

HB 1457

2026

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

HB 1457

2026

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27 Be It Enacted by the Legislature of the State of Florida:
28

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

34 373.019 Definitions.—When appearing in this chapter or in
35 any rule, regulation, or order adopted pursuant thereto, the
36 term:

37 (4) "Compensating stormwater treatment" means a method of
38 stormwater treatment for discharges from more than two parcels,
39 implemented in accordance with the conditions established in s.
40 373.4134.

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

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

49 373.4134 Water quality enhancement areas.—

50 (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

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

105 1. The department or water management districts may accept
106 the donation of money as mitigation only where the donation is
107 specified for use in a duly noticed environmental creation,
108 preservation, enhancement, or restoration project, endorsed by
109 the department or the governing board of the water management
110 district, which offsets the impacts of the activity permitted
111 under this part. However, this subsection does not apply to
112 projects undertaken pursuant to s. 373.4137 or chapter 378.
113 Where a permit is required under this part to implement any
114 project endorsed by the department or a water management
115 district, all necessary permits must ~~be have been~~ issued before
116 ~~prior to~~ the acceptance of any cash donation. After the
117 effective date of this act, when money is donated to either the
118 department or a water management district to offset impacts
119 authorized by a permit under this part, the department or the
120 water management district shall accept only a donation that
121 represents the full cost to the department or water management
122 district of undertaking the project that is intended to mitigate
123 the adverse impacts. The full cost shall include all direct and
124 indirect costs, as applicable, such as those for land
125 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

HB 1457

2026

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

214 **Section 5. Paragraph (a) of subsection (5) of section
215 373.250, Florida Statutes, is amended to read:**

216 373.250 Reuse of reclaimed water.—

217 (5) (a) No later than October 1, 2012, the department shall
218 initiate rulemaking to adopt revisions to the water resource
219 implementation rule, as defined in s. 373.019(27) ~~s.~~
220 ~~373.019(25)~~, which shall include:

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

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

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

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

243 373.421 Delineation methods; formal determinations.—

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

251 the purposes of regulation under s. 373.414. This methodology
252 does shall not become effective until ratified by the
253 Legislature. Subsequent to legislative ratification, the wetland
254 definition in s. 373.019(29) ~~s. 373.019(27)~~ and the adopted
255 wetland methodology shall be binding on the department, the
256 water management districts, local governments, and any other
257 governmental entities. Upon ratification of such wetland
258 methodology, the Legislature preempts the authority of any water
259 management district, state or regional agency, or local
260 government to define wetlands or develop a delineation
261 methodology to implement the definition and determines that the
262 exclusive definition and delineation methodology for wetlands
263 shall be that established pursuant to s. 373.019(29) ~~s.~~
264 ~~373.019(27)~~ and this section. Upon such legislative
265 ratification, any existing wetlands definition or wetland
266 delineation methodology shall be superseded by the wetland
267 definition and delineation methodology established pursuant to
268 this chapter. Subsequent to legislative ratification, a
269 delineation of the extent of a surface water or wetland by the
270 department or a water management district, pursuant to a formal
271 determination under subsection (2), or pursuant to a permit
272 issued under this part in which the delineation was field-
273 verified by the permitting agency and specifically approved in
274 the permit, shall be binding on all other governmental entities
275 for the duration of the formal determination or permit. All

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

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

287 403.813 Permits issued at district centers; exceptions.—
288 (1) A permit is not required under this chapter, chapter
289 373, chapter 61-691, Laws of Florida, or chapter 25214 or
290 chapter 25270, 1949, Laws of Florida, and a local government may
291 not require a person claiming this exception to provide further
292 department verification, for activities associated with the
293 following types of projects; however, except as otherwise
294 provided in this subsection, this subsection does not relieve an
295 applicant from any requirement to obtain permission to use or
296 occupy lands owned by the Board of Trustees of the Internal
297 Improvement Trust Fund or a water management district in its
298 governmental or proprietary capacity or from complying with
299 applicable local pollution control programs authorized under
300 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

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

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

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

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

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

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

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

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

399 556.102 Definitions.—As used in this act:

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

401 cavity, trench, or depression in the earth's surface, formed by
402 removal of earth, intended to change the grade or level of land,
403 or intended to penetrate or disturb the surface of the earth,
404 including land beneath the waters of the state, as defined in s.
405 373.019(24) s. 373.019(22), and the term includes pipe bursting
406 and directional drilling or boring from one point to another
407 point beneath the surface of the earth, or other trenchless
408 technologies.

409 **Section 9. For the purpose of incorporating the amendment
410 made by this act to section 373.414, Florida Statutes, in a
411 reference thereto, paragraph (d) of subsection (6) of section
412 373.4136, Florida Statutes, is reenacted to read:**

413 373.4136 Establishment and operation of mitigation banks.—
414 (6) MITIGATION SERVICE AREA.—The department or water
415 management district shall establish a mitigation service area
416 for each mitigation bank permit. The department or water
417 management district shall notify and consider comments received
418 on the proposed mitigation service area from each local
419 government within the proposed mitigation service area. Except
420 as provided in this section, mitigation credits may be withdrawn
421 and used only to offset adverse impacts in the mitigation
422 service area. The boundaries of the mitigation service area
423 shall depend upon the geographic area where the mitigation bank
424 could reasonably be expected to offset adverse impacts.
425 Mitigation service areas may overlap, and mitigation service

HB 1457

2026

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.

451 2. A 1.0 multiplier shall be applied for use of in-kind
452 and out-of-service-area credits when the service area overlays
453 part of the same regional watershed as the proposed impacts only
454 after credit deficiency has been established by the procedure
455 set forth in paragraph (f).

456 3. A 1.2 multiplier shall be applied for use of in-kind
457 and out-of-service-area credits located within a regional
458 watershed immediately adjacent to the regional watershed
459 overlain by a bank service area in which proposed impacts are
460 located only after credit deficiency has been established by the
461 procedure set forth in paragraph (f).

462 4. When in-kind credits are not available to offset
463 impacts in the regional watershed immediately adjacent to the
464 regional watershed overlain by a mitigation bank service area in
465 which the proposed impacts are located, an additional 0.25
466 multiplier shall be applied for each additional regional
467 watershed boundary crossed only after credit deficiency has been
468 established by the procedure set forth in paragraph (f).

469 5. An additional 0.50 multiplier shall be applied after
470 any multipliers required in subparagraphs 1.-4., if the
471 mitigation used to offset impacts entails out-of-kind
472 replacement.

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