the assurance of meeting department rules for
166 design and construction of all onsite stormwater management
167 required by rule 62-330, Florida Administrative Code.

168 (7) ENHANCEMENT CREDITS.—

169 (a) The department or water management district shall
170 authorize the sale and use of enhancement credits to applicants
171 ~~governmental entities~~ to address adverse water quality impacts
172 of activities regulated under this part or to assist
173 governmental entities seeking to meet required nonpoint source
174 contribution reductions assigned in a basin management action

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175 plan or reasonable assurance plan under s. 403.067.

176 (j) Notwithstanding any other law, this section does not
177 limit or restrict the authority of the department to deny the
178 use of enhancement credits when the department is not reasonably
179 assured that the use of the credits will not cause or contribute
180 to a violation of water quality standards, even if the project
181 being implemented by the applicant or governmental entity is
182 within the enhancement service area. The department may allow
183 the use of enhancement credits if the department receives a
184 request for the use of enhancement credits and determines that
185 such use will not cause or contribute to a violation of water
186 quality standards.

187 Section 3. Subsection (1) of section 373.4135, Florida
188 Statutes, is amended, and subsection (8) is added to that
189 section, to read:

190 373.4135 Mitigation banks and offsite regional mitigation.-

191 (1) The Legislature finds that the adverse impacts of
192 activities regulated under this part may be offset by the
193 creation, maintenance, and use of mitigation banks and offsite
194 regional mitigation. Mitigation banks and offsite regional
195 mitigation can enhance the certainty of mitigation and provide
196 ecological value due to the improved likelihood of environmental
197 success associated with their proper construction, maintenance,
198 and management. Therefore, the department and the water
199 management districts are directed to ~~participate in and~~
200 encourage the establishment of private ~~and public~~ mitigation
201 banks and offsite regional mitigation on private and public
202 lands. Mitigation banks and offsite regional mitigation should
203 emphasize the restoration and enhancement of degraded ecosystems

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204 and the preservation of uplands and wetlands as intact
205 ecosystems rather than alteration of landscapes to create
206 wetlands. This is best accomplished through restoration of
207 ecological communities that were historically present.

208 (a) The Legislature intends that the provisions for
209 establishing mitigation banks apply equally to both public and
210 private entities, except that the rules of the department and
211 water management districts may set forth different measures
212 governing financial responsibility, and different measures
213 governing legal interest, needed to ensure the construction and
214 perpetual protection of a mitigation bank.

215 (b) The Legislature recognizes the importance of mitigation
216 banks as an appropriate and allowable mitigation alternative to
217 permittee-responsible mitigation. However, the Legislature also
218 recognizes that certain timing and geographical constraints
219 could result in the unavailability of mitigation bank credits
220 for a certain project upon completion of the project's
221 application. If state and federal mitigation credits are not
222 available to offset the adverse impacts of a project, a local
223 government may allow permittee-responsible mitigation consisting
224 of the restoration or enhancement of lands purchased and owned
225 by a local government for conservation purposes, and such
226 mitigation must conform to the permitting requirements of s.
227 373.4136. Except when a local government has allowed a public or
228 private permittee-responsible mitigation project to be created
229 on land it has purchased for conservation purposes pursuant to
230 this paragraph, a governmental entity may not create or provide
231 mitigation for a project other than its own unless the
232 governmental entity uses land that was not previously purchased

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233 for conservation and unless the governmental entity provides the
234 same financial assurances as required for mitigation banks
235 permitted under s. 373.4136. This paragraph does not apply to:

236 1. Mitigation banks permitted before December 31, 2011,
237 under s. 373.4136;

238 2. Offsite regional mitigation areas established before
239 December 31, 2011, under subsection (6) or, when credits are not
240 available at a mitigation bank permitted under s. 373.4136,
241 mitigation areas created by a local government which were
242 awarded mitigation credits pursuant to the uniform mitigation
243 assessment method as provided in chapter 62-345, Florida
244 Administrative Code, under a permit issued before December 31,
245 2011;

246 3. Mitigation for transportation projects under ss.
247 373.4137 and 373.4139;

248 4. Mitigation for impacts from mining activities under s.
249 373.41492;

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

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

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

255 8. Mitigation provided on sovereign submerged lands under
256 subsection (6).

