

**By** the Committee on Rules; 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 land development; 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; requiring the Department of Environmental Protection or water management district to modify an existing permitted credit release schedule upon request under certain circumstances; prohibiting mitigation credits from being released for freshwater wetland creation until certain conditions are met; authorizing one-time use of mitigation credits outside the mitigation bank service area in certain circumstances; requiring the department and water management districts to apply proximity factor multipliers in a specified manner; specifying that the use of certain multipliers meets certain requirements; requiring the department or water management district to request an accounting of credit availability from mitigation banks within a specified timeframe; specifying the timeframe to reply to such request; requiring the permit applicant to be notified of credits available; providing a presumption if a mitigation bank does not respond within a certain timeframe; limiting the timeframe for the permit applicant to rely on a credit availability determination for specified purposes; requiring each

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mitigation bank to submit an accounting of credits;  
requiring the department or water management district  
to compile such accountings for a specified purpose  
and to submit a report including certain information  
to the Legislature on a specified date and annually  
thereafter; providing an effective date.

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

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  
~~schedule~~ for the release of ~~those~~ 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  
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.

2. Thirty percent of awarded credits shall be released  
following completion of initial construction activities as

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59 established by the mitigation bank permit.

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

63 4. Twenty percent of awarded credits shall be released upon  
64 meeting final success criteria established by the mitigation  
65 bank permit.

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

70 (c) Upon request by a mitigation bank permittee for  
71 modification of the credit release schedule of a permitted  
72 mitigation bank, the department or relevant water management  
73 district shall modify the credit release schedule to conform it  
74 to paragraph (a) if such permitted mitigation bank has not yet  
75 had mitigation credits released for the completion of  
76 construction activities. The department or water management  
77 district may not alter, change, or modify any other provision of  
78 the mitigation bank permit unrelated to the credit release  
79 schedule ~~The department or the water management district shall~~  
80 ~~allow a portion of the mitigation credits awarded to a~~  
81 ~~mitigation bank to be released for sale or use prior to meeting~~  
82 ~~all of the performance criteria specified in the mitigation bank~~  
83 ~~permit. The department or the water management district shall~~  
84 ~~allow release of all of a mitigation bank's awarded mitigation~~  
85 ~~credits only after the bank meets the mitigation success~~  
86 ~~criteria specified in the permit.~~

87 ~~(b) The number of credits and schedule for release shall be~~

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~~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 implement the bank.~~

~~(d)(e)~~ Notwithstanding the provisions of this subsection, a mitigation ~~no credit may not~~ shall be released for freshwater 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.

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

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

- 136 1. Contributes to a regional integrated ecological network;
- 137 2. Will significantly enhance the water quality or  
138 restoration of an offsite receiving water body that is  
139 designated as an Outstanding Florida Water, a Wild and Scenic  
140 River, an aquatic preserve, a water body designated in a plan  
141 approved pursuant to the Surface Water Improvement and  
142 Management Act, or a nationally designated estuarine preserve;
- 143 3. Will provide for the long-term viability of endangered  
144 or threatened species or species of special concern;
- 145 4. Is consistent with the objectives of a regional

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146 management plan adopted or endorsed by the department or water  
147 management districts; and

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

152 (b) The department and water management districts shall use  
153 regional watersheds to guide the establishment of mitigation  
154 service areas. Drainage basins established pursuant to s.  
155 373.414(8) may be used as regional watersheds when they are  
156 established based on the hydrological or ecological  
157 characteristics of the basin. A mitigation service area may  
158 extend beyond the regional watershed in which the bank is  
159 located into all or part of other regional watersheds when the  
160 mitigation bank has the ability to offset adverse impacts  
161 outside that regional watershed. Similarly, a mitigation service  
162 area may be smaller than the regional watershed in which the  
163 mitigation bank is located when adverse impacts throughout the  
164 regional watershed cannot reasonably be expected to be offset by  
165 the mitigation bank because of local ecological or hydrological  
166 conditions.

167 (c) Once a mitigation bank service area has been  
168 established by the department or a water management district for  
169 a mitigation bank, such mitigation bank shall be deemed to  
170 implement a plan that provides regional ecological value; such  
171 service area shall be accepted by all water management  
172 districts, local governments, and the department; and the use of  
173 credits from such mitigation bank to offset impacts within that  
174 bank's service area shall be considered to have met the

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175 cumulative impact requirements of s. 373.414(8)(a).

176 (d) If the provisions of ~~requirements in~~ s. 373.414(1)(b)  
177 and (8) are met and an insufficient number or type of credits  
178 from banks whose permitted service area overlays in whole or in  
179 part the regional watershed in which the impacts occur, the  
180 permit applicant is entitled to a one-time use of credits  
181 released from a mitigation bank outside the mitigation bank  
182 service area to offset impacts pursuant to s. 373.414(1)(b), as  
183 established by the procedure in paragraph (f). The department or  
184 water management district must have determined that the  
185 mitigation service area lacked the appropriate credit type and  
186 the implementation of permittee-responsible mitigation was not  
187 sufficient to offset impacts associated with the proposed  
188 project. Priority must be given to mitigation banks whose  
189 permitted service area fully includes the impacted site. If the  
190 number of released credits within a mitigation service area only  
191 partially offsets the impacts associated with a proposed project  
192 in the mitigation service area, the permit applicant may only  
193 use out-of-service-area credits to account for the difference  
194 between the released credits available in the mitigation bank  
195 service area and the credits required to offset the impacts  
196 associated with the proposed project. In implementing this  
197 subsection, the department and water management districts shall  
198 apply a proximity factor to determine adequate compensatory  
199 mitigation as follows:

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

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

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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 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



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233 request from the permit applicant and request an accounting of  
234 available credits, including out-of-kind credits. The accounting  
235 may not include credits reserved for other permit applicants.  
236 The mitigation banks contacted by the department or water  
237 management district shall be allowed 15 business days after  
238 receipt of the request by the department or water management  
239 district to reply to such request. If one or more mitigation  
240 banks replying to the request notifies the department or the  
241 water management district that out-of-kind credits are available  
242 to offset the proposed impact and the department or a water  
243 management district determines that such out-of-kind credits are  
244 appropriate to offset all or part of the proposed impact, the  
245 department or the water management district shall notify the  
246 permit applicant that sufficient credits are available within  
247 that bank's service area to offset the proposed impacts and the  
248 use of credits from another mitigation bank outside of that  
249 other mitigation bank's service area may not occur until use of  
250 all of the out-of-kind credits occurs as allowed by the  
251 department or water management district. If a mitigation bank  
252 does not reply within the 15 business day timeframe, it is  
253 presumed credits from that bank are not available. Upon receipt  
254 of the accounting from the mitigation banks, the department or  
255 water management district shall determine if sufficient credits  
256 are available to offset impacts associated with the proposed  
257 project and notify the permit applicant of such determination  
258 within 15 business days. The permit applicant, and no other  
259 entity, may rely on the determination from the department or  
260 water management district for a period of 6 months beginning on  
261 the date the department or water management district notifies

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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 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,~~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.~~

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