

By the Committee on Environment and Natural Resources; and
Senator Brodeur

592-02180-24

20241532c1

1 A bill to be entitled
2 An act relating to mitigation; reordering and amending
3 s. 373.403, F.S.; defining the term "private-sector
4 sponsor"; making technical changes; amending s.
5 373.4134, F.S.; revising legislative findings;
6 defining the term "applicant"; revising the entities
7 to and purposes for which water quality enhancement
8 credits may be sold; requiring the Department of
9 Environmental Protection or water management districts
10 to authorize the sale and use of such credits to
11 applicants, rather than to governmental entities, to
12 address adverse water quality impacts of certain
13 activities; revising construction; amending s.
14 373.4135, F.S.; revising legislative findings;
15 authorizing governmental entities to solicit certain
16 proposals for mitigation bank projects on public land;
17 providing requirements for the proposals and for
18 agreements between local governmental and private
19 entities; providing requirements for the agreements;
20 providing requirements for the department and water
21 management districts in assigning mitigation bank
22 credits to the bank; providing applicability;
23 providing construction; amending ss. 330.41, 373.414,
24 and 373.461, F.S.; conforming cross-references;
25 reenacting s. 403.9332(1)(a) and (c), F.S., relating
26 to mitigation and enforcement, to incorporate the
27 amendments made to s. 373.4135, F.S., in references
28 thereto; providing an effective date.
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592-02180-24

20241532c1

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

31
32 Section 1. Section 373.403, Florida Statutes, is reordered
33 and amended to read:

34 373.403 Definitions.—When appearing in this part or in any
35 rule, regulation, or order adopted pursuant thereto, the
36 following terms mean:

37 (4)~~(1)~~ "Dam" means any artificial or natural barrier, with
38 appurtenant works, raised to obstruct or impound, or which does
39 obstruct or impound, any of the surface waters of the state.

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

44 (10)~~(3)~~ "Impoundment" means any lake, reservoir, pond, or
45 other containment of surface water occupying a bed or depression
46 in the earth's surface and having a discernible shoreline.

47 (18)~~(4)~~ "Reservoir" means any artificial or natural holding
48 area which contains or will contain the water impounded by a
49 dam.

50 (23)~~(5)~~ "Works" means all artificial structures, including,
51 but not limited to, ditches, canals, conduits, channels,
52 culverts, pipes, and other construction that connects to, draws
53 water from, drains water into, or is placed in or across the
54 waters in the state.

55 (3)~~(6)~~ "Closed system" means any reservoir or works located
56 entirely within agricultural lands owned or controlled by the
57 user and which requires water only for the filling,
58 replenishing, and maintaining the water level thereof.

592-02180-24

20241532c1

59 (1)~~(7)~~ "Alter" means to extend a dam or works beyond
60 maintenance in its original condition, including changes which
61 may increase or diminish the flow or storage of surface water
62 which may affect the safety of such dam or works.

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

67 (5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

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

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

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

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

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

592-02180-24

20241532c1

88 373.421(1).

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

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

98 (19)~~(17)~~ "Seawall" means a manmade wall or an encroachment,
99 except riprap, which is made to break the force of waves and to
100 protect the shore from erosion.

101 (7)~~(18)~~ "Ecological value" means the value of functions
102 performed by uplands, wetlands, and other surface waters to the
103 abundance, diversity, and habitats of fish, wildlife, and listed
104 species. These functions include, but are not limited to,
105 providing cover and refuge; breeding, nesting, denning, and
106 nursery areas; corridors for wildlife movement; food chain
107 support; and natural water storage, natural flow attenuation,
108 and water quality improvement, which enhances fish, wildlife,
109 and listed species utilization.

110 (13)~~(19)~~ "Mitigation bank" means a project permitted under
111 s. 373.4136 undertaken to provide for the withdrawal of
112 mitigation credits to offset adverse impacts authorized by a
113 permit under this part.

114 (14)~~(20)~~ "Mitigation credit" means a standard unit of
115 measure which represents the increase in ecological value
116 resulting from restoration, enhancement, preservation, or

592-02180-24

20241532c1

117 creation activities.

118 (15)~~(21)~~ "Mitigation service area" means the geographic
119 area within which mitigation credits from a mitigation bank may
120 be used to offset adverse impacts of activities regulated under
121 this part.

122 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
123 an area of land off the site of an activity permitted under this
124 part, where an applicant proposes to mitigate the adverse
125 impacts of only the applicant's specific activity as a
126 requirement of the permit, which provides regional ecological
127 value, and which is not a mitigation bank permitted under s.
128 373.4136.

129 (17) "Private-sector sponsor" means an individual or entity
130 that establishes and operates a wetland mitigation bank project
131 and is responsible for compliance with any permit or
132 authorization, including, but not limited to, funding and
133 undertaking wetland enhancement, restoration or creation
134 activities, and the provision of financial assurances, as well
135 as any required monitoring, reporting, and maintenance of the
136 mitigation bank.

