

1 A bill to be entitled
2 An act relating to stormwater treatment; amending s.
3 311.106, F.S.; prohibiting certain stormwater
4 treatment and net improvement activities; amending s.
5 373.403, F.S.; providing definitions; amending s.
6 373.413, F.S.; defining the term "regional stormwater
7 management system"; requiring the Department of
8 Environmental Protection to require specified
9 documentation for issuance of an environmental
10 resource permit for a regional stormwater management
11 system; requiring that environmental resource permits
12 authorizing a regional stormwater management system
13 establish and include certain graphic depictions;
14 authorizing certain environmental resource permit
15 applicants to purchase and use certain pollution
16 reduction allocations; requiring the department and
17 water management districts to use specified
18 information to establish drainage areas; providing an
19 exception; amending s. 373.4134, F.S.; revising
20 legislative findings and intent; removing the
21 definition of the term "enhancement credit";
22 authorizing the use of water quality enhancement
23 credits by certain permit applicants; providing that
24 certain use of enhancement credits constitutes certain
25 stormwater treatment; providing that certain pollutant

load reductions may not be referred to as enhancement credits; requiring the department to file specified rules for adoption by a specified date; providing for water quality enhancement provisional permits; providing for the use of certain enhancement credits under such permits; providing for the modification of such permits under certain conditions; requiring the department and water management districts to recognize any enhancement credit used from a water quality enhancement area established pursuant to a provisional permit; amending s. 373.414, F.S.; clarifying the types of mitigation measures for compensating stormwater treatment which the department or a water management district governing board must consider under certain circumstances; 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.

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

Section 1. Section 311.106, Florida Statutes, is amended to read:

311.106 Seaport stormwater permitting and mitigation.—

51 (1) A seaport listed in s. 403.021(9)(b) is authorized to
52 provide for onsite or offsite stormwater treatment for water
53 quality impacts caused by a proposed port activity that requires
54 a permit and that causes or contributes to pollution from
55 stormwater runoff. Offsite stormwater treatment may occur
56 outside of the established boundaries of the port, but must be
57 within the same drainage basin in which the port activity
58 occurs. A port offsite stormwater treatment project must be
59 constructed and maintained by the seaport or by the seaport in
60 conjunction with an adjacent local government. In order to limit
61 stormwater treatment from individual parcels within a port, a
62 seaport may provide for a regional stormwater treatment facility
63 that must be constructed and maintained by the seaport or by the
64 seaport in conjunction with an adjacent local government.

65 (2) For a proposed port activity with water quality
66 impacts that causes or contributes to pollution from stormwater
67 runoff from a seaport not listed in s. 403.021(9)(b), a regional
68 stormwater management system as defined in rule 62-330, Florida
69 Administrative Code, operated by a non-local governmental entity
70 independently or under contract with a seaport or local
71 government, may not provide stormwater treatment or achieve net
72 improvement under s. 373.414(1)(b)3. For a proposed port
73 activity with water quality impacts that causes or contributes
74 to pollution from stormwater runoff from a seaport not listed in
75 s. 403.021(9)(b), a water quality enhancement area as defined in

s. 373.4134(2) and operated by a non-local governmental entity independently or under contract with a seaport or local government may not convey enhancement credits to provide stormwater treatment or achieve net improvement under s. 373.414(1)(b)3.

Section 2. Subsections (23), (24), and (25) are added to section 373.403, Florida Statutes, to read:

373.403 Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(23) "Compensating stormwater treatment" means a method of stormwater treatment for discharges from multiple parcels.

(24) "Enhancement credit" means a standard unit of measure that represents a quantity of pollutant removed by a water quality enhancement area.

(25) "Pollutant reduction allocation" means a standard unit of measure that represents a quantity of pollutant removed by a regional stormwater management system for purposes of providing compensating stormwater treatment under the environmental resource permitting program.

Section 3. Subsection (7) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(7)(a) As used in this subsection, the term "regional stormwater management system" means a method of compensating

101 stormwater treatment that creates pollution reduction
102 allocations and that is designed, constructed, operated, and
103 maintained to collect, convey, store, absorb, inhibit, treat, or
104 harvest stormwater to prevent or reduce flooding, overdrainage,
105 environmental degradation, and water pollution, or otherwise
106 affect the quantity and quality of discharges within the area
107 served by the regional stormwater management system, which is
108 the land or development that is served by or contributes
109 stormwater to the regional stormwater management system.

110 **(b)** As part of meeting the requirement to demonstrate that
111 an applicant for an environmental resource permit for a regional
112 stormwater management system has the financial, legal, and
113 administrative capability of ensuring such regional stormwater
114 management system will be undertaken according to the terms and
115 conditions of an issued permit, the department or a water
116 management district shall require such applicant to provide
117 documentation of adequate financial responsibility. The
118 documentation may consist of, but is not limited to, performance
119 bonds, letters of credit, insurance policies, or trust
120 agreements ensuring completion of construction, the amount of
121 which shall be based on cost estimates of completing the
122 construction, and an endowment or other long-term financial
123 assurance mechanism sufficient to ensure operation and
124 maintenance for the entire period the regional stormwater
125 management system is anticipated to be relied upon to provide

126 stormwater treatment, attenuation, or regulatory pollutant load
127 reduction allocations, the amount of which shall be based on
128 cost estimates of such long-term operation and maintenance. The
129 cost estimates and associated financial responsibility
130 mechanisms shall be updated every 5 years to reflect current
131 costs. This subsection shall not be construed to impose
132 additional financial responsibility requirements on stormwater
133 management systems that are not regional stormwater management
134 systems.

