The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 492
INTRODUCER:	Rules Committee; Appropriations Committee on Agriculture, Environment, and General Government and Senator McClain
SUBJECT:	Land Development
DATE:	April 22, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Favorable**
2.	Reagan	Betta	AEG	**Fav/CS**
3.	Barriero	Yeatman	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 492 provides a standardized schedule for releasing mitigation credits and removes the requirement that the Department of Environmental Protection (DEP) and water management districts determine the credit release schedule on a case-by-case basis pursuant to statutorily enumerated factors. The bill provides that credits must be released as follows:

- 30 percent upon recording a conservation easement and establishing financial assurances (or 100 percent for preservation-only banks).
- 30 percent after completing initial construction activities.
- 20 percent upon meeting interim performance criteria.
- 20 percent upon meeting final success criteria.

Additionally, the bill allows freshwater wetland creation credits to be released before all the success criteria have been met. Only success criteria for initial construction success criteria need to be met.

The bill provides that permit applicants are entitled to a one-time use of credits from a mitigation bank outside the mitigation bank service area when an insufficient number or type of credits are available within the impacted area. The DEP or a water management district must have determined that the mitigation service area lacked the appropriate credit type and the implementation of permittee-responsible mitigation was not sufficient to offset impacts before

approving credits outside the service area. The bill provides that the following multipliers would apply to credits outside the service area:

- 1.0 multiplier for use of in-kind credits within the service area.
- 1.0 multiplier 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.
- 1.2 multiplier 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 mitigation bank service area in which proposed impacts are located only after credit-deficiency has been established only after credit-deficiency has been established.
- When in-kind credits are not available to offset impacts in the regional watershed immediately adjacent to the regional watershed overlain by a 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.
- An additional 0.50 multiplier shall be applied if the mitigation used to offset impacts entails an out-of-kind replacement.

The bill provides that use of these multipliers meets the requirements for addressing cumulative impacts.

Once the amount of mitigation required to offset impacts is determined, the DEP or water management district must contact all mitigation banks with a service area encompassing the location of the proposed impacts within seven days to verify the availability of credits. The mitigation banks have 15 days to respond; if no response is received, it is presumed credits from that bank are not available. The DEP or water management district must then notify the permit applicant if sufficient credits are available. The bill also requires mitigation banks to submit annual reports detailing the number and type of available credits for sale. The DEP and water management districts must compile these reports and provide an annual assessment of the state’s mitigation banking system to the Legislature.

The bill has no impact on state revenues or expenditures. See Section V., Fiscal Impact Statement.

The bill has an effective date of July 1, 2025.

II. Present Situation:

Environmental Resource Permits (ERP)

Part IV of ch. 373, F.S., and ch. 62-330, F.A.C., regulate the statewide ERP program, which governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and other works such as docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters.[1] ERP applications are processed by either the Department of Environmental Protection (DEP) or one of Florida's five water management districts.[2]

Permit applicants must demonstrate that the regulated activity will not be harmful to the water resources or will not be inconsistent with the overall objectives of the water management district.[3] Applicants must provide reasonable assurance that state water quality standards will not be violated and that the proposed activity is not contrary to the public interest.[4] If a proposed activity significantly degrades or is within an Outstanding Florida Water,[5] the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.[6] In determining whether an activity is contrary to the public interest or clearly in the public interest, the water management district or the DEP must consider and balance the following criteria:

- Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
- Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
- Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
- Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
- Whether the activity will be of a temporary or permanent nature;
- Whether the activity will adversely affect or will enhance significant historical and archaeological resources; and
- The current condition and relative value of functions being performed by areas affected by the proposed activity.[7]

If the applicant is unable to otherwise meet this criteria, the DEP or the governing board of a water management district, in deciding to grant or deny a permit, must consider measures proposed by or acceptable to the applicant to mitigate adverse effects of the regulated activity.[8] Such measures may include onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks.[9]

In deciding whether to grant or deny a permit for an activity that affects surface waters or wetlands, the DEP or the water management district must consider the cumulative impacts of:

- The proposed activity;

