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1                   A bill to be entitled  
2     An act relating to land development; amending s.  
3     373.4136, F.S.; beginning on a specified date,  
4     revising the schedule for credit release upon issuance  
5     of a mitigation bank credit permit; providing  
6     specifications for such schedule; authorizing a  
7     mitigation bank applicant to propose an alternative  
8     credit release schedule; requiring the Department of  
9     Environmental Protection or water management district  
10    to modify an existing permitted credit release  
11    schedule upon request under certain circumstances;  
12    prohibiting mitigation credits from being released for  
13    freshwater wetland creation until certain conditions  
14    are met; authorizing one-time use of mitigation  
15    credits outside the mitigation bank service area in  
16    certain circumstances; requiring the department and  
17    water management districts to apply proximity factor  
18    multipliers in a specified manner; specifying that the  
19    use of certain multipliers meets certain requirements;  
20    requiring the department or water management district  
21    to request an accounting of credit availability from  
22    mitigation banks within a specified timeframe;  
23    specifying the timeframe to reply to such request;  
24    requiring the permit applicant to be notified of  
25    credits available; providing a presumption if a  
26    mitigation bank does not respond within a certain  
27    timeframe; limiting the timeframe for the permit  
28    applicant to rely on a credit availability  
29    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; 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.

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

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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 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.

(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

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88 construction activities. The department or water management  
89 district may not alter, change, or modify any other provision of  
90 the mitigation bank permit unrelated to the credit release  
91 schedule ~~The department or the water management district shall~~  
92 ~~allow a portion of the mitigation credits awarded to a~~  
93 ~~mitigation bank to be released for sale or use prior to meeting~~  
94 ~~all of the performance criteria specified in the mitigation bank~~  
95 ~~permit. The department or the water management district shall~~  
96 ~~allow release of all of a mitigation bank's awarded mitigation~~  
97 ~~credits only after the bank meets the mitigation success~~  
98 ~~criteria specified in the permit.~~

99 ~~(b) The number of credits and schedule for release shall be~~  
100 ~~determined by the department or water management district based~~  
101 ~~upon the performance criteria for the mitigation bank and the~~  
102 ~~success criteria for each mitigation activity. The release~~  
103 ~~schedule for a specific mitigation bank or phase thereof shall~~  
104 ~~be related to the actions required to implement the bank, such~~  
105 ~~as site protection, site preparation, earthwork, removal of~~  
106 ~~wastes, planting, removal or control of nuisance and exotic~~  
107 ~~species, installation of structures, and annual monitoring and~~  
108 ~~management requirements for success. In determining the specific~~  
109 ~~release schedule for a bank, the department or water management~~  
110 ~~district shall consider, at a minimum, the following factors:~~

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

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

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

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

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

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

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

143       (a) In determining the boundaries of the mitigation service  
144 area, the department or the water management district shall  
145 consider the characteristics, size, and location of the

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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 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

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175 mitigation bank is located when adverse impacts throughout the  
176 regional watershed cannot reasonably be expected to be offset by  
177 the mitigation bank because of local ecological or hydrological  
178 conditions.

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

188 (d) If the provisions of ~~requirements in~~ s. 373.414(1)(b)  
189 and (8) are met and an insufficient number or type of credits  
190 from banks whose permitted service area overlays in whole or in  
191 part the regional watershed in which the impacts occur, the  
192 permit applicant is entitled to a one-time use of credits  
193 released from a mitigation bank outside the mitigation bank  
194 service area to offset impacts pursuant to s. 373.414(1)(b), as  
195 established by the procedure in paragraph (f). The department or  
196 water management district must have determined that the  
197 mitigation service area lacked the appropriate credit type.  
198 Priority must be given to mitigation banks whose permitted  
199 service area fully includes the impacted site. If the number of  
200 released credits within a mitigation service area only partially  
201 offsets the impacts associated with a proposed project in the  
202 mitigation service area, the permit applicant may only use out-  
203 of-service-area credits to account for the difference between

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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 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.

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

236 (f) Once the amount of mitigation required to offset  
237 impacts has been determined, and the department or water  
238 management district determines that out-of-service-area or out-  
239 of-kind mitigation is necessary, the department or water  
240 management district shall contact all mitigation banks with a  
241 mitigation service area encompassing the location of the  
242 proposed impacts within 7 business days after receipt of the  
243 request from the permit applicant and request an accounting of  
244 available credits, including out-of-kind credits. The accounting  
245 may not include credits reserved for other permit applicants.  
246 The mitigation banks contacted by the department or water  
247 management district shall be allowed 15 business days after  
248 receipt of the request by the department or water management  
249 district to reply to such request. If one or more mitigation  
250 banks replying to the request notifies the department or the  
251 water management district that out-of-kind credits are available  
252 to offset the proposed impact and the department or a water  
253 management district determines that such out-of-kind credits are  
254 appropriate to offset all or part of the proposed impact, the  
255 department or the water management district shall notify the  
256 permit applicant that sufficient credits are available within  
257 that bank's service area to offset the proposed impacts and the  
258 use of credits from another mitigation bank outside of that  
259 other mitigation bank's service area may not occur until use of  
260 all of the out-of-kind credits occurs as allowed by the  
261 department or water management district. If a mitigation bank

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262 does not reply within the 15 business day timeframe, it is  
263 presumed credits from that bank are not available. Upon receipt  
264 of the accounting from the mitigation banks, the department or  
265 water management district shall determine if sufficient credits  
266 are available to offset impacts associated with the proposed  
267 project and notify the permit applicant of such determination  
268 within 15 business days. The permit applicant, and no other  
269 entity, may rely on the determination from the department or  
270 water management district for a period of 6 months beginning on  
271 the date the department or water management district notifies  
272 the permit applicant of such determination, but only for  
273 purposes relating to the pending application producing such  
274 determination and not any extensions, nor renewals, nor  
275 modifications of any permit issued pursuant to that pending  
276 application, nor for any other permit application.

277 (g) Beginning July 1, 2026, and each July 1 thereafter,  
278 each mitigation bank in this state shall submit to the  
279 department or water management district an accounting of the  
280 number and type of credits the mitigation bank has available for  
281 sale. The accounting may not include names of parties for which  
282 credits have been reserved or the contract price paid for the  
283 credits. The department or water management district shall  
284 compile the information to provide an assessment of this state's  
285 mitigation banking system and submit a report to the President  
286 of the Senate and the Speaker of the House of Representatives on  
287 October 1, 2026, and each October 1 thereafter, the following  
288 projects or activities regulated under this part shall be  
289 eligible to use a mitigation bank, regardless of whether they  
290 are located within the mitigation service area:

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

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

296 ~~3. Projects with total adverse impacts of less than 1 acre~~  
297 ~~in size.~~

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

300 376.308 Liabilities and defenses of facilities.—

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

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

309 1. A notice has been recorded in accordance with s.  
310 378.213(1); and

311 2. The Department of Health has conducted a survey under s.  
312 404.0561(1).

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

315 378.213 Notice of former phosphate mine site.—

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

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NOTICE

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

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the petitioner's request. The additional survey must meet the requirements of this section and is deemed final within 90 days 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.

Section 6. This act shall take effect July 1, 2025.