257 (c) It is the further intent of the Legislature that
258 mitigation banks and offsite regional mitigation be considered
259 appropriate and a permittable mitigation option under the
260 conditions specified by the rules of the department and water
261 management districts.

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262 (d) Offsite mitigation, including offsite regional
263 mitigation, may be located outside the regional watershed in
264 which the adverse impacts of an activity regulated under this
265 part are located, if such adverse impacts are offset by the
266 offsite mitigation.

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

271 (f) When an applicant seeking for a permit under ~~the~~
272 ~~provisions of~~ this part other than this section and s. 373.4136
273 submits more than one mitigation proposal to the department or a
274 water management district, the department or water management
275 district shall, in evaluating each proposal, ensure that such
276 proposal adequately offsets the adverse impacts.

277 (8) A governmental entity shall consider unsolicited
278 proposals for or may solicit proposals, in accordance with s.
279 255.065(3) or other established public procurement process, for
280 a mitigation bank project on public land. If a mitigation bank
281 is to be established and operated by a private entity on public
282 land, the governmental entity and private entity must enter into
283 an agreement requiring the private entity to serve as the
284 sponsor of the project and the agreement must require the
285 mitigation bank to conform to the permitting requirements of s.
286 373.4136.

287 (a) The agreement must require the private entity to pay a
288 usage fee to the governmental entity which reflects the market
289 value of the public land, as determined by a competitive process
290 in accordance with state law or such other method of assuring

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291 that the cost of the use of the public land is fully accounted
292 for in the pricing of mitigation credits.

293 (b) In determining the number of mitigation bank credits
294 assigned to the mitigation bank, the department or water
295 management district shall reflect the conservation status of the
296 land in the location factor set forth in the uniform mitigation
297 assessment method.

298 (c) This subsection applies to drainage basins or
299 corresponding hydrologic units if the applicant demonstrates to
300 the department or water management district that in-kind credits
301 are not available.

302 (d) Rulemaking is not required to implement this
303 subsection.

304 Section 4. Paragraph (a) of subsection (2) of section
305 330.41, Florida Statutes, is amended to read:

306 330.41 Unmanned Aircraft Systems Act.—

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

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

314 1. A power generation or transmission facility, substation,
315 switching station, or electrical control center.

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

317 3. A water intake structure, water treatment facility,
318 wastewater treatment plant, or pump station.

319 4. A mining facility.

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- 320 5. A natural gas or compressed gas compressor station,
321 storage facility, or natural gas or compressed gas pipeline.
- 322 6. A liquid natural gas or propane gas terminal or storage
323 facility.
- 324 7. Any portion of an aboveground oil or gas pipeline.
- 325 8. A refinery.
- 326 9. A gas processing plant, including a plant used in the
327 processing, treatment, or fractionation of natural gas.
- 328 10. A wireless communications facility, including the
329 tower, antennae, support structures, and all associated ground-
330 based equipment.
- 331 11. A seaport as listed in s. 311.09(1), which need not be
332 completely enclosed by a fence or other physical barrier and
333 need not be marked with a sign or signs indicating that entry is
334 forbidden.
- 335 12. An inland port or other facility or group of facilities
336 serving as a point of intermodal transfer of freight in a
337 specific area physically separated from a seaport.
- 338 13. An airport as defined in s. 330.27.
- 339 14. A spaceport territory as defined in s. 331.303(18).
- 340 15. A military installation as defined in 10 U.S.C. s.
341 2801(c)(4) and an armory as defined in s. 250.01.
- 342 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
343 structures, such as locks, floodgates, or dikes, which are
344 designed to maintain or control the level of navigable
345 waterways.
- 346 17. A state correctional institution as defined in s.
347 944.02 or a private correctional facility authorized under
348 chapter 957.

