

1                   A bill to be entitled  
2     An act relating to stormwater treatment; amending s.  
3     373.019, F.S.; defining the terms "compensating  
4     stormwater treatment" and "total land area"; amending  
5     s. 373.4134, F.S.; revising legislative findings;  
6     requiring compensating stormwater treatment to comply  
7     with certain provisions unless certain circumstances  
8     exist; amending s. 373.414, F.S.; explaining the types  
9     of mitigation measures for compensating stormwater  
10    treatment that the Department of Environmental  
11    Protection or a water management district governing  
12    board must consider under certain circumstances;  
13    authorizing mitigation measures or enhancement credits  
14    intended to address certain impacts to be generated by  
15    certain entities and sold only to certain  
16    environmental resource permit applicants; requiring  
17    that certain uses of public lands require a private  
18    entity to cease certain activities upon a certain  
19    determination by the department; amending ss. 373.036,  
20    373.250, 373.421, 403.813, and 556.102, F.S.;  
21    conforming cross-references; reenacting s.  
22    373.4136(6)(d), F.S., relating to establishment and  
23    operation of mitigation banks; to incorporate the  
24    amendment made to s. 373.414, F.S., in a reference  
25    thereto; providing an effective date.

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

**Section 1. Present subsections (4) through (21) and (22) through (28) of section 373.019, Florida Statutes, are redesignated as subsections (5) through (22) and (24) through (30) respectively, and new subsections (4) and (23) are added to that section, to read:**

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(4) "Compensating stormwater treatment" means a method of stormwater treatment for discharges from more than two parcels, implemented in accordance with the conditions established in s. 373.4134.

(23) "Total land area" means land holdings under common ownership which are contiguous, or land holdings served by common surface water management facilities.

**Section 2. Present paragraphs (d) through (g) of subsection (3) of section 373.4134, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, a new paragraph (d) is added to that subsection, and paragraph (e) of subsection (1) of that section is amended, to read:**

373.4134 Water quality enhancement areas.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds

51 that:

52 (e) Water quality enhancement areas that provide water  
53 quality enhancement credits to applicants seeking permits under  
54 ss. 373.403-373.443 and to governmental entities seeking to meet  
55 an assigned basin management action plan allocation or  
56 reasonable assurance plan under s. 403.067 are considered an  
57 appropriate and permittable option. The use of an enhancement  
58 credit as specified herein transfers the legal responsibility  
59 for complying with the applicable regulatory water quality  
60 treatment requirement from the purchaser and user of such  
61 enhancement credit to the generator of such enhancement credit.  
62 The transfer of legal responsibility for complying with  
63 applicable regulatory water quality treatment requirements does  
64 not occur outside of the use of enhancement credits.

65 (3) WATER QUALITY ENHANCEMENT AREAS.—

66 (d) Compensating stormwater treatment must comply with  
67 this section unless:

68 1. The treatment and discharging parcels are owned,  
69 operated, and maintained by the same entity; or

70 2. The area providing compensating stormwater treatment  
71 receives stormwater discharge directly from parcels within the  
72 total land area and treats the discharge before such discharge  
73 flows off the parcel on which the compensating stormwater  
74 treatment occurs.

75 **Section 3. Paragraph (b) of subsection (1) of section**

76 **373.414, Florida Statutes, is amended to read:**

77 373.414 Additional criteria for activities in surface  
78 waters and wetlands.—

79 (1) As part of an applicant's demonstration that an  
80 activity regulated under this part will not be harmful to the  
81 water resources or will not be inconsistent with the overall  
82 objectives of the district, the governing board or the  
83 department shall require the applicant to provide reasonable  
84 assurance that state water quality standards applicable to  
85 waters as defined in s. 403.031 will not be violated and  
86 reasonable assurance that such activity in, on, or over surface  
87 waters or wetlands, as delineated in s. 373.421(1), is not  
88 contrary to the public interest. However, if such an activity  
89 significantly degrades or is within an Outstanding Florida  
90 Water, as provided by department rule, the applicant must  
91 provide reasonable assurance that the proposed activity will be  
92 clearly in the public interest.

