

1 A bill to be entitled
2 An act relating to mitigation banks; amending s.
3 373.4136, F.S.; revising provisions for the release
4 and use of mitigation bank credits; providing
5 conditions for the use of out-of-service-area
6 mitigation credits by project applicants; providing a
7 methodology for determining the award of such credits;
8 requiring mitigation banks to submit specified annual
9 reports to the Department of Environmental Protection
10 or water management district; requiring the department
11 or water management district to submit specified
12 annual reports to the Legislature; amending s. 704.06,
13 F.S.; requiring certain water management districts,
14 upon application by the owner of a parcel subject to a
15 conservation easement, to release the conservation
16 easement if specified conditions are met, including
17 obtaining sufficient mitigation credits from a
18 mitigation bank; providing for the valuation of the
19 property upon such release; specifying that land
20 released from the conservation easement may be used
21 for development consistent with certain zoning;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 **Section 1. Subsections (5) and (6) of section 373.4136,**
 27 **Florida Statutes, are amended to read:**

28 373.4136 Establishment and operation of mitigation banks.—

29 (5) SCHEDULE FOR CREDIT RELEASE.—After issuing ~~awarding~~
 30 ~~mitigation credits to~~ a mitigation bank permit, the department
 31 or the water management district shall adhere to the credit
 32 release schedule set forth in this subsection ~~a schedule~~ for the
 33 release of ~~those~~ credits awarded by ~~in~~ the mitigation bank
 34 permit. A mitigation credit that has been released may be sold
 35 or used to offset adverse impacts from an activity regulated
 36 under this part.

37 (a) Thirty percent of awarded credits shall be released
 38 for the recording of the conservation easement and establishment
 39 of financial assurances required by the mitigation bank permit.
 40 If a preservation-only bank is used, 100 percent of awarded
 41 credits shall be released for the recording of the conservation
 42 easement and establishment of financial assurances required by
 43 the mitigation bank permit ~~The department or the water~~
 44 ~~management district shall allow a portion of the mitigation~~
 45 ~~credits awarded to a mitigation bank to be released for sale or~~
 46 ~~use prior to meeting all of the performance criteria specified~~
 47 ~~in the mitigation bank permit. The department or the water~~
 48 ~~management district shall allow release of all of a mitigation~~
 49 ~~bank's awarded mitigation credits only after the bank meets the~~
 50 ~~mitigation success criteria specified in the permit.~~

51 (b) Thirty percent of awarded credits shall be released
52 following completion of initial construction activities as
53 established by the mitigation bank permit ~~The number of credits~~
54 ~~and schedule for release shall be determined by the department~~
55 ~~or water management district based upon the performance criteria~~
56 ~~for the mitigation bank and the success criteria for each~~
57 ~~mitigation activity. The release schedule for a specific~~
58 ~~mitigation bank or phase thereof shall be related to the actions~~
59 ~~required to implement the bank, such as site protection, site~~
60 ~~preparation, earthwork, removal of wastes, planting, removal or~~
61 ~~control of nuisance and exotic species, installation of~~
62 ~~structures, and annual monitoring and management requirements~~
63 ~~for success. In determining the specific release schedule for a~~
64 ~~bank, the department or water management district shall~~
65 ~~consider, at a minimum, the following factors:~~

66 1. ~~Whether the mitigation consists solely of preservation~~
67 ~~or includes other types of mitigation.~~

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

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

72 4. ~~The financial expenditure required for each action to~~
73 ~~implement the bank.~~

74 (c) Twenty percent of awarded credits shall be released in
75 increments as monitoring indicates interim performance criteria

76 established by the mitigation bank permit are being met.

77 (d) Twenty percent of awarded credits shall be released
78 upon meeting final success criteria established by the
79 mitigation bank permit.

80 (e)~~(e)~~ Notwithstanding ~~the provisions of~~ this subsection,
81 a mitigation ~~no~~ credit may not ~~shall~~ be released for freshwater
82 wetland creation until the success criteria established ~~included~~
83 in the mitigation bank permit for initial construction
84 activities are met.

