



463698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/22/2025	.	
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The Committee on Rules (McClain) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

373.4136 Establishment and operation of mitigation banks.—

(5) SCHEDULE FOR CREDIT RELEASE.—After July 1, 2025, when  
issuing ~~awarding mitigation credits to~~ a mitigation bank permit,  
the department or the water management district shall adhere to  
the credit release schedule set forth in paragraph (a) a



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12 ~~schedule~~ for the release of ~~these~~ credits awarded by ~~in~~ the  
13 mitigation bank permit. A mitigation credit that has been  
14 released may be sold or used to offset adverse impacts from an  
15 activity regulated under this part.

16 (a) 1. Thirty percent of awarded credits shall be released  
17 upon the recordation of the conservation easement and  
18 establishment of financial assurances required by the mitigation  
19 bank permit. If a preservation-only assessment area is used, 100  
20 percent of awarded credits shall be released for the recordation  
21 of the conservation easement and establishment of financial  
22 assurances required by the mitigation bank permit. The  
23 ~~department or the water management district shall allow a~~  
24 ~~portion of the mitigation credits awarded to a mitigation bank~~  
25 ~~to be released for sale or use prior to meeting all of the~~  
26 ~~performance criteria specified in the mitigation bank permit.~~  
27 ~~The department or the water management district shall allow~~  
28 ~~release of all of a mitigation bank's awarded mitigation credits~~  
29 ~~only after the bank meets the mitigation success criteria~~  
30 ~~specified in the permit.~~

31 2. (b) Thirty percent of awarded credits shall be released  
32 following completion of initial construction activities as  
33 established by the mitigation bank permit.

34 3. Twenty percent of awarded credits shall be released in  
35 increments as monitoring indicates interim performance criteria  
36 established by the mitigation bank permit are being met.

37 4. Twenty percent of awarded credits shall be released upon  
38 meeting final success criteria established by the mitigation  
39 bank permit ~~The number of credits and schedule for release shall~~  
40 ~~be determined by the department or water management district~~



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41 ~~based upon the performance criteria for the mitigation bank and~~  
42 ~~the success criteria for each mitigation activity. The release~~  
43 ~~schedule for a specific mitigation bank or phase thereof shall~~  
44 ~~be related to the actions required to implement the bank, such~~  
45 ~~as site protection, site preparation, earthwork, removal of~~  
46 ~~wastes, planting, removal or control of nuisance and exotic~~  
47 ~~species, installation of structures, and annual monitoring and~~  
48 ~~management requirements for success. In determining the specific~~  
49 ~~release schedule for a bank, the department or water management~~  
50 ~~district shall consider, at a minimum, the following factors:~~

51 ~~1. Whether the mitigation consists solely of preservation~~  
52 ~~or includes other types of mitigation.~~

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

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

57 ~~4. The financial expenditure required for each action to~~  
58 ~~implement the bank.~~

59 (b) The mitigation bank applicant may propose an  
60 alternative credit release schedule and the department or water  
61 management district shall consider the proposed alternative  
62 credit release schedule.

63 (c) Upon request by a mitigation bank permittee for  
64 modification of the credit release schedule of a permitted  
65 mitigation bank, the department or relevant water management  
66 district shall modify the credit release schedule to conform it  
67 to paragraph (a) if such permitted mitigation bank has not yet  
68 had mitigation credits released for the completion of  
69 construction activities. The department or water management



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70 district may not alter, change, or modify any other provision of  
71 the mitigation bank permit unrelated to the credit release  
72 schedule.

73 (d)(e) Notwithstanding ~~the provisions of~~ this subsection, a  
74 mitigation ~~ne~~ credit may not shall be released for freshwater  
75 wetland creation until the success criteria established included  
76 in the mitigation bank permit for initial construction  
77 activities are met.

78 (e)(d) The withdrawal of mitigation credits from a  
79 mitigation bank shall be accomplished as a minor modification of  
80 the mitigation bank permit. A processing fee is not shall not be  
81 required by the department or water management district for this  
82 minor modification.

83 (6) MITIGATION SERVICE AREA.—The department or water  
84 management district shall establish a mitigation service area  
85 for each mitigation bank permit. The department or water  
86 management district shall notify and consider comments received  
87 on the proposed mitigation service area from each local  
88 government within the proposed mitigation service area. Except  
89 as provided in this section herein, mitigation credits may be  
90 withdrawn and used only to offset adverse impacts in the  
91 mitigation service area. The boundaries of the mitigation  
92 service area shall depend upon the geographic area where the  
93 mitigation bank could reasonably be expected to offset adverse  
94 impacts. Mitigation service areas may overlap, and mitigation  
95 service areas for two or more mitigation banks may be approved  
96 for a regional watershed.