135 (c) An environmental resource permit authorizing a
136 regional stormwater management system shall establish and
137 include a graphic depiction of the drainage area to be served by
138 the regional stormwater management system. Environmental
139 resource permit applicants located within the drainage area may
140 purchase and use pollution reduction allocations from a regional
141 stormwater management system to meet stormwater treatment
142 performance criteria. The department or water management
143 district shall use Hydrologic Unit Code 12 subbasin as set forth
144 by the United States Geological Survey to establish the drainage
145 area, unless the applicant provides justification demonstrating
146 the proposed offsite area outside of the Hydrologic Unit Code 12
147 subbasin would provide the same degree of compensating treatment
148 for a common downstream receiving waters without causing or
149 contributing to any localized adverse impact to any downstream
150 waters through water quality monitoring, modeling, or a

combination thereof.

Section 4. Paragraphs (c) through (f) of subsection (2) of section 373.4134, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, paragraphs (d) through (g) of subsection (3) are redesignated as paragraphs (e) through (h), respectively, a new paragraph (d) is added to that subsection, and paragraph (e) of subsection (1), paragraph (b) of subsection (2), paragraph (b) of subsection (3), paragraph (e) of subsection (7), and subsection (9) of that section are amended, to read:

373.4134 Water quality enhancement areas.—

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

(e) Water quality enhancement areas that provide water quality enhancement credits to applicants seeking permits under ss. 373.403–373.443 and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067 are considered an appropriate and permittable option. The use of an enhancement credit as specified herein transfers the legal responsibility for complying with the applicable regulatory water quality treatment requirement from the purchaser and user of such enhancement credit to the generator of such enhancement credit.

(2) DEFINITIONS.—As used in this section, the term:

~~(b) "Enhancement credit" means a standard unit of measure~~

176 ~~that represents a quantity of pollutant removed.~~

177 (3) WATER QUALITY ENHANCEMENT AREAS.—

178 (b) Water quality enhancement credits may be sold to and
179 used by governmental entities ~~seeking~~ to meet an assigned basin
180 management action plan allocation or reasonable assurance plan
181 or to permit applicants to meet environmental resource permit
182 stormwater treatment performance standards or to achieve for the
183 ~~purpose of achieving net improvement or meeting environmental~~
184 ~~resource permit performance standards~~ under s. 373.414(1)(b)3.
185 ~~after reasonable assurances have been provided for the design~~
186 ~~and construction of all onsite stormwater management, as~~
187 ~~required by law.~~

188 (d) The use of enhancement credits from a water quality
189 enhancement area constitutes compensating stormwater treatment
190 under the environmental resource permitting program.

191 (7) ENHANCEMENT CREDITS.—

192 (e) Reductions in pollutant loading required under any
193 state regulatory program are not eligible to be considered as
194 enhancement credits. In addition, pollutant reductions achieved
195 though compensating stormwater treatment to meet environmental
196 resource permitting stormwater performance standards or as a
197 mitigation measure to achieve net improvement under s.
198 373.414(1)(b)3. outside of enhancement credits generated from a
199 water quality enhancement area may not be referred to as
200 enhancement credits.

201 (9) RULES.—The department shall adopt rules to implement
202 this section. The department shall file the rules for adoption
203 by October 1, 2026. Pending the adoption of the rules to
204 implement this section, the department shall accept, review, and
205 take final agency action on applications for water quality
206 enhancement area provisional permits. The department shall issue
207 a water quality enhancement provisional permit in response to a
208 submitted application if the applicant provides reasonable
209 assurance of meeting the statutory criteria of this section. The
210 department shall allow the use of enhancement credits from a
211 water quality enhancement area established under a provisional
212 permit as provided in this section and subject to compliance
213 with s. 373.4134 and the terms of the provisional permit.
214 Notwithstanding any other provision of law or rule, when
215 reviewing an environmental resource permit application that
216 seeks to satisfy stormwater treatment performance standards or
217 achieve net improvement under s. 373.414(1)(b)3., the department
218 or a water management district shall allow the use of
219 enhancement credits from a water quality enhancement area with a
220 provisional permit pursuant to the terms of such provisional
221 permit. After the department adopts rules to implement this
222 section, the department may modify an issued water quality
223 enhancement provisional permit to conform such permit to such
224 adopted rules. Any enhancement credit used from a water quality
225 enhancement area established under a provisional permit shall

226 continue to be recognized by the department and water management
227 districts without change regardless of whether the provisional
228 permit is subsequently modified to conform to the adopted ~~This~~
229 ~~section may not be implemented until the department adopts such~~
230 rules.