85 (f)~~(d)~~ The withdrawal of mitigation credits from a
86 mitigation bank shall be accomplished as a minor modification of
87 the mitigation bank permit. A processing fee is not ~~shall not be~~
88 required by the department or water management district for this
89 minor modification.

90 (6) MITIGATION SERVICE AREA.—The department or water
91 management district shall establish a mitigation service area
92 for each mitigation bank permit. The department or water
93 management district shall notify and consider comments received
94 on the proposed mitigation service area from each local
95 government within the proposed mitigation service area. Except
96 as provided in this section ~~herein~~, mitigation credits may be
97 withdrawn and used only to offset adverse impacts in the
98 mitigation service area. The boundaries of the mitigation
99 service area shall depend upon the geographic area where the
100 mitigation bank could reasonably be expected to offset adverse

101 impacts. Mitigation service areas may overlap, and mitigation
102 service areas for two or more mitigation banks may be approved
103 for a regional watershed.

104 (a) In determining the boundaries of the mitigation
105 service area, the department or the water management district
106 shall consider the characteristics, size, and location of the
107 mitigation bank and, at a minimum, the extent to which the
108 mitigation bank:

109 1. Contributes to a regional integrated ecological
110 network;

111 2. Will significantly enhance the water quality or
112 restoration of an offsite receiving water body that is
113 designated as an Outstanding Florida Water, a Wild and Scenic
114 River, an aquatic preserve, a water body designated in a plan
115 approved pursuant to the Surface Water Improvement and
116 Management Act, or a nationally designated estuarine preserve;

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

119 4. Is consistent with the objectives of a regional
120 management plan adopted or endorsed by the department or water
121 management districts; and

122 5. Can reasonably be expected to offset specific types of
123 wetland impacts within a specific geographic area. A mitigation
124 bank need not be able to offset all expected impacts within its
125 service area.

126 (b) The department and water management districts shall
127 use regional watersheds to guide the establishment of mitigation
128 service areas. Drainage basins established pursuant to s.
129 373.414(8) may be used as regional watersheds when they are
130 established based on the hydrological or ecological
131 characteristics of the basin. A mitigation service area may
132 extend beyond the regional watershed in which the bank is
133 located into all or part of other regional watersheds when the
134 mitigation bank has the ability to offset adverse impacts
135 outside that regional watershed. Similarly, a mitigation service
136 area may be smaller than the regional watershed in which the
137 mitigation bank is located when adverse impacts throughout the
138 regional watershed cannot reasonably be expected to be offset by
139 the mitigation bank because of local ecological or hydrological
140 conditions.

141 (c) Once a mitigation bank service area has been
142 established by the department or a water management district for
143 a mitigation bank, such service area shall be accepted by all
144 water management districts, local governments, and the
145 department and shall be considered to have met the cumulative
146 impact requirements of s. 373.414(8)(a) for impacts permitted
147 within any regional watershed included in the mitigation bank
148 service area.

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

151 part shall be eligible to use credits released from a mitigation
152 bank to offset impacts resulting from such projects or
153 activities a mitigation bank, regardless of whether they are
154 located within the mitigation service area:

155 1. Projects with adverse impacts partially located within
156 the mitigation service area.

157 2. Linear projects, such as roadways, transmission lines,
158 distribution lines, pipelines, railways, or seaports listed in
159 s. 311.09(1).

160 3. Projects with total adverse impacts of less than 1 acre
161 in size.

162 4. Projects that meet the requirements of s. 373.414(1)(b)
163 and the criteria in paragraphs (e), (f), and (g).