97 (a) In determining the boundaries of the mitigation service  
98 area, the department or the water management district shall



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99 consider the characteristics, size, and location of the  
100 mitigation bank and, at a minimum, the extent to which the  
101 mitigation bank:

102 1. Contributes to a regional integrated ecological network;

103 2. Will significantly enhance the water quality or  
104 restoration of an offsite receiving water body that is  
105 designated as an Outstanding Florida Water, a Wild and Scenic  
106 River, an aquatic preserve, a water body designated in a plan  
107 approved pursuant to the Surface Water Improvement and  
108 Management Act, or a nationally designated estuarine preserve;

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

111 4. Is consistent with the objectives of a regional  
112 management plan adopted or endorsed by the department or water  
113 management districts; and

114 5. Can reasonably be expected to offset specific types of  
115 wetland impacts within a specific geographic area. A mitigation  
116 bank need not be able to offset all expected impacts within its  
117 service area.

118 (b) The department and water management districts shall use  
119 regional watersheds to guide the establishment of mitigation  
120 service areas. Drainage basins established pursuant to s.  
121 373.414(8) may be used as regional watersheds when they are  
122 established based on the hydrological or ecological  
123 characteristics of the basin. A mitigation service area may  
124 extend beyond the regional watershed in which the bank is  
125 located into all or part of other regional watersheds when the  
126 mitigation bank has the ability to offset adverse impacts  
127 outside that regional watershed. Similarly, a mitigation service



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128 area may be smaller than the regional watershed in which the  
129 mitigation bank is located when adverse impacts throughout the  
130 regional watershed cannot reasonably be expected to be offset by  
131 the mitigation bank because of local ecological or hydrological  
132 conditions.

133 (c) Once a mitigation bank service area has been  
134 established by the department or a water management district for  
135 a mitigation bank, such mitigation bank shall be deemed to  
136 implement a plan that provides regional ecological value; such  
137 service area shall be accepted by all water management  
138 districts, local governments, and the department; and the use of  
139 credits from such mitigation bank to offset impacts within that  
140 bank's service area shall be considered to have met the  
141 cumulative impact requirements of s. 373.414(8) (a).

142 (d) If the ~~requirements in provisions of~~ s. 373.414(1) (b)  
143 and (8) are met, ~~the following projects or activities regulated~~  
144 ~~under this part shall be eligible to use a mitigation bank,~~  
145 ~~regardless of whether they are located within the mitigation~~  
146 ~~service area:~~

147 1. ~~Projects with adverse impacts partially located within~~  
148 ~~the mitigation service area.~~

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

152 3. ~~Projects with total adverse impacts of less than 1 acre~~  
153 ~~in size. and an insufficient number or type of credits from~~  
154 ~~banks whose permitted service area overlays in whole or in part~~  
155 ~~the regional watershed in which the impacts occur, the permit~~  
156 ~~applicant is entitled to a one-time use of credits released from~~



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157 a mitigation bank outside the mitigation bank service area to  
158 offset impacts pursuant to s. 373.414(1)(b), as established by  
159 the procedure in paragraph (f). The department or water  
160 management district must have determined that the mitigation  
161 service area lacked the appropriate credit type and the  
162 implementation of permittee-responsible mitigation was not  
163 sufficient offset impacts associated with the proposed project.  
164 Priority must be given to mitigation banks whose permitted  
165 service area fully includes the impacted site. If the number of  
166 released credits within a mitigation service area only partially  
167 offsets the impacts associated with a proposed project in the  
168 mitigation service area, the permit applicant may only use out-  
169 of-service-area credits to account for the difference between  
170 the released credits available in the mitigation bank service  
171 area and the credits required to offset the impacts associated  
172 with the proposed project. In implementing this subsection, the  
173 department and water management districts shall apply a  
174 proximity factor to determine adequate compensatory mitigation  
175 as follows:

176 1. A 1.0 multiplier shall be applied for use of in-kind  
177 credits within the service area.

178 2. A 1.0 multiplier shall be applied for use of in-kind and  
179 out-of-service-area credits when the service area overlays part  
180 of the same regional watershed as the proposed impacts only  
181 after credit-deficiency has been established by the procedure  
182 set forth in paragraph (f).

183 3. A 1.2 multiplier shall be applied for use of in-kind and  
184 out-of-service-area credits located within a regional watershed  
185 immediately adjacent to the regional watershed overlain by a



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186 bank service area in which proposed impacts are located only  
187 after credit-deficiency has been established by the procedure  
188 set forth in paragraph (f).

189 4. When in-kind credits are not available to offset impacts  
190 in the regional watershed immediately adjacent to the regional  
191 watershed overlain by a mitigation bank service area in which  
192 the proposed impacts are located, an additional 0.25 multiplier  
193 shall be applied for each additional regional watershed boundary  
194 crossed only after credit-deficiency has been established by the  
195 procedure set forth in paragraph (f).