[1] Fla. Admin. Code R. 62-330.010(2).
[2] DEP, *Environmental Resource Permitting Coordination, Assistance, Portals*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-permitting#:~:text=The%20Environmental%20Resource%20Permit%20(ERP,alteration%20of%20surface%20water%20flows (last visited Mar. 5, 2025).
[3] Section 373.414(1), F.S.
[4] *Id.*
[5] An Outstanding Florida Water is a water designated worthy of special protection because of its natural attributes. DEP, *Outstanding Florida Waters*, https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Feb. 7, 2025); *see* Fla. Admin. Code R. 62-302.700(2) and (9).
[6] Section 373.414(1), F.S.
[7] Section 373.414(1)(a), F.S.
[8] Section 373.414(1)(b), F.S.
[9] *Id.*

- Other projects that already exist, are under construction, or have applied for permits or formal wetland or surface water determinations;
- Activities related to developments of regional impact[10] which are under review, approved, or vested, or other activities regulated under Part IV of chapter 373, F.S., which may reasonably be expected to be located within surface waters or wetlands in the same drainage basin based upon a local government's comprehensive plans.[11]

These cumulative impacts must be evaluated within the same drainage basin as the proposed activity.[12]

Overview of Mitigation Banking

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable wetland impacts within a defined mitigation service area.[13] Mitigation banks are alternative to permittee-responsible mitigation.[14] Permittee-responsible mitigation refers to mitigation undertaken by the permittee to provide compensatory mitigation for which the permittee retains full responsibility.[15]

In mitigation banking, the bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.[16] Creation of a mitigation bank in Florida typically requires both a permit from the DEP or a water management district and federal approval of a mitigation bank instrument from several agencies led by the U.S. Army Corps of Engineers (USACE), in a joint state/federal interagency review team.[17] Requirements for mitigation bank permits differ between mitigation bank instruments issued by the USACE and state permits issued by the DEP or the water management districts.

The Uniform Mitigation Assessment Method (UMAM) was established as a way to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.[18] The UMAM provides a standardized procedure for assessing the ecological functions provided by wetlands and other surface waters,

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[10] "Development of regional impact" means any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. Section 380.06(1), F.S.
[11] Section 373.414(8)(a), F.S.
[12] *Id.*
[13] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Feb. 17, 2025). "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part. Section 373.403(21), F.S.
[14] Section 373.4135(1)(b), F.S.
[15] EPA, *Mechanisms for Providing Compensatory Mitigation under CWA Section 404*, https://www.epa.gov/cwa-404/mechanisms-providing-compensatory-mitigation-under-cwa-section-404 (last visited Feb. 17, 2025).
[16] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Feb. 17, 2025).
[17] DEP, *Mitigation Banking Rule and Procedure Synopsis*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Feb. 17, 2025).
[18] *See* section 373.414(18), F.S.

the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.[19] The UMAM evaluates functions through consideration of an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, and mitigation risk.[20] This standardized methodology is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.[21]

State Mitigation Banking Regulations

To obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.[22]

The applicant must also provide reasonable assurances that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet ERP requirements and related rules;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.[23]

Mitigation Bank Credits

After evaluating the permit application, the permitting agency awards mitigation credits to a proposed mitigation bank or phase of such mitigation bank.[24] The number of credits awarded is based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using a functional assessment methodology.[25] In determining the degree of improvement in ecological value, specific factors must be evaluated, including, among other things, the ecological and hydrological relationship

[19] DEP, *The Uniform Mitigation Assessment Method (UMAM)*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment (last visited Feb. 17, 2025).
[20] *Id.*
[21] *Id.*
[22] Section 373.4136(1), F.S.
[23] *Id.*; Fla. Admin. Code R. 62-342.400.
[24] Section 373.4136(4), F.S., An entity establishing and operating a mitigation bank may apply to modify the mitigation bank permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. *Id.*
[25] *Id.*

between wetlands and uplands in the mitigation bank and the proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, and the extent to which the mitigation bank provides habitat for fish and wildlife.[26]

After awarding mitigation credits to a mitigation bank, the permitting agency establishes a schedule for the release of those credits in the mitigation bank permit.[27] A mitigation credit that has been released may be sold or used to offset adverse impacts from a regulated activity.[28] A portion of the mitigation credits can be released for sale or use prior to meeting all the performance criteria specified in the mitigation bank permit.[29] However, the permitting agency will only release the full amount of awarded credits after all success criteria are met.[30]