164 (e) If the requirements of s. 373.414(1)(a) are met and an
165 insufficient number or type of credits have been released within
166 the mitigation bank service area in which the impacts associated
167 with a proposed project are located, the project applicant is
168 entitled to a one-time use of credits released from a mitigation
169 bank outside the mitigation bank service area to offset impacts
170 pursuant to s. 373.414(1)(b), as established by the procedure in
171 paragraph (h), and upon verification by the department or water
172 management district that mitigation banks within the regional
173 watershed in which the adverse impacts are located lack the
174 appropriate credit type to offset impacts associated with the
175 proposed project. If the number of released credits within a

176 mitigation service area only partially offset the impacts
177 associated with a proposed project in the mitigation service
178 area, the project applicant may use out-of-service-area credits
179 to account for the difference between the released credits
180 available in the mitigation bank service area and the credits
181 required to offset the impacts associated with the proposed
182 project. In implementing this subsection, the department and
183 water management districts shall apply a proximity factor to
184 determine adequate compensatory mitigation as follows:

185 1. A multiplier may not be applied for use of out-of-
186 service-area credits located within the same regional watershed
187 as the proposed impacts.

188 2. A 1.2 multiplier shall be applied for use of out-of-
189 service-area credits located within a regional watershed
190 immediately adjacent to the regional watershed in which proposed
191 impacts are located.

192 3. When credits are not available in the regional
193 watershed immediately adjacent to the regional watershed in
194 which the proposed impacts are located, an additional 0.25
195 multiplier shall be applied for each additional regional
196 watershed located outside the regional watershed immediately
197 adjacent to the regional watershed in which the proposed impacts
198 are located.

199 4. An additional 0.50 multiplier shall be applied if the
200 mitigation used to offset impacts entails out-of-kind

201 replacement.

202 (f) Use of the multipliers in paragraph (e) must meet the
203 cumulative impact requirements of s. 373.414(8)(a).

204 (g) Once a project applicant requests to use out-of-
205 service-area credits, the department or water management
206 district shall contact all mitigation banks within a mitigation
207 service area encompassing the location of the proposed impacts
208 within 3 business days after receipt of the request from the
209 project applicant and request an accounting of available
210 credits. The accounting may not include credits reserved for
211 other project applicants. The mitigation banks contacted by the
212 department or water management district shall provide the
213 accounting within 5 business days after receipt of the request
214 by the department or water management district. Upon receipt of
215 the accounting from the mitigation banks, the department or
216 water management district shall determine if sufficient credits
217 are available to offset impacts associated with the proposed
218 project and notify the project applicant of such determination.
219 The project applicant may rely on the determination from the
220 department or water management district for a period of 1 year
221 after such determination.

222 (h) Beginning July 1, 2026, and each July 1 thereafter,
223 each mitigation bank in this state shall submit to the
224 department or water management district a report with an
225 accounting of the number and type of credits the mitigation has

226 available for sale. The report may not include names of parties
227 for which credits have been reserved or the contract price paid
228 for the credits. The department or water management district
229 shall compile the annual reports to provide an assessment of
230 this state's mitigation banking system and submit a report to
231 the President of the Senate and the Speaker of the House of
232 Representatives on October 1, 2026, and each October 1
233 thereafter.

234 **Section 2. Subsection (14) is added to section 704.06,**
235 **Florida Statutes, to read:**

236 704.06 Conservation easements; creation; acquisition;
237 enforcement.—

238 (14) (a) Upon application by the fee simple owner of a
239 parcel of land subject to a conservation easement to a water
240 management district, a water management district shall release
241 the conservation easement if the following conditions are met:

242 1. The land subject to the easement is less than 15 acres
243 and is bordered on three or more sides by impervious surfaces;

244 2. Any undeveloped adjacent parcels of land are less than
245 15 acres and similarly bordered on three or more sides by
246 impervious surfaces;

247 3. The land contains no historical, architectural,
248 archeological, or cultural significance; and

249 4. Prior to the release of the conservation easement, the
250 applicant must have secured sufficient mitigation credits using

251 the uniform mitigation assessment method from a mitigation bank
252 located in this state to offset the loss of wetlands located on
253 the land subject to the conservation easement.

254 (b) Upon the water management district's release of the
255 conservation easement, the ad valorem taxes on the property
256 shall be based on the just value of the property, and the
257 property may be used for development consistent with the zoning
258 designation of the adjacent lands.

259 **Section 3.** This act shall take effect July 1, 2025.