196 5. An additional 0.50 multiplier shall be applied after any  
197 multipliers required in subparagraphs 1.-4., if the mitigation  
198 used to offset impacts entails out-of-kind replacement.

199 (e) Use of the multipliers in subparagraphs (d)2., 3., 4.,  
200 and 5. meets the requirements of s. 373.414(8)(a) for addressing  
201 cumulative impacts.

202 (f) Once the amount of mitigation required to offset  
203 impacts has been determined, and the department or water  
204 management district determines that out-of-service-area or out-  
205 of-kind mitigation is necessary, the department or water  
206 management district shall contact all mitigation banks with a  
207 mitigation service area encompassing the location of the  
208 proposed impacts within 7 business days after receipt of the  
209 request from the permit applicant and request an accounting of  
210 available credits, including out-of-kind credits. The accounting  
211 may not include credits reserved for other permit applicants.  
212 The mitigation banks contacted by the department or water  
213 management district shall be allowed 15 business days after  
214 receipt of the request by the department or water management





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215 district to reply to such request. If one or more mitigation  
216 banks replying to the request notifies the department or the  
217 water management district that out-of-kind credits are available  
218 to offset the proposed impact and the department or a water  
219 management district determines that such out-of-kind credits are  
220 appropriate to offset all or part of the proposed impact, the  
221 department or the water management district shall notify the  
222 permit applicant that sufficient credits are available within  
223 that bank's service area to offset the proposed impacts and the  
224 use of credits from another mitigation bank outside of that  
225 other mitigation bank's service area may not occur until use of  
226 all of the out-of-kind credits occurs as allowed by the  
227 department or water management district. If a mitigation bank  
228 does not reply within the 15 business day timeframe, it is  
229 presumed credits from that bank are not available. Upon receipt  
230 of the accounting from the mitigation banks, the department or  
231 water management district shall determine if sufficient credits  
232 are available to offset impacts associated with the proposed  
233 project and notify the permit applicant of such determination  
234 within 15 business days. The permit applicant, and no other  
235 entity, may rely on the determination from the department or  
236 water management district for a period of six months beginning  
237 on the date the department or water management district notifies  
238 the permit applicant of such determination, but only for  
239 purposes relating to the pending application producing such  
240 determination and not any extensions, nor renewals, nor  
241 modifications of any permit issued pursuant to that pending  
242 application, nor for any other permit application.

243 (g) Beginning July 1, 2026, and each July 1 thereafter,



244 each mitigation bank in this state shall submit to the  
245 department or water management district an accounting of the  
246 number and type of credits the mitigation bank has available for  
247 sale. The accounting may not include names of parties for which  
248 credits have been reserved or the contract price paid for the  
249 credits. The department or water management district shall  
250 compile the information to provide an assessment of this state's  
251 mitigation banking system and submit a report to the President  
252 of the Senate and the Speaker of the House of Representatives on  
253 October 1, 2026, and each October 1 thereafter.

254 Section 2. This act shall take effect July 1, 2025.

255  
256 ===== T I T L E A M E N D M E N T =====

257 And the title is amended as follows:

258 Delete everything before the enacting clause  
259 and insert:

260 A bill to be entitled  
261 An act relating to land development; amending s.  
262 373.4136, F.S.; beginning on a specified date,  
263 revising the schedule for credit release upon issuance  
264 of a mitigation bank credit permit; providing  
265 specifications for such schedule; authorizing a  
266 mitigation bank applicant to propose an alternative  
267 credit release schedule; requiring the department or  
268 water management district to modify an existing  
269 permitted credit release schedule upon the request  
270 under certain circumstances; prohibiting mitigation  
271 credits from being released for freshwater wetland  
272 creation until certain conditions are met; authorizing



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273 one-time use of mitigation credits outside the  
274 mitigation bank service area in certain circumstances;  
275 requiring the department and water management  
276 districts to apply a proximity factor multipliers in a  
277 specified manner; specifying that the use of certain  
278 multipliers meets certain requirements; requiring the  
279 department or water management district to request an  
280 accounting of credit availability from mitigation  
281 banks within a specified timeframe; specifying the  
282 timeframe to reply to such request; requiring the  
283 permit applicant to be notified of credits available;  
284 providing a presumption if a mitigation bank does not  
285 respond within a certain timeframe; limiting the  
286 timeframe for permit applicant to rely on a credit  
287 availability determination for specified purposes;  
288 requiring each mitigation banks to submit an  
289 accounting of credits; requiring the department or  
290 water management district to compile such accountings  
291 for a specified purpose and to submit a report  
292 including certain information to the Legislature on a  
293 specified date and annually thereafter; providing an  
294 effective date.