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LEGISLATIVE ACTION

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

Senate Substitute for Amendment (145310) (with title amendment)

Delete lines 70 - 313
and insert:
the credit release schedule set forth in paragraph (a) a
schedule for the release of ~~these~~ credits awarded by ~~in~~ the
mitigation bank permit. A mitigation credit that has been
released may be sold or used to offset adverse impacts from an
activity regulated under this part.

(a) 1. Thirty percent of awarded credits shall be released



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upon the recordation of the conservation easement and establishment of financial assurances required by the mitigation bank permit. If a preservation-only assessment area is used, 100 percent of awarded credits shall be released for the recordation of the conservation easement and establishment of financial assurances required by the mitigation bank permit. ~~The department or the water management district shall allow a portion of the mitigation credits awarded to a mitigation bank to be released for sale or use prior to meeting all of the performance criteria specified in the mitigation bank permit. The department or the water management district shall allow release of all of a mitigation bank's awarded mitigation credits only after the bank meets the mitigation success criteria specified in the permit.~~

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

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

4. Twenty percent of awarded credits shall be released upon meeting final success criteria established by the mitigation bank permit ~~The number of credits and schedule for release shall be determined by the department or water management district based upon the performance criteria for the mitigation bank and the success criteria for each mitigation activity. The release schedule for a specific mitigation bank or phase thereof shall be related to the actions required to implement the bank, such as site protection, site preparation, earthwork, removal of~~



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~~wastes, planting, removal or control of nuisance and exotic species, installation of structures, and annual monitoring and management requirements for success. In determining the specific release schedule for a bank, the department or water management district shall consider, at a minimum, the following factors:~~

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

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

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

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

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

(c) Upon request by a mitigation bank permittee for modification of the credit release schedule of a permitted mitigation bank, the department or relevant water management district shall modify the credit release schedule to conform it to paragraph (a) if such permitted mitigation bank has not yet had mitigation credits released for the completion of construction activities. The department or water management district may not alter, change, or modify any other provision of the mitigation bank permit unrelated to the credit release schedule.

(d)~~(e)~~ Notwithstanding the provisions of this subsection, a mitigation credit may not ~~shall~~ be released for freshwater



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wetland creation until the success criteria established ~~included~~
in the mitigation bank permit for initial construction
activities are met.

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

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

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

1. Contributes to a regional integrated ecological network;
2. Will significantly enhance the water quality or



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restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan approved pursuant to the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve;

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

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

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

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



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

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

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

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

~~3. Projects with total adverse impacts of less than 1 acre in size.~~ and an insufficient number or type of credits from banks whose permitted service area overlays in whole or in part the regional watershed in which the impacts occur, the permit applicant is entitled to a one-time use of credits released from a mitigation bank outside the mitigation bank service area to offset impacts pursuant to s. 373.414(1)(b), as established by the procedure in paragraph (f). The department or water management district must have determined that the mitigation service area lacked the appropriate credit type and the



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implementation of permittee-responsible mitigation was not
sufficient offset impacts associated with the proposed project.
Priority must be given to mitigation banks whose permitted
service area fully includes the impacted site. If the number of
released credits within a mitigation service area only partially
offsets the impacts associated with a proposed project in the
mitigation service area, the permit applicant may only use out-
of-service-area credits to account for the difference between
the released credits available in the mitigation bank service
area and the credits required to offset the impacts associated
with the proposed project. In implementing this subsection, the
department and water management districts shall apply a
proximity factor to determine adequate compensatory mitigation
as follows:

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

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

3. A 1.2 multiplier shall be applied for use of in-kind and
out-of-service-area credits located within a regional watershed
immediately adjacent to the regional watershed overlain by a
bank service area in which proposed impacts are located only
after credit-deficiency has been established by the procedure
set forth in paragraph (f).

4. When in-kind credits are not available to offset impacts
in the regional watershed immediately adjacent to the regional



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watershed overlain by a mitigation bank service area in which the proposed impacts are located, an additional 0.25 multiplier shall be applied for each additional regional watershed boundary crossed only after credit-deficiency has been established by the procedure set forth in paragraph (f).