The permitting agency determines the number of credits and schedule for release based on the performance criteria for the mitigation bank and the success criteria for each mitigation activity.[31] The release schedule for a specific mitigation bank or phase thereof is related to the actions required to implement the bank, such as site protection, site preparation, earthwork, removal of 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 permitting agency must consider, at a minimum, the following factors:
- Whether the mitigation consists solely of preservation or includes other types of mitigation.
- The length of time anticipated to be required before a determination of success can be achieved.
- The ecological value to be gained from each action required to implement the bank.
- The financial expenditure required for each action to implement the bank.[32]

However, no credit can be released for freshwater wetland creation until the success criteria included in the mitigation bank permit are met.[33]

Mitigation Service Area

During the permitting of a mitigation bank, the permitting agency (the DEP or a water management district) determines the mitigation service area, which is the geographic region within which the bank could reasonably be expected to offset impacts.[34] In determining the boundaries of the mitigation service area, the permitting agency must consider the characteristics, size, and location of the mitigation bank and, at a minimum, the extent to which the mitigation bank:
- Contributes to a regional integrated ecological network;

[26] Section 373.4136(4), F.S.
[27] Section 373.4136(5), F.S.
[28] *Id.*
[29] Section 373.4136(5)(a), F.S.
[30] *Id.*
[31] Section 373.4136(5)(b), F.S.
[32] Section 373.4136(5)(b), F.S.
[33] Section 373.4136(5)(c), F.S.
[34] DEP, *Mitigation Banking Rule and Procedure Synopsis*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Feb. 13, 2025); section 373.4136(6), F.S.

- Will significantly enhance the water quality or 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;
- Will provide for the long-term viability of endangered or threatened species or species of special concern;
- Is consistent with the objectives of a regional management plan adopted or endorsed by the department or water management districts; and
- Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not offset all expected impacts within its service area.[35]

The DEP and the water management districts use regional watersheds to guide the establishment of mitigation service areas.[36] 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.[37] 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.[38]

In general, mitigation credits may only be used to offset adverse impacts in the mitigation service area.[39] However, if certain requirements are met, the following projects may be eligible to use a mitigation bank regardless of whether they are located within the mitigation service area:
- Projects with adverse impacts partially located within the mitigation service area.
- Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or certain seaports.
- Projects with total adverse impacts of less than one acre in size.[40]

Federal Mitigation Banking Regulations

For projects requiring a federal permit, a USACE district engineer determines the mitigation to be required in a mitigation bank permit based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity.[41] When evaluating options for mitigation, the USACE considers the type and location options in the following order (commonly referred to as the mitigation preference hierarchy):
- Mitigation bank credits;

[35] *Id*.
[36] Section 373.4136(6)(b), F.S. Regional watersheds within each water management district are specifically delineated in DEP rules. *See* Fla. Admin. Code R. 62-342.200(9).
[37] Section 373.4136(6)(b), F.S.
[38] *Id.*
[39] Section 373.4136(6), F.S.
[40] Section 373.4136(6)(d), F.S.
[41] 33 C.F.R. 332.3(a)(1).

- In-lieu fee program credits;[42]
- Permittee-responsible mitigation under a watershed approach;[43]
- Permittee-responsible mitigation through on-site and in-kind[44] mitigation; or
- Permittee-responsible mitigation through off-site and/or out-of-kind[45] mitigation.[46]

In general, the required mitigation should be located within the same watershed as the impact site and where it is most likely to successfully replace lost functions and services, taking into account watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, and compatibility with adjacent land uses.[47] When compensating for impacts to marine resources, the location of the mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell).[48] Compensation for impacts to aquatic resources in coastal watersheds should also be located in a coastal watershed where practicable.[49]

Mitigation Bank Credits

When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from a mitigation bank.[50] An approved instrument (including an approved mitigation plan and appropriate real estate and financial assurances) must be in place before credits can be used to compensate for authorized impacts.[51] Mitigation bank credits are not released until specific milestones associated with the mitigation bank site's protection and development are achieved.[52]

If the USACE determines that mitigation is necessary to offset unavoidable impacts to aquatic resources, the amount of required mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions.[53] The USACE requires a mitigation ratio greater than one-to-one where necessary to account for (1) the distance between the affected aquatic resource and the compensation site, (2) the method of mitigation (e.g., preservation), (3) the likelihood of success, (4) differences between the functions lost at the impact site and the functions expected