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

144 373.4134 Water quality enhancement areas.—

145 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds

592-02180-24

20241532c1

146 that:

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

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

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

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

163 (a) “Applicant” means a governmental entity or private
164 sector entity that wishes to purchase water quality enhancement
165 credits to meet an assigned basin management action plan
166 allocation or reasonable assurance plan or for the purpose of
167 achieving the net improvement performance standard under s.
168 373.414(1)(b)3.

169 (3) WATER QUALITY ENHANCEMENT AREAS.—

170 (b) Water quality enhancement credits may be sold ~~only~~ to
171 governmental entities or applicants seeking to meet an assigned
172 basin management action plan allocation or reasonable assurance
173 plan or for the purpose of achieving net improvement performance
174 standards under s. 373.414(1)(b)3. after ~~the governmental entity~~

592-02180-24

20241532c1

175 ~~has provided~~ reasonable assurances have been provided for the
176 ~~assurance of meeting department rules for~~ design and
177 construction of all onsite stormwater management, as required by
178 law.

179 (7) ENHANCEMENT CREDITS.—

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

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

198 Section 3. Subsection (1) of section 373.4135, Florida
199 Statutes, is amended, and subsection (8) is added to that
200 section, to read:

201 373.4135 Mitigation banks and offsite regional mitigation.—

202 (1) The Legislature finds that the adverse impacts of
203 activities regulated under this part may be offset by the

592-02180-24

20241532c1

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

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

227 (b) The Legislature recognizes the importance of mitigation
228 banks as an appropriate and allowable mitigation alternative to
229 permittee-responsible mitigation. However, the Legislature also
230 recognizes that certain timing and geographical constraints
231 could result in the unavailability of mitigation bank credits
232 for a certain project upon completion of the project's

592-02180-24

20241532c1

233 application. If state and federal mitigation credits are not
234 available to offset the adverse impacts of a project, a local
235 government may allow permittee-responsible mitigation consisting
236 of the restoration or enhancement of lands purchased and owned
237 by a local government for conservation purposes, and such
238 mitigation must conform to the permitting requirements of s.
239 373.4136. Except when a local government has allowed a public or
240 private mitigation project, including permittee-responsible
241 mitigation, to be created on land it has purchased for
242 conservation purposes pursuant to this paragraph, a governmental
243 entity may not create or provide mitigation for a project other
244 than its own unless the governmental entity uses land that was
245 not previously purchased for conservation and unless the
246 governmental entity provides the same financial assurances as
247 required for mitigation banks permitted under s. 373.4136. This
248 paragraph does not apply to:

249 1. Mitigation banks permitted before December 31, 2011,
250 under s. 373.4136;

251 2. Offsite regional mitigation areas established before
252 December 31, 2011, under subsection (6) or, when credits are not
253 available at a mitigation bank permitted under s. 373.4136,
254 mitigation areas created by a local government which were
255 awarded mitigation credits pursuant to the uniform mitigation
256 assessment method as provided in chapter 62-345, Florida
257 Administrative Code, under a permit issued before December 31,
258 2011;

259 3. Mitigation for transportation projects under ss.
260 373.4137 and 373.4139;

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

592-02180-24

20241532c1

262 373.41492;

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

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

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

268 8. Mitigation provided on sovereign submerged lands under
269 subsection (6).

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

275 (d) Offsite mitigation, including offsite regional
276 mitigation, may be located outside the regional watershed in
277 which the adverse impacts of an activity regulated under this
278 part are located, if such adverse impacts are offset by the
279 offsite mitigation.

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

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

290 (8) A local government may, through a public procurement

592-02180-24

20241532c1

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

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

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

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

313 (d) Rulemaking is not required to implement this
314 subsection.

315 Section 4. Paragraph (a) of subsection (2) of section
316 330.41, Florida Statutes, is amended to read:

317 330.41 Unmanned Aircraft Systems Act.—

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

319 (a) "Critical infrastructure facility" means any of the

592-02180-24

20241532c1

320 following, if completely enclosed by a fence or other physical
321 barrier that is obviously designed to exclude intruders, or if
322 clearly marked with a sign or signs which indicate that entry is
323 forbidden and which are posted on the property in a manner
324 reasonably likely to come to the attention of intruders:

325 1. A power generation or transmission facility, substation,
326 switching station, or electrical control center.

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

328 3. A water intake structure, water treatment facility,
329 wastewater treatment plant, or pump station.

330 4. A mining facility.

331 5. A natural gas or compressed gas compressor station,
332 storage facility, or natural gas or compressed gas pipeline.

333 6. A liquid natural gas or propane gas terminal or storage
334 facility.

335 7. Any portion of an aboveground oil or gas pipeline.

336 8. A refinery.

337 9. A gas processing plant, including a plant used in the
338 processing, treatment, or fractionation of natural gas.

339 10. A wireless communications facility, including the
340 tower, antennae, support structures, and all associated ground-
341 based equipment.