93 (b) If the applicant is unable to otherwise meet the  
94 criteria set forth in this subsection, the governing board or  
95 the department, in deciding to grant or deny a permit, must  
96 consider measures proposed by or acceptable to the applicant to  
97 mitigate adverse effects that may be caused by the regulated  
98 activity. Such measures may include, but are not limited to,  
99 onsite mitigation, offsite mitigation, offsite regional  
100 mitigation, and the purchase of mitigation credits from

mitigation banks permitted under s. 373.4136. It is the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, this subsection does not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must be ~~have been~~ issued before ~~prior to~~ the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land

126 management, and general overhead consisting of costs such as  
127 staff time, building, and vehicles. The department or the water  
128 management district may use a multiplier or percentage to add to  
129 other direct or indirect costs to estimate general overhead.  
130 Mitigation credit for such a donation may be given only to the  
131 extent that the donation covers the full cost to the agency of  
132 undertaking the project intended to mitigate the adverse  
133 impacts. However, nothing herein may be construed to prevent the  
134 department or a water management district from accepting a  
135 donation representing a portion of a larger project, provided  
136 that the donation covers the full cost of that portion and  
137 mitigation credit is given only for that portion. The department  
138 or water management district may deviate from the full cost  
139 requirements of this subparagraph to resolve a proceeding  
140 brought pursuant to chapter 70 or a claim for inverse  
141 condemnation. ~~Nothing in~~ This section may not be construed to  
142 require the owner of a private mitigation bank, permitted under  
143 s. 373.4136, to include the full cost of a mitigation credit in  
144 the price of the credit to a purchaser of such ~~said~~ credit.

145 2. The department and each water management district shall  
146 report by March 1 of each year, as part of the consolidated  
147 annual report required by s. 373.036(7), all cash donations  
148 accepted under subparagraph 1. during the preceding water  
149 management district fiscal year for wetland mitigation purposes.  
150 The report must exclude those contributions pursuant to s.

151 373.4137. The report must include a description of the endorsed  
152 mitigation projects and, except for projects governed by s.  
153 373.4135(6), must address, as applicable, success criteria,  
154 project implementation status and timeframe, monitoring, long-  
155 term management, provisions for preservation, and full cost  
156 accounting.

157 3. If the applicant is unable to meet water quality  
158 standards because existing ambient water quality does not meet  
159 standards, the governing board or the department must consider  
160 mitigation measures, such as compensating stormwater treatment,  
161 proposed by or acceptable to the applicant that cause net  
162 improvement of the water quality in the receiving body of water  
163 for those parameters which do not meet standards. Mitigation  
164 measures or enhancement credits, intended to address water  
165 quality impacts regulated under ss. 373.403-373.443, may be  
166 generated by third parties and sold and transferred to  
167 environmental resource permit applicants only as authorized  
168 under s. 373.4134.

169 4. Where a public landowner has authorized or entered into  
170 a legally binding agreement with a private entity to construct,  
171 modify, or operate stormwater management systems or other  
172 features on such public lands so that the private entity may  
173 provide offsite compensatory treatment for third-party water  
174 quality impacts or stormwater discharge, such public landowner  
175 must require the private entity to cease all such activities

176 upon a written determination by the department or a water  
177 management district employing the criteria in paragraph (1)(a)  
178 that the use of such public lands is contrary to the public  
179 interest.

180 5. If mitigation requirements imposed by a local  
181 government for surface water and wetland impacts of an activity  
182 regulated under this part cannot be reconciled with mitigation  
183 requirements approved under a permit for the same activity  
184 issued under this part, including application of the uniform  
185 wetland mitigation assessment method adopted pursuant to  
186 subsection (18), the mitigation requirements for surface water  
187 and wetland impacts are controlled by the permit issued under  
188 this part.