[42] An in-lieu fee program is a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. 33 C.F.R. 332.2.
[43] Permittee-responsible mitigation means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility. 33 C.F.R. 332.2.
[44] In-kind means a resource of a similar structural and functional type to the impacted resource. 33 C.F.R. 332.2.
[45] Out-of-kind means a resource of a different structural and functional type from the impacted resource. 33 C.F.R. 332.2.
[46] *See* 33 C.F.R. 332.3(b).
[47] 33 C.F.R. 332.3(b)(1).
[48] *Id.*
[49] *Id.*
[50] 33 C.F.R. 332.3(b)(1).
[51] 33 C.F.R. 332.3(b)(2).
[52] *Id.*
[53] 33 C.F.R. 332.3(f)(1).

to be produced by the mitigation project, (5) temporal losses of aquatic resource functions, and/or (5) the difficulty of restoring or establishing the desired aquatic resource type and functions.[54]

Mitigation Service Area

Under federal law, the mitigation service area is the watershed, ecoregion,[55] physiographic province, or other geographic area within which the mitigation bank is authorized to provide compensatory mitigation required by USACE permits.[56] The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area.[57] For example, in urban areas, a U.S. Geological Survey 8-digit hydrologic unit code (HUC)[58] watershed or a smaller watershed may be an appropriate service area.[59] In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area.[60] Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable.[61] The economic viability of the mitigation bank may also be considered in determining the size of the service area.[62]

USACE Proximity Factor Tool

The USACE developed a proximity factor tool that may be used when there are insufficient mitigation credits within the approved mitigation bank service area. The tool is used to assess the number of credits required for any compensatory mitigation proposed outside of approved mitigation bank service areas.[63] The proximity factor is based on ratio multipliers for multiple

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[54] 33 C.F.R. 332.3(f)(2).

[55] Ecoregions are areas where ecosystems (and the type, quality, and quantity of environmental resources) are generally similar. A Roman numeral classification scheme has been adopted for different hierarchical levels of ecoregions, ranging from general regions to more detailed: Level I - 12 ecoregions in the continental U.S.; Level II - 25 ecoregions in the continental U.S.; Level III -105 ecoregions in the continental U.S.; Level IV - 967 ecoregions in the conterminous U.S. EPA, *Ecoregions*, https://www.epa.gov/eco-research/ecoregions (last visited Feb. 14, 2025).

[56] 33 C.F.R. 332.8(d)(6)(ii)(A).

[57] *Id.*

[58] "HUC" means the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. Each unit is assigned a two- to 12-digit number that uniquely identifies each of the six levels of classification within six two-digit fields. United States Geological Survey (USGS), *Hydrologic Unit Codes (HUCs) Explained*, https://nas.er.usgs.gov/hucs.aspx (last visited Mar. 3, 2025). Eight-digit HUCs are used for large watersheds known as subbasins; 10-digit HUCs divide the large subbasins into watersheds; and 12-digit HUCs divide watersheds into subwatersheds that capture local tributary systems. EPA, *Hydrologic Unit Codes: HUC 4, HUC 8, and HUC 12*, *available at* https://enviroatlas.epa.gov/enviroatlas/datafactsheets/pdf/Supplemental/HUC.pdf; DEP, *About the Florida National Hydrography Dataset*, https://floridadep.gov/dear/watershed-services-program/content/about-florida-national-hydrography-dataset (last visited Mar. 3, 2025).

[59] 33 C.F.R. 332.8(d)(6)(ii)(A).

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] USACE, *Standard Operating Procedure—Assessing a Proximity Factor for Compensatory Mitigation Required to Offset Unavoidable Impacts to Waters of the United States*, 1 (2023), *available at* https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll15/id/1998.

variables.[64] The tool is only applied when the USACE has determined that mitigation outside of the approved mitigation service area is the most environmentally preferable mitigation option.[65]

The proximity factor tool applies the following multipliers:

- No multiplier if the impact site is outside of a mitigation bank service area boundary, but within the same 8-digit HUC that contains the mitigation bank location.
- 1.5 multiplier if the impact site is outside of a mitigation bank service area boundary and one 8-digit HUC away from the mitigation bank service area boundary.
- 0.25 multiplier for each additional 8-digit HUC away from the mitigation bank location.
- 0.75 multiplier if mitigation entails out-kind replacement (there is no multiplier if the mitigation entails in-kind replacement).
- 0.25 multiplier if mitigation occurs within a different EPA Level IV Ecoregion.[66]