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

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

(f) Once the amount of mitigation required to offset impacts has been determined, and the department or water management district determines that out-of-service-area or out-of-kind mitigation is necessary , the department or water management district shall contact all mitigation banks with a mitigation service area encompassing the location of the proposed impacts within 7 business days after receipt of the request from the permit applicant and request an accounting of available credits, including out-of-kind credits. The accounting may not include credits reserved for other permit applicants. The mitigation banks contacted by the department or water management district shall be allowed 15 business days after receipt of the request by the department or water management district to reply to such request. If one or more mitigation banks replying to the request notifies the department or the water management district that out-of-kind credits are available to offset the proposed impact and the department or a water management district determines that such out-of-kind credits are



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appropriate to offset all or part of the proposed impact, the
department or the water management district shall notify the
permit applicant that sufficient credits are available within
that bank's service area to offset the proposed impacts and the
use of credits from another mitigation bank outside of that
other mitigation bank's service area may not occur until use of
all of the out-of-kind credits occurs as allowed by the
department or water management district. If a mitigation bank
does not reply within the 15 business day timeframe, it is
presumed credits from that bank are not available. Upon receipt
of the accounting from the mitigation banks, the department or
water management district shall determine if sufficient credits
are available to offset impacts associated with the proposed
project and notify the permit applicant of such determination
within 15 business days. The permit applicant, and no other
entity, may rely on the determination from the department or
water management district for a period of six months beginning
on the date the department or water management district notifies
the permit applicant of such determination, but only for
purposes relating to the pending application producing such
determination and not any extensions, nor renewals, nor
modifications of any permit issued pursuant to that pending
application, nor for any other permit application.

(g) Beginning July 1, 2026, and each July 1 thereafter,
each mitigation bank in this state shall submit to the
department or water management district an accounting of the
number and type of credits the mitigation bank has available for
sale. The accounting may not include names of parties for which
credits have been reserved or the contract price paid for the



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credits. The department or water management district shall
compile the information to provide an assessment of this state's
mitigation banking system and submit a report to the President
of the Senate and the Speaker of the House of Representatives on
October 1, 2026, and each October 1 thereafter.

Section 2. Paragraph (e) is added to subsection (2) of
section 376.308, Florida Statutes, to read:

376.308 Liabilities and defenses of facilities.—

(2) In addition to the defense described in paragraph
(1)(c), the only other defenses of a person specified in
subsection (1) are to plead and prove that the occurrence was
solely the result of any of the following or any combination of
the following:

(e) The condition giving rise to the cause of action is a
natural geological substance of a former phosphate mine, as
defined in s. 378.213, for which:

1. A notice has been recorded in accordance with s.
378.213(1); and

2. The Department of Health has conducted a survey under s.
404.0561(1).

Section 3. Section 378.213, Florida Statutes, is created to
read:

378.213 Notice of former phosphate mine site.—

(1) A landowner may record a notice in the official records
of the county in which the land is located which identifies the
landowner's property as a former phosphate mine. The recorded
notice must be in substantially the following form:

NOTICE



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This property is a former phosphate mine as defined in
s. 378.213(2), Florida Statutes.

Such recording serves as notice that the land is a former
phosphate mine.

(2) As used in this section, the term "former phosphate
mine" means an area of land upon which phosphate mining has been
conducted and which may have been subject to a radiation survey
in accordance with s. 404.0561 and state reclamation
requirements of ss. 378.201-378.212, but does not include a
phosphogypsum stack as defined in s. 403.4154(1)(d).

Section 4. Section 404.0561, Florida Statutes, is created
to read:

404.0561 Survey of former phosphate mining lands.—

(1) Upon petition by a current landowner, the department
shall conduct a gamma radiation survey of a former phosphate
land parcel within 120 days after receipt of the petition to
determine the radioactivity levels. The survey must document
gamma radiation exposure measurements and the locations of the
measurements.

(2) The department shall provide a copy of the preliminary
survey results to the petitioner within 30 days after completion
of the survey. Within 60 days after receipt of the survey, the
petitioner may request an additional survey based upon any
reasonable belief that the survey was flawed or not
representative of conditions on the site. The department shall
conduct one additional survey within 90 days after receipt of
the petitioner's request. The additional survey must meet the
requirements of this section and is deemed final within 90 days



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after completion.

