

By the Appropriations Committee on Agriculture, Environment, and General Government; and Senator McClain

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A bill to be entitled

An act relating to mitigation banks; amending s. 373.4136, F.S.; beginning on a specified date, revising the schedule for credit release upon issuance of a mitigation bank credit permit; providing specifications for such schedule; authorizing a mitigation bank applicant to propose an alternative credit release schedule and requiring the Department of Environmental Protection or water management district to consider such credit release schedule; revising the results of the establishment of a mitigation bank service area; revising the projects or activities eligible to use credits released from a mitigation bank for certain purposes; authorizing a project applicant to receive a one-time use of certain credits in certain circumstances; providing requirements for a permit applicant if the number of released credits within a mitigation service area only partially offsets certain impacts; requiring the 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

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credits; providing that mitigation banks contacted by the department or water management district are allowed a specified timeframe to reply to such request; 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 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. 704.06, F.S.; requiring certain water management districts, upon application by the owner of a parcel subject to a conservation easement, to release a conservation easement if specified conditions are met; providing for the valuation of the property for certain tax purposes upon such release; specifying that land released from the conservation easement may be used for development

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59 consistent with certain zoning; providing an effective
60 date.

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62 Be It Enacted by the Legislature of the State of Florida:

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

66 373.4136 Establishment and operation of mitigation banks.—

67 (5) SCHEDULE FOR CREDIT RELEASE.—After July 1, 2025, when
68 issuing ~~awarding mitigation credits to~~ a mitigation bank permit,
69 the department or the water management district shall adhere to
70 the credit release schedule set forth in this subsection ~~a~~
71 ~~schedule~~ for the release of ~~those~~ credits awarded by ~~in~~ the
72 mitigation bank permit. A mitigation credit that has been
73 released may be sold or used to offset adverse impacts from an
74 activity regulated under this part.

75 (a) Thirty percent of awarded credits shall be released for
76 the recordation of the conservation easement and establishment
77 of financial assurances required by the mitigation bank permit.
78 If a preservation-only assessment area is used, 100 percent of
79 awarded credits shall be released for the recordation of the
80 conservation easement and establishment of financial assurances
81 required by the mitigation bank permit ~~The department or the~~
82 ~~water management district shall allow a portion of the~~
83 ~~mitigation credits awarded to a mitigation bank to be released~~
84 ~~for sale or use prior to meeting all of the performance criteria~~
85 ~~specified in the mitigation bank permit. The department or the~~
86 ~~water management district shall allow release of all of a~~
87 ~~mitigation bank's awarded mitigation credits only after the bank~~

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~~meets the mitigation success criteria specified in the permit.~~

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

(c) 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.

(d) 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 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~~

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117 ~~implement the bank.~~

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

122 (f)~~(e)~~ ~~Notwithstanding the provisions of this subsection, a~~
123 mitigation ~~no credit may not shall~~ be released for freshwater
124 wetland creation until the success criteria established ~~included~~
125 in the mitigation bank permit for initial construction
126 activities are met.

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

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

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

151 1. Contributes to a regional integrated ecological network;

152 2. Will significantly enhance the water quality or
153 restoration of an offsite receiving water body that is
154 designated as an Outstanding Florida Water, a Wild and Scenic
155 River, an aquatic preserve, a water body designated in a plan
156 approved pursuant to the Surface Water Improvement and
157 Management Act, or a nationally designated estuarine preserve;

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

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

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

167 (b) The department and water management districts shall use
168 regional watersheds to guide the establishment of mitigation
169 service areas. Drainage basins established pursuant to s.
170 373.414(8) may be used as regional watersheds when they are
171 established based on the hydrological or ecological
172 characteristics of the basin. A mitigation service area may
173 extend beyond the regional watershed in which the bank is
174 located into all or part of other regional watersheds when the

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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.

(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 s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use credits released from a mitigation bank to offset impacts resulting from such projects or activities ~~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.

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

206 (e) If the requirements of s. 373.414(1)(a) are met and an
207 insufficient number or type of credits from banks whose
208 permitted service area overlays in whole or in part the regional
209 watershed in which the impacts occur, the project applicant is
210 entitled to a one-time use of credits released from a mitigation
211 bank outside the mitigation bank service area to offset impacts
212 pursuant to s. 373.414(1)(b), as established by the procedure in
213 paragraph (g), and upon verification by the department or water
214 management district that mitigation banks within the regional
215 watershed in which the adverse impacts are located lack the
216 appropriate credit type to offset impacts associated with the
217 proposed project. If the number of released credits within a
218 mitigation service area only partially offsets the impacts
219 associated with a proposed project in the mitigation service
220 area, the permit applicant may only use out-of-service-area
221 credits to account for the difference between the released
222 credits available in the mitigation bank service area and the
223 credits required to offset the impacts associated with the
224 proposed project. In implementing this subsection, the
225 department and water management districts shall apply a
226 proximity factor to determine adequate compensatory mitigation
227 as follows:

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

231 2. A 1.0 multiplier shall be applied for use of in-kind and
232 out-of-service-area credits when the service area overlays part

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of the same regional watershed as the proposed impacts.

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.

4. 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, as established by the procedure in paragraph (g), an additional 0.25 multiplier shall be applied for each additional regional watershed boundary crossed.

5. An additional 0.50 multiplier shall be applied after any multipliers required in subparagraphs 1., 2., 3., and 4., if the mitigation used to offset impacts entails out-of-kind replacement which does not replace the same type of freshwater wetland or fresh surface water impacted.

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

(g) Once a permit applicant requests to use out-of-service-area or out-of-kind credits, the department or water management district shall contact all mitigation banks with a mitigation service area encompassing the location of the proposed impacts within 3 business days after receipt of the request from the permit applicant and request an accounting of available 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

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management district to reply to such request. If a mitigation bank does not reply within the 15 business day timeframe, it is presumed credits 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 1 year 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.

(h) 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 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. Subsection (14) is added to section 704.06, Florida Statutes, to read:

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291 704.06 Conservation easements; creation; acquisition;
292 enforcement.—

293 (14) (a) Upon application by the fee simple owner of a
294 parcel of land subject to a conservation easement to a water
295 management district, a water management district shall release
296 the conservation easement if the following conditions are met:

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

299 2. Any undeveloped adjacent parcels of land are less than
300 15 acres and similarly bordered on three or more sides by
301 impervious surfaces;

302 3. The land contains no historical, architectural,
303 archeological, or cultural significance; and

304 4. Before the release of the conservation easement, the
305 applicant must have secured sufficient mitigation credits using
306 the uniform mitigation assessment method from a mitigation bank
307 located in this state to offset the loss of wetlands located on
308 the land subject to the conservation easement.

309 (b) Upon the water management district's release of the
310 conservation easement, the ad valorem taxes on the property
311 shall be based on the just value of the property, and the
312 property may be used for development consistent with the zoning
313 designation of the adjacent lands.

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