The sum of the applicable multipliers provides the proximity factor.[67] The resulting proximity factor is then multiplied by the number of credits required by the USACE to compensate for unavoidable adverse effects to aquatic resources (e.g., via application of an approved functional assessment such as UMAM).[68] The USACE has the discretion to consider and approve use of the proximity factor tool on a case-by-case basis.[69]

Mitigation should be performed within the same 6-digit HUC.[70] When assessing the location of the mitigation site relative to the impact site, the calculation starts at the 8-digit HUC that contains the mitigation bank site.[71]

III. Effect of Proposed Changes:

Section 1 amends s. 373.4136, F.S., regarding the establishment and operation of mitigation banks. Currently, the Department of Environmental Protection (DEP) and the water management districts are authorized to set the schedule for releasing mitigation credits to each mitigation bank on a case-by-case basis based on the performance criteria for the mitigation bank, the success criteria for each mitigation activity, and other enumerated factors.[72]

The bill requires the DEP and the water management districts, after July 1, 2025, to adhere to the following credit release schedule:

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[64] *Id.*
[65] *Id.* at 3.
[66] *Id.*
[67] USACE, *Standard Operating Procedure—Assessing a Proximity Factor for Compensatory Mitigation Required to Offset Unavoidable Impacts to Waters of the United States* at 1, 4, *available at* https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll15/id/1998.
[68] *Id.*
[69] *Id.* at 5.
[70] *Id.* at 5.
[71] *Id.*
[72] Section 373.4136(5)(b), F.S. The factors include (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; and (4) the financial expenditure required for each action to implement the bank. *Id.*

- 30 percent of awarded credits 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 must be released for the recordation of the conservation easement and establishment of financial assurances required by the mitigation bank permit.
- 30 percent of awarded credits following completion of initial construction activities as established by the mitigation bank permit.
- 20 percent of awarded credits in increments as monitoring indicates interim performance criteria established by the mitigation bank permit are being met.
- 20 percent of awarded credits upon meeting final success criteria established by the mitigation bank permit

The bill provides that the mitigation bank applicant may propose an alternative credit release schedule, and the DEP or water management district must consider the proposed alternative credit release schedule. Upon request by a mitigation bank permittee for modification of the credit release schedule of a permitted mitigation bank, the DEP or water management district must modify the credit release schedule to conform it to the bill's credit release schedule if such permitted mitigation bank has not yet had mitigation credits released for the completion of construction activities. The DEP or water management district may not alter, change, or modify any other provision of the mitigation bank permit unrelated to the credit release schedule.

Currently, credits cannot be released for freshwater wetland creation until the success criteria included in the mitigation bank permit are met. The bill allows these types of credits to be released sooner, after the success criteria for initial construction activities are met.

The bill provides that once a mitigation bank service area has been established by the DEP or a water management district, such service area must be considered to have met the cumulative impact requirements of s. 373.414(8)(a), F.S.,[73] for impacts permitted within any regional watershed included in the mitigation bank service area.

The bill provides that, when the provisions of s. 373.414(1)(b) and (8), F.S., are met 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. The DEP or water management district must have determined that the mitigation service area lacked the appropriate credit type and the implementation of permittee-responsible mitigation was not sufficient to offset impacts associated with the proposed project. Priority must be given to mitigation banks whose permitted service area fully includes the impacted site.

[73] Section 373.414(8)(a), F.S., provides that, in deciding whether to grant a permit for an activity that affects surface waters or wetlands, the permitting agency must consider the cumulative impacts of (1) the proposed activity; (2) other projects that already exist, are under construction, or have applied for permits or formal wetland or surface water determinations; and (3) activities related to developments of regional impact which are under review, approved, or vested, or other activities regulated under Part IV of chapter 373, F.S., which may reasonably be expected to be located within surface waters or wetlands in the same drainage basin based upon a local government's comprehensive plans.

The bill provides that, if the number of released credits within a mitigation service area only partially offsets the impacts associated with a proposed project in that mitigation service area, the project applicant may 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. The bill requires the DEP and the water management districts to follow the following guidelines to apply a proximity factor to determine adequate compensatory mitigation as follows:

- A 1.0 multiplier shall be applied for use of in-kind credits within the service area.
- 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.
- 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 mitigation bank service area in which proposed impacts are located only after credit-deficiency has been established only after credit-deficiency has been established.
- When in-kind credits are not available to offset impacts in the regional watershed immediately adjacent to the regional watershed overlain by a 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.
- An additional 0.50 multiplier shall be applied if the mitigation used to offset impacts entails an out-of-kind replacement.