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349 18. A secure detention center or facility as defined in s.
350 985.03, or a nonsecure residential facility, a high-risk
351 residential facility, or a maximum-risk residential facility as
352 those terms are described in s. 985.03(44).

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

354 20. A critical infrastructure facility as defined in s.
355 692.201.

356 Section 5. Paragraph (a) of subsection (8) of section
357 373.414, Florida Statutes, is amended to read:

358 373.414 Additional criteria for activities in surface
359 waters and wetlands.—

360 (8) (a) The governing board or the department, in deciding
361 whether to grant or deny a permit for an activity regulated
362 under this part shall consider the cumulative impacts upon
363 surface water and wetlands, as delineated in s. 373.421(1),
364 within the same drainage basin as defined in s. 373.403 ~~s.~~
365 ~~373.403(9)~~, of:

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

367 2. Projects which are existing or activities regulated
368 under this part which are under construction or projects for
369 which permits or determinations pursuant to s. 373.421 ~~or s.~~
370 ~~403.914~~ have been sought.

371 3. Activities which are under review, approved, or vested
372 pursuant to s. 380.06, or other activities regulated under this
373 part which may reasonably be expected to be located within
374 surface waters or wetlands, as delineated in s. 373.421(1), in
375 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
376 based upon the comprehensive plans, adopted pursuant to chapter
377 163, of the local governments having jurisdiction over the

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378 activities, or applicable land use restrictions and regulations.

379 Section 6. Paragraph (c) of subsection (2) of section
380 373.461, Florida Statutes, is amended to read:

381 373.461 Lake Apopka improvement and management.—

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

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

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

389 403.9332 Mitigation and enforcement.—

390 (1) (a) Any area in which 5 percent or more of the trimmed
391 mangrove trees have been trimmed below 6 feet in height, except
392 as provided in s. 403.9326(1) (c), (d), (f), (g), and (h),
393 destroyed, defoliated, or removed as a result of trimming
394 conducted under s. 403.9326 or s. 403.9327 must be restored or
395 mitigated. Restoration must be accomplished by replanting
396 mangroves, in the same location and of the same species as each
397 mangrove destroyed, defoliated, removed, or trimmed, to achieve
398 within 5 years a canopy area equivalent to the area destroyed,
399 removed, defoliated, or trimmed; or mitigation must be
400 accomplished by replanting offsite, in areas suitable for
401 mangrove growth, mangroves to achieve within 5 years a canopy
402 area equivalent to the area destroyed, removed, defoliated, or
403 trimmed. Where all or a portion of the restoration or mitigation
404 is not practicable, as determined by the department or delegated
405 local government, the impacts resulting from the destruction,
406 defoliation, removal, or trimming of the mangroves must be

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407 offset by donating a sufficient amount of money to offset the
408 impacts, which must be used for the restoration, enhancement,
409 creation, or preservation of mangrove wetlands within a
410 restoration, enhancement, creation, or preservation project
411 approved by the department or delegated local government; or by
412 purchasing credits from a mitigation bank created under s.
413 373.4135 at a mitigation ratio of 2-to-1 credits to affected
414 area. The donation must be equivalent to the cost, as verified
415 by the department or delegated local government, of creating
416 mangrove wetlands at a 2-to-1, created versus affected ratio,
417 based on canopy area. The donation may not be less than \$4 per
418 square foot of created wetland area.

419 (c) If mangroves are to be trimmed or altered under a
420 permit issued under s. 403.9328, the department or delegated
421 local government may require mitigation. The department or
422 delegated local government shall establish reasonable mitigation
423 requirements that must include, as an option, the use of
424 mitigation banks created under s. 373.4135, where appropriate.
425 The department's mitigation requirements must ensure that
426 payments received as mitigation are sufficient to offset impacts
427 and are used for mangrove creation, preservation, protection, or
428 enhancement.

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