

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Cross offered the following:

3
4 **Amendment to Amendment (169355) by Representative Duggan**

5 Remove lines 16-221 of the amendment and insert:
6 activity regulated under this part. All credit release requests
7 must be processed for approval or denial within 60 days of
8 receipt by the department or water management district.

9 (a) Twenty percent of awarded credits shall be released
10 for the recordation of the conservation easement and
11 establishment of financial assurances required by the mitigation
12 bank permit. If a preservation-only assessment area is used, 100
13 percent of awarded credits shall be released for the recordation
14 of the conservation easement and establishment of financial
15 assurances required by the mitigation bank permit ~~The department~~
16 ~~or the water management district shall allow a portion of the~~

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17 ~~mitigation credits awarded to a mitigation bank to be released~~
18 ~~for sale or use prior to meeting all of the performance criteria~~
19 ~~specified in the mitigation bank permit. The department or the~~
20 ~~water management district shall allow release of all of a~~
21 ~~mitigation bank's awarded mitigation credits only after the bank~~
22 ~~meets the mitigation success criteria specified in the permit.~~

23 (b) Thirty percent of awarded credits shall be released
24 following completion of initial construction activities as
25 established by the mitigation bank permit.

26 (c) Thirty percent of awarded credits shall be released in
27 increments as monitoring indicates interim performance criteria
28 established by the mitigation bank permit are being met.

29 (d) Twenty percent of awarded credits shall be released
30 upon meeting final success criteria established by the
31 mitigation bank permit ~~The number of credits and schedule for~~
32 ~~release shall be determined by the department or water~~
33 ~~management district based upon the performance criteria for the~~
34 ~~mitigation bank and the success criteria for each mitigation~~
35 ~~activity. The release schedule for a specific mitigation bank or~~
36 ~~phase thereof shall be related to the actions required to~~
37 ~~implement the bank, such as site protection, site preparation,~~
38 ~~earthwork, removal of wastes, planting, removal or control of~~
39 ~~nuisance and exotic species, installation of structures, and~~
40 ~~annual monitoring and management requirements for success. In~~
41 ~~determining the specific release schedule for a bank, the~~

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42 ~~department or water management district shall consider, at a~~
43 ~~minimum, the following factors:~~

44 ~~1. Whether the mitigation consists solely of preservation~~
45 ~~or includes other types of mitigation.~~

46 ~~2. The length of time anticipated to be required before a~~
47 ~~determination of success can be achieved.~~

48 ~~3. The ecological value to be gained from each action~~
49 ~~required to implement the bank.~~

50 ~~4. The financial expenditure required for each action to~~
51 ~~implement the bank.~~

52 (e) The mitigation bank applicant may propose an
53 alternative credit release schedule and the department or water
54 management district shall consider the proposed alternative
55 credit release schedule.

56 (f)~~(e)~~ Notwithstanding the provisions of this subsection,
57 a mitigation ~~no~~ credit may not shall be released for freshwater
58 wetland creation until the success criteria established ~~included~~
59 in the mitigation bank permit for initial construction
60 activities are met.

61 (g)~~(d)~~ The withdrawal of mitigation credits from a
62 mitigation bank shall be accomplished as a minor modification of
63 the mitigation bank permit. A processing fee is not shall not be
64 required by the department or water management district for this
65 minor modification.

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66 (6) MITIGATION SERVICE AREA.—The department or water
67 management district shall establish a mitigation service area
68 for each mitigation bank permit. The department or water
69 management district shall notify and consider comments received
70 on the proposed mitigation service area from each local
71 government within the proposed mitigation service area. Except
72 as provided in this section ~~herein~~, mitigation credits may be
73 withdrawn and used only to offset adverse impacts in the
74 mitigation service area. The boundaries of the mitigation
75 service area shall depend upon the geographic area where the
76 mitigation bank could reasonably be expected to offset adverse
77 impacts. Mitigation service areas may overlap, and mitigation
78 service areas for two or more mitigation banks may be approved
79 for a regional watershed.

80 (a) In determining the boundaries of the mitigation
81 service area, the department or the water management district
82 shall consider the characteristics, size, and location of the
83 mitigation bank and, at a minimum, the extent to which the
84 mitigation bank:

85 1. Contributes to a regional integrated ecological
86 network;

87 2. Will significantly enhance the water quality or
88 restoration of an offsite receiving water body that is
89 designated as an Outstanding Florida Water, a Wild and Scenic
90 River, an aquatic preserve, a water body designated in a plan

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91 approved pursuant to the Surface Water Improvement and
92 Management Act, or a nationally designated estuarine preserve;

93 3. Will provide for the long-term viability of endangered
94 or threatened species or species of special concern;

95 4. Is consistent with the objectives of a regional
96 management plan adopted or endorsed by the department or water
97 management districts; and

98 5. Can reasonably be expected to offset specific types of
99 wetland impacts within a specific geographic area. A mitigation
100 bank need not be able to offset all expected impacts within its
101 service area.

102 (b) The department and water management districts shall
103 use regional watersheds to guide the establishment of mitigation
104 service areas. Drainage basins established pursuant to s.
105 373.414(8) may be used as regional watersheds when they are
106 established based on the hydrological or ecological
107 characteristics of the basin. A mitigation service area may
108 extend beyond the regional watershed in which the bank is
109 located into all or part of other regional watersheds when the
110 mitigation bank has the ability to offset adverse impacts
111 outside that regional watershed. Similarly, a mitigation service
112 area may be smaller than the regional watershed in which the
113 mitigation bank is located when adverse impacts throughout the
114 regional watershed cannot reasonably be expected to be offset by

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115 the mitigation bank because of local ecological or hydrological
116 conditions.

