

By Senator DiCeglie

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1 A bill to be entitled
2 An act relating to mitigation credits; reordering and
3 amending s. 373.403, F.S.; defining the term
4 "proximity factor"; amending s. 373.4136, F.S.;
5 revising the list of projects eligible to use
6 mitigation banks; requiring the Department of
7 Environmental Protection and water management
8 districts to authorize the use of mitigation credits
9 within surrounding basins; specifying the
10 circumstances under which credits may be deemed
11 unavailable in a basin; specifying factors the
12 department and water management districts must
13 consider when awarding mitigation credits; providing
14 requirements for the calculation of additional credits
15 necessary to use mitigation credits from outside a
16 project area basin; providing construction; requiring
17 the department to adopt rules; providing requirements
18 for such rules; amending ss. 330.41, 373.414, and
19 373.461, F.S.; conforming cross-references; providing
20 an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 373.403, Florida Statutes, is reordered
25 and amended to read:

26 373.403 Definitions.—When appearing in this part or in any
27 rule, regulation, or order adopted pursuant thereto, the
28 following terms mean:

29 (4)~~(1)~~ "Dam" means any artificial or natural barrier, with

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

32 (2) "Appurtenant works" means any artificial improvements
33 to a dam which might affect the safety of such dam or, when
34 employed, might affect the holding capacity of such dam or of
35 the reservoir or impoundment created by such dam.

36 (10)~~(3)~~ "Impoundment" means any lake, reservoir, pond, or
37 other containment of surface water occupying a bed or depression
38 in the earth's surface and having a discernible shoreline.

39 (18)~~(4)~~ "Reservoir" means any artificial or natural holding
40 area which contains or will contain the water impounded by a
41 dam.

42 (23)~~(5)~~ "Works" means all artificial structures, including,
43 but not limited to, ditches, canals, conduits, channels,
44 culverts, pipes, and other construction that connects to, draws
45 water from, drains water into, or is placed in or across the
46 waters in the state.

47 (3)~~(6)~~ "Closed system" means any reservoir or works located
48 entirely within agricultural lands owned or controlled by the
49 user and which requires water only for the filling,
50 replenishing, and maintaining the water level thereof.

51 (1)~~(7)~~ "Alter" means to extend a dam or works beyond
52 maintenance in its original condition, including changes which
53 may increase or diminish the flow or storage of surface water
54 which may affect the safety of such dam or works.

55 (12)~~(8)~~ "Maintenance" or "repairs" means remedial work of a
56 nature as may affect the safety of any dam, impoundment,
57 reservoir, or appurtenant work or works, but excludes routine
58 custodial maintenance.

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59 (5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

60 (21)~~(10)~~ "Stormwater management system" means a system
61 ~~which is~~ designed and constructed or implemented to control
62 discharges ~~which are~~ necessitated by rainfall events,
63 incorporating methods to collect, convey, store, absorb,
64 inhibit, treat, use, or reuse water to prevent or reduce
65 flooding, overdrainage, environmental degradation, and water
66 pollution or otherwise affect the quantity and quality of
67 discharges from the system.

68 (20)~~(11)~~ "State water quality standards" means water
69 quality standards adopted pursuant to chapter 403.

70 (22)~~(12)~~ "Watershed" means the land area that ~~which~~
71 contributes to the flow of water into a receiving body of water.

72 (6)~~(13)~~ "Dredging" means excavation, by any means, in
73 surface waters or wetlands, as delineated in s. 373.421(1). The
74 term ~~It~~ also means the excavation, or creation, of a water body
75 which is, or is to be, connected to surface waters or wetlands,
76 as delineated in s. 373.421(1), directly or via an excavated
77 water body or series of water bodies.

78 (9)~~(14)~~ "Filling" means the deposition, by any means, of
79 materials in surface waters or wetlands, as delineated in s.
80 373.421(1).

81 (8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
82 coastal body of water that ~~which~~ has a free connection with the
83 open sea and within which seawater is measurably diluted with
84 fresh water derived from riverine systems.

85 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
86 depression that ~~which~~ is below mean high water and that ~~which~~
87 has permanent or ephemeral communications with the sea, but

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88 ~~which~~ is protected from the sea by some type of naturally
89 existing barrier.

90 (19)~~(17)~~ "Seawall" means a manmade wall or encroachment,
91 except riprap, which is made to break the force of waves and to
92 protect the shore from erosion.