The bill provides that the use of these multipliers meets the requirements for addressing cumulative impacts.

The bill provides that, once the amount of mitigation required to offset impacts has been determined, and the DEP or water management district determines that out-of-service-area or out-of-kind mitigation is necessary, the DEP or water management district must contact all mitigation banks within a mitigation service area encompassing the location of the proposed impacts within seven business days after the request from the project applicant and request an accounting of available credits, including out-of-kind credits. The accounting may not include credits reserved for other project applicants. The mitigation banks contacted must provide such accounting within 15 business days after the request.

If one or more mitigation banks replying to the request notifies the DEP or the water management district that out-of-kind credits are available to offset the proposed impact and the DEP or water management district determines that such out-of-kind credits are appropriate to offset all or part of the proposed impact, the DEP or water management district must 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. 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 DEP or the water management district must determine if sufficient credits exist to offset impacts associated with the proposed project and notify the project applicant of such determination, within 15 business days. The applicant, and no other entity, may rely on the determination for a period of six months after 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.

The bill requires, beginning July 1, 2026, and each July 1 thereafter, each mitigation bank to submit an annual report to the DEP or the applicable water management district with an accounting of the number and type of credits that the mitigation bank has available for sale, but the report may not include names of parties for which credits have been reserved, if any, or the contract price paid for such credits. The DEP and each water management district must compile such annual reports and provide an annual assessment of this state’s mitigation banking system to the Legislature on October 1, 2026, and each October 1 thereafter.

Section 2 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 373.4136 and 704.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 21, 2025:
The committee substitute removes the section on the release of conservation easements. It also:

- Provides that, before out-of-service-area credits are used, the Department of Environmental Protection (DEP) or water management district must determine the mitigation service area lacks the appropriate credit type and permittee-responsible mitigation is insufficient to offset the project's impacts.
- Provides that priority must be given to mitigation banks whose permitted service area fully includes the impact site.
- Clarifies that the proximity factor may only be used after credit-deficiency has been established.
- Provides that DEP or water management district must contact mitigation banks for an accounting of available credits only after the amount of mitigation required for a project has been determined and out-of-service-area or out-of-kind credits is determined to be necessary.
- Provides that if out-of-kind credits are available and appropriate to offset the project's impacts, DEP or the water management district must notify the permit applicant that such credits are available; out-of-service area credits may not be used until all the out-of-kind credits within the service area are used.
- Extends the deadline for when DEP must contact mitigation banks for an accounting of available credits from 3 to 7 days.
- Provides that, upon request, DEP or water management district must modify a permittee's credit release schedule to conform with the schedule in the bill if mitigation credits have not been released for the completion of construction activities.
- Reduces the timeframe an applicant may rely on the determination of credit availability from 1 year to 6 months.

- Clarifies that the presumption that credits are unavailable only applies to credits from the bank that failed to reply to DEP's request for an accounting of credits.
- Changes the title to land development.

CS by Appropriations Committee on Agriculture, Environment, and General Government on April 10, 2025:
The committee substitute makes the following changes:
- Allows a mitigation bank applicant to propose to the department or water management district an alternative credit release schedule instead of the schedule provided in the bill.
- Clarifies the regional ecological significance of mitigation banks.
- Reduces the multipliers used when no mitigation credits are available in an impacted watershed.
- Increases the time in which a mitigation bank must respond to a request by DEP or water management district for an accounting of available credits and provides that if a mitigation bank does not respond within 15 days, it is presumed credits are not available.
- Increases the time in which DEP or water management district must make a determination if sufficient credits exist in the impacted area to offset the impacts and clarifies that only the permit applicant, and no other entity, can rely on the determination.
- Allows for the release of conservation easements on small, low or non-functioning wetlands that are surrounded by development provided the property owner purchases sufficient mitigation bank credits to offset the impact. The process replaces low-quality wetlands with the preservation of high-quality wetlands and allows the parcel to be used for its highest and best use and returned to the tax rolls.

B. Amendments:

None.