231 **Section 5. Paragraph (b) of subsection (1) of section**
232 **373.414, Florida Statutes, is amended to read:**

233 373.414 Additional criteria for activities in surface
234 waters and wetlands.—

235 (1) As part of an applicant's demonstration that an
236 activity regulated under this part will not be harmful to the
237 water resources or will not be inconsistent with the overall
238 objectives of the district, the governing board or the
239 department shall require the applicant to provide reasonable
240 assurance that state water quality standards applicable to
241 waters as defined in s. 403.031 will not be violated and
242 reasonable assurance that such activity in, on, or over surface
243 waters or wetlands, as delineated in s. 373.421(1), is not
244 contrary to the public interest. However, if such an activity
245 significantly degrades or is within an Outstanding Florida
246 Water, as provided by department rule, the applicant must
247 provide reasonable assurance that the proposed activity will be
248 clearly in the public interest.

249 (b) If the applicant is unable to otherwise meet the
250 criteria set forth in this subsection, the governing board or

the department, in deciding to grant or deny a permit, must consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional 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

276 water management district shall accept only a donation that
277 represents the full cost to the department or water management
278 district of undertaking the project that is intended to mitigate
279 the adverse impacts. The full cost shall include all direct and
280 indirect costs, as applicable, such as those for land
281 acquisition, land restoration or enhancement, perpetual land
282 management, and general overhead consisting of costs such as
283 staff time, building, and vehicles. The department or the water
284 management district may use a multiplier or percentage to add to
285 other direct or indirect costs to estimate general overhead.
286 Mitigation credit for such a donation may be given only to the
287 extent that the donation covers the full cost to the agency of
288 undertaking the project intended to mitigate the adverse
289 impacts. However, this section ~~nothing herein~~ may not be
290 construed to prevent the department or a water management
291 district from accepting a donation representing a portion of a
292 larger project, provided that the donation covers the full cost
293 of that portion and mitigation credit is given only for that
294 portion. The department or water management district may deviate
295 from the full cost requirements of this subparagraph to resolve
296 a proceeding brought pursuant to chapter 70 or a claim for
297 inverse condemnation. ~~Nothing in~~ This section may not be
298 construed to require the owner of a private mitigation bank,
299 permitted under s. 373.4136, to include the full cost of a
300 mitigation credit in the price of the credit to a purchaser of

301 such ~~said~~ credit.

302 2. The department and each water management district shall
303 report by March 1 of each year, as part of the consolidated
304 annual report required by s. 373.036(7), all cash donations
305 accepted under subparagraph 1. during the preceding water
306 management district fiscal year for wetland mitigation purposes.
307 The report must exclude those contributions pursuant to s.
308 373.4137. The report must include a description of the endorsed
309 mitigation projects and, except for projects governed by s.
310 373.4135(6), must address, as applicable, success criteria,
311 project implementation status and timeframe, monitoring, long-
312 term management, provisions for preservation, and full cost
313 accounting.

314 3. If the applicant is unable to meet water quality
315 standards because existing ambient water quality does not meet
316 standards, the governing board or the department must consider
317 mitigation measures, such as compensating stormwater treatment
318 as defined in s. 373.403(23), proposed by or acceptable to the
319 applicant that cause net improvement of the water quality in the
320 receiving body of water for those parameters which do not meet
321 standards.

322 4. If mitigation requirements imposed by a local
323 government for surface water and wetland impacts of an activity
324 regulated under this part cannot be reconciled with mitigation
325 requirements approved under a permit for the same activity

issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts are controlled by the permit issued under this part.

Section 6. 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 areas for two or more mitigation banks may be approved for a regional watershed.

(d) If the provisions of s. 373.414(1)(b) and (8) are met

and an insufficient number or type of credits from banks whose permitted service area overlays in whole or in part the regional watershed in which the impacts occur, the permit applicant is entitled to a one-time use of credits released from a mitigation bank outside the mitigation bank service area to offset impacts pursuant to s. 373.414(1)(b), as established by the procedure in paragraph (f). The department or water management district must have determined that the mitigation service area lacked the appropriate credit type. Priority must be given to mitigation banks whose permitted service area fully includes the impacted site. If the number of released credits within a mitigation service area only partially offsets the impacts associated with a proposed project in the mitigation service area, the permit applicant may only use out-of-service-area credits to account for the difference between 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

376 after credit deficiency has been established by the procedure
377 set forth in paragraph (f).

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

384 4. When in-kind credits are not available to offset
385 impacts in the regional watershed immediately adjacent to the
386 regional watershed overlain by a mitigation bank service area in
387 which the proposed impacts are located, an additional 0.25
388 multiplier shall be applied for each additional regional
389 watershed boundary crossed only after credit deficiency has been
390 established by the procedure set forth in paragraph (f).

391 5. An additional 0.50 multiplier shall be applied after
392 any multipliers required in subparagraphs 1.-4., if the
393 mitigation used to offset impacts entails out-of-kind
394 replacement.

395 **Section 7.** This act shall take effect July 1, 2026.