93 (7)~~(18)~~ "Ecological value" means the value of functions
94 performed by uplands, wetlands, and other surface waters to the
95 abundance, diversity, and habitats of fish, wildlife, and listed
96 species. These functions include, but are not limited to,
97 providing cover and refuge; breeding, nesting, denning, and
98 nursery areas; corridors for wildlife movement; food chain
99 support; and natural water storage, natural flow attenuation,
100 and water quality improvement, which enhances fish, wildlife,
101 and listed species utilization.

102 (13)~~(19)~~ "Mitigation bank" means a project permitted under
103 s. 373.4136 which is undertaken to provide for the withdrawal of
104 mitigation credits to offset adverse impacts authorized by a
105 permit under this part.

106 (14)~~(20)~~ "Mitigation credit" means a standard unit of
107 measure which represents the increase in ecological value
108 resulting from restoration, enhancement, preservation, or
109 creation activities.

110 (15)~~(21)~~ "Mitigation service area" means the geographic
111 area within which mitigation credits from a mitigation bank may
112 be used to offset adverse impacts of activities regulated under
113 this part.

114 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
115 an area of land off the site of an activity permitted under this
116 part, where an applicant proposes to mitigate the adverse

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117 impacts of only the applicant's specific activity as a
118 requirement of the permit, which provides regional ecological
119 value, and which is not a mitigation bank permitted under s.
120 373.4136.

121 (17) "Proximity factor" means the variable measurement used
122 to determine the amount of wetland mitigation credits required
123 based on the location of the project site relative to the
124 wetland mitigation bank and its significance within the basin.

125 Section 2. Present subsections (7) through (11) of section
126 373.4136, Florida Statutes, are redesignated as subsections (8)
127 through (12), respectively, a new subsection (7) is added to
128 that section, and paragraph (d) of subsection (6) of that
129 section is amended, to read:

130 373.4136 Establishment and operation of mitigation banks.—

131 (6) MITIGATION SERVICE AREA.—The department or water
132 management district shall establish a mitigation service area
133 for each mitigation bank permit. The department or water
134 management district shall notify and consider comments received
135 on the proposed mitigation service area from each local
136 government within the proposed mitigation service area. Except
137 as provided herein, mitigation credits may be withdrawn and used
138 only to offset adverse impacts in the mitigation service area.
139 The boundaries of the mitigation service area shall depend upon
140 the geographic area where the mitigation bank could reasonably
141 be expected to offset adverse impacts. Mitigation service areas
142 may overlap, and mitigation service areas for two or more
143 mitigation banks may be approved for a regional watershed.

144 (d) If the requirements in s. 373.414(1)(b) and (8) are
145 met, the following projects or activities regulated under this

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146 part are ~~shall be~~ eligible to use a mitigation bank, regardless
147 of whether the projects or activities ~~they~~ are located within
148 the mitigation service area:

149 1. Projects with adverse impacts partially located within
150 the mitigation service area.

151 2. Linear projects, such as roadways, transmission lines,
152 distribution lines, pipelines, railways, or seaports listed in
153 s. 311.09(1).

154 3. Projects with total adverse impacts of less than 1 acre
155 in size.

156 4. Projects approved by the department or water management
157 district on a case-by-case basis if sufficient quantities of
158 mitigation credits are not available to be sold or used to
159 offset imminent and otherwise allowable adverse impacts within a
160 mitigation service area.

161 (7) MITIGATION CREDITS OUTSIDE THE PROJECT AREA BASIN.—

162 (a) If mitigation credits are not available within a
163 project area basin, the department or water management district
164 must allow the use of any mitigation credits available within a
165 mitigation bank in a surrounding basin. Mitigation credits are
166 deemed unavailable in a basin if the entity requesting the
167 wetland mitigation credits provides to the department or water
168 management district a signed letter by the mitigation bank
169 within the project area basin attesting that credits are not
170 available for the time period the credits would be used.

171 (b) In determining the amount of mitigation credits to be
172 awarded, the department or water management district must
173 evaluate the loss of environmental impacts and how best to
174 address such loss. The department or water management district

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175 must assess the likelihood for ecological success and
176 sustainability and the location of the mitigation banking site
177 relative to the project site and its significance within the
178 basin. The department or water management district may require a
179 mitigation credit ratio greater than 1 to 1 when necessary to
180 account for the distance between a mitigation service area and a
181 surrounding basin.