189 **Section 4. Paragraph (d) of subsection (1) of section**  
190 **373.036, Florida Statutes, is amended to read:**

191 373.036 Florida water plan; district water management  
192 plans.—

193 (1) FLORIDA WATER PLAN.—In cooperation with the water  
194 management districts, regional water supply authorities, and  
195 others, the department shall develop the Florida water plan. The  
196 Florida water plan shall include, but not be limited to:

197 (d) Goals, objectives, and guidance for the development  
198 and review of programs, rules, and plans relating to water  
199 resources, based on statutory policies and directives. The state  
200 water policy rule, renamed the water resource implementation

rule pursuant to s. 373.019(27) ~~s. 373.019(25)~~, shall serve as this part of the plan. Amendments or additions to this part of the Florida water plan shall be adopted by the department as part of the water resource implementation rule. In accordance with s. 373.114, the department shall review rules of the water management districts for consistency with this rule. Amendments to the water resource implementation rule must be adopted by the secretary of the department and be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after publication in the Florida Administrative Register. Amendments do ~~shall~~ not become effective until the conclusion of the next regular session of the Legislature following their adoption.

**Section 5. Paragraph (a) of subsection (5) of section 373.250, Florida Statutes, is amended to read:**

373.250 Reuse of reclaimed water.—

(5)(a) No later than October 1, 2012, the department shall initiate rulemaking to adopt revisions to the water resource implementation rule, as defined in s. 373.019(27) ~~s. 373.019(25)~~, which shall include:

1. Criteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit. As used in this subparagraph, the term "impact offset" means the use of reclaimed water to reduce or eliminate a harmful impact

that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.

2. Criteria for the use of substitution credits where a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. As used in this subparagraph, the term "substitution credit" means the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

**Section 6. Subsection (1) of section 373.421, Florida Statutes, is amended to read:**

373.421 Delineation methods; formal determinations.—

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(29) ~~s. 373.019(27)~~. This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for

the purposes of regulation under s. 373.414. This methodology  
does ~~shall~~ not become effective until ratified by the  
Legislature. Subsequent to legislative ratification, the wetland  
definition in s. 373.019(29) ~~s. 373.019(27)~~ and the adopted  
wetland methodology shall be binding on the department, the  
water management districts, local governments, and any other  
governmental entities. Upon ratification of such wetland  
methodology, the Legislature preempts the authority of any water  
management district, state or regional agency, or local  
government to define wetlands or develop a delineation  
methodology to implement the definition and determines that the  
exclusive definition and delineation methodology for wetlands  
shall be that established pursuant to s. 373.019(29) ~~s.~~  
~~373.019(27)~~ and this section. Upon such legislative  
ratification, any existing wetlands definition or wetland  
delineation methodology shall be superseded by the wetland  
definition and delineation methodology established pursuant to  
this chapter. Subsequent to legislative ratification, a  
delineation of the extent of a surface water or wetland by the  
department or a water management district, pursuant to a formal  
determination under subsection (2), or pursuant to a permit  
issued under this part in which the delineation was field-  
verified by the permitting agency and specifically approved in  
the permit, shall be binding on all other governmental entities  
for the duration of the formal determination or permit. All

existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this may ~~shall~~ not be construed to limit any power of the department, the water management districts, and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

**Section 7. Paragraphs (r) and (u) of subsection (1) of section 403.813, Florida Statutes, are amended to read:**

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require a person claiming this exception to provide further department verification, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal

301 governments:

302 (r) The removal of aquatic plants, the removal of  
303 tussocks, the associated replanting of indigenous aquatic  
304 plants, and the associated removal from lakes of organic  
305 detrital material when such planting or removal is performed and  
306 authorized by permit or exemption granted under s. 369.20 or s.  
307 369.25, provided that:

308 1. Organic detrital material that exists on the surface of  
309 natural mineral substrate shall be allowed to be removed to a  
310 depth of 3 feet or to the natural mineral substrate, whichever  
311 is less;

312 2. All material removed pursuant to this paragraph shall  
313 be placed on a self-contained, upland spoil site which will  
314 prevent the escape of the spoil material into waters in the  
315 state except when spoil material is permitted to be used to  
316 create wildlife islands in freshwater bodies of the state when a  
317 governmental entity is permitted pursuant to s. 369.20 to create  
318 such islands as a part of a restoration or enhancement project;

319 3. All activities are performed in a manner consistent  
320 with state water quality standards; and

321 4. Activities under this exemption are not conducted in  
322 wetland areas, as defined in s. 373.019(29) ~~s. 373.019(27)~~,  
323 which are supported by a natural soil as shown in applicable  
324 United States Department of Agriculture county soil surveys,  
325 except when a governmental entity is permitted pursuant to s.

326 369.20 to conduct such activities as a part of a restoration or  
327 enhancement project.

328  
329 The department may not adopt implementing rules for this  
330 paragraph, notwithstanding any other provision of law.

331 (u) Notwithstanding any provision to the contrary in this  
332 subsection, a permit or other authorization under chapter 253,  
333 chapter 369, chapter 373, or this chapter is not required for an  
334 individual residential property owner for the removal of organic  
335 detrital material from freshwater rivers or lakes that have a  
336 natural sand or rocky substrate and that are not aquatic  
337 preserves or for the associated removal and replanting of  
338 aquatic vegetation for the purpose of environmental enhancement,  
339 providing that:

340 1. No activities under this exemption are conducted in  
341 wetland areas, as defined in s. 373.019(29) ~~s. 373.019(27)~~,  
342 which are supported by a natural soil as shown in applicable  
343 United States Department of Agriculture county soil surveys.

344 2. No filling or peat mining is allowed.

345 3. No removal of native wetland trees, including, but not  
346 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

347 4. When removing organic detrital material, no portion of  
348 the underlying natural mineral substrate or rocky substrate is  
349 removed.

350 5. Removed organic detrital material and plant material is

placed on an upland spoil site which will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to

expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

**Section 8. Subsection (6) of section 556.102, Florida Statutes, is amended to read:**

556.102 Definitions.—As used in this act:

(6) "Excavate" or "excavation" means any manmade cut,

cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(24) ~~s. 373.019(22)~~, and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

**Section 9. For the purpose of incorporating the amendment made by this act to section 373.414, Florida Statutes, in a reference thereto, paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is reenacted to read:**

373.4136 Establishment and operation of mitigation banks.—

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

426 areas for two or more mitigation banks may be approved for a  
427 regional watershed.

428       (d) If the provisions of s. 373.414(1)(b) and (8) are met  
429 and an insufficient number or type of credits from banks whose  
430 permitted service area overlays in whole or in part the regional  
431 watershed in which the impacts occur, the permit applicant is  
432 entitled to a one-time use of credits released from a mitigation  
433 bank outside the mitigation bank service area to offset impacts  
434 pursuant to s. 373.414(1)(b), as established by the procedure in  
435 paragraph (f). The department or water management district must  
436 have determined that the mitigation service area lacked the  
437 appropriate credit type. Priority must be given to mitigation  
438 banks whose permitted service area fully includes the impacted  
439 site. If the number of released credits within a mitigation  
440 service area only partially offsets the impacts associated with  
441 a proposed project in the mitigation service area, the permit  
442 applicant may only use out-of-service-area credits to account  
443 for the difference between the released credits available in the  
444 mitigation bank service area and the credits required to offset  
445 the impacts associated with the proposed project. In  
446 implementing this subsection, the department and water  
447 management districts shall apply a proximity factor to determine  
448 adequate compensatory mitigation as follows:

449       1. A 1.0 multiplier shall be applied for use of in-kind  
450 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.

**Section 10.** This act shall take effect July 1, 2026.