342 11. A seaport as listed in s. 311.09(1), which need not be
343 completely enclosed by a fence or other physical barrier and
344 need not be marked with a sign or signs indicating that entry is
345 forbidden.

346 12. An inland port or other facility or group of facilities
347 serving as a point of intermodal transfer of freight in a
348 specific area physically separated from a seaport.

592-02180-24

20241532c1

- 349 13. An airport as defined in s. 330.27.
- 350 14. A spaceport territory as defined in s. 331.303(18).
- 351 15. A military installation as defined in 10 U.S.C. s.
- 352 2801(c)(4) and an armory as defined in s. 250.01.
- 353 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
- 354 structures, such as locks, floodgates, or dikes, which are
- 355 designed to maintain or control the level of navigable
- 356 waterways.
- 357 17. A state correctional institution as defined in s.
- 358 944.02 or a private correctional facility authorized under
- 359 chapter 957.
- 360 18. A secure detention center or facility as defined in s.
- 361 985.03, or a nonsecure residential facility, a high-risk
- 362 residential facility, or a maximum-risk residential facility as
- 363 those terms are described in s. 985.03(44).
- 364 19. A county detention facility as defined in s. 951.23.
- 365 20. A critical infrastructure facility as defined in s.
- 366 692.201.
- 367 Section 5. Paragraph (a) of subsection (8) of section
- 368 373.414, Florida Statutes, is amended to read:
- 369 373.414 Additional criteria for activities in surface
- 370 waters and wetlands.—
- 371 (8) (a) The governing board or the department, in deciding
- 372 whether to grant or deny a permit for an activity regulated
- 373 under this part shall consider the cumulative impacts upon
- 374 surface water and wetlands, as delineated in s. 373.421(1),
- 375 within the same drainage basin as defined in s. 373.403 ~~s.~~
- 376 ~~373.403(9)~~, of:
- 377 1. The activity for which the permit is sought.

592-02180-24

20241532c1

378 2. Projects which are existing or activities regulated
379 under this part which are under construction or projects for
380 which permits or determinations pursuant to s. 373.421 ~~or s.~~
381 ~~403.914~~ have been sought.

382 3. Activities which are under review, approved, or vested
383 pursuant to s. 380.06, or other activities regulated under this
384 part which may reasonably be expected to be located within
385 surface waters or wetlands, as delineated in s. 373.421(1), in
386 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
387 based upon the comprehensive plans, adopted pursuant to chapter
388 163, of the local governments having jurisdiction over the
389 activities, or applicable land use restrictions and regulations.

390 Section 6. Paragraph (c) of subsection (2) of section
391 373.461, Florida Statutes, is amended to read:

392 373.461 Lake Apopka improvement and management.—

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

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

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

400 403.9332 Mitigation and enforcement.—

401 (1)(a) Any area in which 5 percent or more of the trimmed
402 mangrove trees have been trimmed below 6 feet in height, except
403 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),
404 destroyed, defoliated, or removed as a result of trimming
405 conducted under s. 403.9326 or s. 403.9327 must be restored or
406 mitigated. Restoration must be accomplished by replanting

592-02180-24

20241532c1

407 mangroves, in the same location and of the same species as each
408 mangrove destroyed, defoliated, removed, or trimmed, to achieve
409 within 5 years a canopy area equivalent to the area destroyed,
410 removed, defoliated, or trimmed; or mitigation must be
411 accomplished by replanting offsite, in areas suitable for
412 mangrove growth, mangroves to achieve within 5 years a canopy
413 area equivalent to the area destroyed, removed, defoliated, or
414 trimmed. Where all or a portion of the restoration or mitigation
415 is not practicable, as determined by the department or delegated
416 local government, the impacts resulting from the destruction,
417 defoliation, removal, or trimming of the mangroves must be
418 offset by donating a sufficient amount of money to offset the
419 impacts, which must be used for the restoration, enhancement,
420 creation, or preservation of mangrove wetlands within a
421 restoration, enhancement, creation, or preservation project
422 approved by the department or delegated local government; or by
423 purchasing credits from a mitigation bank created under s.
424 373.4135 at a mitigation ratio of 2-to-1 credits to affected
425 area. The donation must be equivalent to the cost, as verified
426 by the department or delegated local government, of creating
427 mangrove wetlands at a 2-to-1, created versus affected ratio,
428 based on canopy area. The donation may not be less than \$4 per
429 square foot of created wetland area.

430 (c) If mangroves are to be trimmed or altered under a
431 permit issued under s. 403.9328, the department or delegated
432 local government may require mitigation. The department or
433 delegated local government shall establish reasonable mitigation
434 requirements that must include, as an option, the use of
435 mitigation banks created under s. 373.4135, where appropriate.

592-02180-24

20241532c1

436 The department's mitigation requirements must ensure that
437 payments received as mitigation are sufficient to offset impacts
438 and are used for mangrove creation, preservation, protection, or
439 enhancement.

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