182 (c) The department and water management district must use a
183 proximity factor to determine how many additional credits may be
184 required for a project using mitigation credits from outside the
185 project area basin.

186 1. If the project site is outside of the mitigation bank
187 service area, but within a continuous basin, up to 1.5
188 mitigation credits may be required.

189 2. If the project site is outside of the mitigation bank
190 service area and located within the watershed, but not
191 contiguous to the basin of the project site, up to 2 mitigation
192 credits may be required.

193 3. For each additional basin away from the project site, an
194 additional 0.25 mitigation credits may be required.

195 4. The resulting proximity factor must be used to determine
196 the number of mitigation credits required by a functional
197 assessment to determine the total number of credits necessary
198 for wetland mitigation.

199 (d) The use of mitigation credits outside the basin may not
200 affect any United States Army Corps of Engineers credits and
201 consultation may be required regarding such use.

202 (e) The department shall adopt rules to implement this
203 section and shall publish a notice of the proposed rules

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204 pursuant to s. 120.54(3) (a) by September 1, 2024.

205 Section 3. Paragraph (a) of subsection (2) of section
206 330.41, Florida Statutes, is amended to read:

207 330.41 Unmanned Aircraft Systems Act.—

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

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

215 1. A power generation or transmission facility, substation,
216 switching station, or electrical control center.

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

218 3. A water intake structure, water treatment facility,
219 wastewater treatment plant, or pump station.

220 4. A mining facility.

221 5. A natural gas or compressed gas compressor station,
222 storage facility, or natural gas or compressed gas pipeline.

223 6. A liquid natural gas or propane gas terminal or storage
224 facility.

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

226 8. A refinery.

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

229 10. A wireless communications facility, including the
230 tower, antennae, support structures, and all associated ground-
231 based equipment.

232 11. A seaport as listed in s. 311.09(1), which need not be

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233 completely enclosed by a fence or other physical barrier and
234 need not be marked with a sign or signs indicating that entry is
235 forbidden.

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

239 13. An airport as defined in s. 330.27.

240 14. A spaceport territory as defined in s. 331.303(18).

241 15. A military installation as defined in 10 U.S.C. s.
242 2801(c)(4) and an armory as defined in s. 250.01.

243 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
244 structures, such as locks, floodgates, or dikes, which are
245 designed to maintain or control the level of navigable
246 waterways.

247 17. A state correctional institution as defined in s.
248 944.02 or a private correctional facility authorized under
249 chapter 957.

250 18. A secure detention center or facility as defined in s.
251 985.03, or a nonsecure residential facility, a high-risk
252 residential facility, or a maximum-risk residential facility as
253 those terms are described in s. 985.03(44).

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

255 20. A critical infrastructure facility as defined in s.
256 692.201.

257 Section 4. Paragraph (a) of subsection (8) of section
258 373.414, Florida Statutes, is amended to read:

259 373.414 Additional criteria for activities in surface
260 waters and wetlands.—

261 (8) (a) The governing board or the department, in deciding

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262 whether to grant or deny a permit for an activity regulated
263 under this part shall consider the cumulative impacts upon
264 surface water and wetlands, as delineated in s. 373.421(1),
265 within the same drainage basin as defined in s. 373.403 ~~s.~~
266 ~~373.403(9)~~, of:

- 267 1. The activity for which the permit is sought.
- 268 2. Projects which are existing or activities regulated
269 under this part which are under construction or projects for
270 which permits or determinations pursuant to s. 373.421 ~~or s.~~
271 ~~403.914~~ have been sought.
- 272 3. Activities which are under review, approved, or vested
273 pursuant to s. 380.06, or other activities regulated under this
274 part which may reasonably be expected to be located within
275 surface waters or wetlands, as delineated in s. 373.421(1), in
276 the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~,
277 based upon the comprehensive plans, adopted pursuant to chapter
278 163, of the local governments having jurisdiction over the
279 activities, or applicable land use restrictions and regulations.

280 Section 5. Paragraph (c) of subsection (2) of section
281 373.461, Florida Statutes, is amended to read:

282 373.461 Lake Apopka improvement and management.—

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

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

286 Section 6. This act shall take effect upon becoming a law.