117 (c) Once a mitigation bank service area has been
118 established by the department or a water management district for
119 a mitigation bank, such mitigation bank shall be deemed to
120 implement a plan that provides regional ecological value; such
121 service area shall be accepted by all water management
122 districts, local governments, and the department; and the use of
123 credits from such mitigation bank to offset impacts within that
124 bank's service area shall be considered to have met the
125 cumulative impact requirements of s. 373.414(8) (a).

126 (d) If the requirements in s. 373.414(1)(b) and (8) are
127 met, the following projects or activities regulated under this
128 part shall be eligible to use credits released from a mitigation
129 bank to offset impacts resulting from such projects or
130 activities a mitigation bank, regardless of whether they are
131 located within the mitigation service area:

132 1. Projects with adverse impacts partially located within
133 the mitigation service area.

134 2. Linear projects, such as roadways, transmission lines,
135 distribution lines, pipelines, railways, or seaports listed in
136 s. 311.09(1).

137 3. Projects with total adverse impacts of less than 1 acre
138 in size.

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139 4. Projects that meet the requirements of s. 373.414(1)(b)
140 and the criteria in paragraphs (e)-(g).

141 (e) If the requirements of s. 373.414(1)(a) are met and an
142 insufficient number of credits from banks whose permitted
143 service area overlays in whole or in part the regional watershed
144 in which the impacts occur, and all the available credits within
145 overlapping service areas have been exhausted, the project
146 applicant is entitled to a one-time use of credits released from
147 a mitigation bank outside the mitigation bank service area to
148 offset impacts pursuant to s. 373.414(1)(b), as established by
149 the procedure in paragraph (g), and upon verification by the
150 department or water management district that mitigation banks
151 within the regional watershed in which the adverse impacts are
152 located lack the appropriate credit type to offset impacts
153 associated with the proposed project. If the number of released
154 credits within a mitigation service area only partially offset
155 the impacts associated with a proposed project in the mitigation
156 service area, the permit applicant may only use out-of-service-
157 area credits to account for the difference between the released
158 credits available in the mitigation bank service area and the
159 credits required to offset the impacts associated with the
160 proposed project once all the mitigation credits within a
161 service area have been exhausted. In implementing this
162 subsection, the department and water management districts shall

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163 apply a proximity factor to determine adequate compensatory
164 mitigation as follows:

165 1. A 1.0 multiplier shall be applied for use of in-kind
166 credits within any regional watershed overlain in whole or in
167 part by the service area.

168 2. A 1.2 multiplier shall be applied for use of in-kind
169 and out-of-service-area credits when the service area overlays
170 part of the same regional watershed as the proposed impacts.

171 3. A 1.5 multiplier shall be applied for use of in-kind
172 and out-of-service-area credits located within a regional
173 watershed immediately adjacent to the boundary of the permitted
174 service area of the credit-deficient bank which is located
175 within the regional watershed in which proposed impacts are
176 located.

177 4. When in-kind credits are not available to offset
178 impacts in the regional watershed immediately adjacent to the
179 boundary of the permitted service area of the credit-deficient
180 bank which is located within the regional watershed in which the
181 proposed impacts are located, as established by the procedure in
182 paragraph (g), an additional 0.5 multiplier shall be applied for
183 each additional regional watershed boundary crossed.

184 5. An additional 0.75 multiplier shall be applied after
185 any multipliers required in subparagraphs 1., 2., 3., and 4., if
186 the mitigation used to offset impacts entails out-of-kind

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187 replacement which does not replace the same type of freshwater
188 wetland or fresh surface water impacted.

189 (f) Use of the multipliers in subparagraphs (e)2.-4. meets
190 the requirements of s. 373.414(8) (a) for addressing cumulative
191 impacts.

192 (g) Once a permit applicant's UMAM scores for the impact
193 permit are finalized and a mitigation plan is determined to be
194 complete by the department or district, a permit applicant may
195 request to use out-of-service-area or out-of-kind credits. At
196 that time, the department or water management district shall
197 contact all mitigation banks with a mitigation service area
198 encompassing the location of the proposed impacts within 15
199 business days after receipt of the request from the permit
200 applicant and request an accounting of available credits. The
201 accounting may not include credits reserved for other permit
202 applicants. The mitigation banks contacted by the department or
203 water management district shall be allowed 15 business days
204 after receipt of the request by the department or water
205 management district. If a mitigation bank does not reply within
206 the 15 business day timeframe, it is presumed credits are not
207 available. Upon receipt of the accounting from the mitigation
208 banks, the department or water management district shall
209 determine if sufficient credits are available to offset impacts
210 associated with the proposed project and notify the permit
211 applicant of such determination within 15 business days. The

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212 permit applicant, and no other entity, may rely on the
213 determination from the department or water management district
214 for a period of 6 months beginning on the date the department or
215 water management district notifies the permit applicant of such
216 determination, but only for purposes relating to the pending
217 application producing such determination and not any extensions,
218 nor renewals, nor modifications of any permit issued pursuant to
219 that pending application, nor for any other permit application.
220 A mitigation plan is considered final once the environmental
221 resource permit is issued outlining mitigation in the special
222 conditions section of the applicant's permit. Should the
223 mitigation plan not be implemented (credits transferred on the
224 mitigation bank ledger) prior to the expiration of the impact
225 permit, then the out-of-service area mitigation approval is
226 forfeited.