Section 5. Section 768.405, Florida Statutes, is created to read:

768.405 Documentation of radiation levels.—In any civil action based on strict liability under s. 376.313(3), negligence or similar conduct related to an alleged discharge of hazardous substances or condition of pollution related to phosphate mining, including the presence of mining overburden, solid waste from the extraction, or beneficiation of phosphate rock from a phosphate mine; or any other similar claim related to the mining of phosphatic rock or reclamation of a mined area, the plaintiff must include a radiation survey of the property with the complaint. The survey must be prepared by a person certified as either a health physicist by the American Board of Health Physics or as a radiation protection technologist by the National Registry of Radiation Protection Technologists. The survey must be representative and document the measured gamma radiation on the property, including background values determined in accordance with the Environmental Protection Agency's Multi-agency Radiation Survey and Site Investigation Manual; the locations of the measurements; the testing equipment; the testing methodology used, including the equipment calibration date and protocol; and the name of the person performing the survey and describe the person's relevant training, education, and experience. The survey shall be verified under penalty of perjury as provided in s. 92.525.

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

And the title is amended as follows:



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331 Delete lines 1 - 60
332 and insert:
333 An act relating to land development; amending s.
334 373.4136, F.S.; beginning on a specified date,
335 revising the schedule for credit release upon issuance
336 of a mitigation bank credit permit; providing
337 specifications for such schedule; authorizing a
338 mitigation bank applicant to propose an alternative
339 credit release schedule and requiring the Department
340 of Environmental Protection or water management
341 district to consider such credit release schedule;
342 requiring the department or water management district
343 to modify an existing permitted credit release
344 schedule upon the request of the mitigation bank
345 permittee under certain circumstances; prohibiting the
346 department from altering, changing, or modifying other
347 provisions of the mitigation bank permit that are
348 unrelated to the credit release schedule; prohibiting
349 a mitigation credit from being released for freshwater
350 wetland creation until certain conditions are met;
351 revising the results of the establishment of a
352 mitigation bank service area; revising the projects or
353 activities eligible to use credits released from a
354 mitigation bank for certain purposes; authorizing a
355 permit applicant to receive a one-time use of certain
356 credits in certain circumstances; providing
357 requirements for a permit applicant if the number of
358 released credits within a mitigation service area only
359 partially offsets certain impacts; requiring the



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department and water management districts to apply a proximity factor in a specified manner to make a certain determination; specifying multipliers for such proximity factor; specifying that the use of certain multipliers meets certain requirements; requiring the department or water management district to contact certain mitigation banks and request a certain accounting within a specified timeframe after receiving a certain request from the applicant; prohibiting such accounting from including certain credits; providing that mitigation banks contacted by the department or water management district are allowed a specified timeframe to reply to such request; requiring the department or water management district to notify the permit applicant of certain information if the department or water management district is notified that out-of-kind credits are available to offset the proposed impact and the department or water management district makes a certain determination; providing a presumption if a mitigation bank does not respond within a certain timeframe; requiring the department or water management district to make a certain determination upon receipt of the requested accounting; requiring the department or water management district to notify the applicant of such determination within a specified timeframe; authorizing only the permit applicant to rely on such determination for a specified timeframe and for specified purposes; beginning on a specified



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date and annually thereafter, requiring each mitigation bank in this state to submit a certain accounting to the department or water management district; providing requirements for such accounting; requiring the department or water management district to compile such accountings for a specified purpose and to submit a report that includes certain information to the Legislature on a specified date and annually thereafter; amending s. 376.308, F.S.; providing conditions for a cause of action against certain former phosphate mine sites; creating s. 378.213, F.S.; authorizing landowners to record certain notice of former phosphate mines; specifying requirements for such notice; defining the term "former phosphate mine"; creating s. 404.0561, F.S.; requiring the Department of Health to conduct gamma radiation surveys of former phosphate land parcels upon petition; creating s. 768.405, F.S.; requiring that specified documentation of radiation levels be submitted in certain civil actions related to phosphate mining; providing an effective date.