

CS/HB 1457

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A bill to be entitled  
An act relating to stormwater treatment; amending s. 311.106, F.S.; prohibiting certain stormwater treatment and net improvement activities; amending s. 373.403, F.S.; providing definitions; amending s. 373.413, F.S.; defining the term "regional stormwater management system"; requiring the Department of Environmental Protection to require specified documentation for issuance of an environmental resource permit for a regional stormwater management system; requiring that environmental resource permits authorizing a regional stormwater management system establish and include certain graphic depictions; authorizing certain environmental resource permit applicants to purchase and use certain pollution reduction allocations; requiring the department and water management districts to use specified information to establish drainage areas; providing an exception; amending s. 373.4134, F.S.; revising legislative findings and intent; removing the definition of the term "enhancement credit"; authorizing the use of water quality enhancement credits by certain permit applicants; providing that certain use of enhancement credits constitutes certain stormwater treatment; providing that certain pollutant

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26       load reductions may not be referred to as enhancement  
27       credits; requiring the department to file specified  
28       rules for adoption by a specified date; providing for  
29       water quality enhancement provisional permits;  
30       providing for the use of certain enhancement credits  
31       under such permits; providing for the modification of  
32       such permits under certain conditions; requiring the  
33       department and water management districts to recognize  
34       any enhancement credit used from a water quality  
35       enhancement area established pursuant to a provisional  
36       permit; amending s. 373.414, F.S.; clarifying the  
37       types of mitigation measures for compensating  
38       stormwater treatment which the department or a water  
39       management district governing board must consider  
40       under certain circumstances; reenacting s.  
41       373.4136(6)(d), F.S., relating to establishment and  
42       operation of mitigation banks, to incorporate the  
43       amendment made to s. 373.414, F.S., in a reference  
44       thereto; providing an effective date.

45  
46       Be It Enacted by the Legislature of the State of Florida:

47  
48       **Section 1. Section 311.106, Florida Statutes, is amended**  
49       **to read:**

50       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

76 s. 373.4134(2) and operated by a non-local governmental entity  
77 independently or under contract with a seaport or local  
78 government may not convey enhancement credits to provide  
79 stormwater treatment or achieve net improvement under s.  
80 373.414(1)(b)3.

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

83 373.403 Definitions.—When appearing in this part or in any  
84 rule, regulation, or order adopted pursuant thereto, the  
85 following terms mean:

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

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

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

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

98 373.413 Permits for construction or alteration.—

99 (7)(a) As used in this subsection, the term "regional  
100 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

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151 combination thereof.

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

161 373.4134 Water quality enhancement areas.—

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

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

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

175 (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

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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

251 the department, in deciding to grant or deny a permit, must  
252 consider measures proposed by or acceptable to the applicant to  
253 mitigate adverse effects that may be caused by the regulated  
254 activity. Such measures may include, but are not limited to,  
255 onsite mitigation, offsite mitigation, offsite regional  
256 mitigation, and the purchase of mitigation credits from  
257 mitigation banks permitted under s. 373.4136. It is the  
258 responsibility of the applicant to choose the form of  
259 mitigation. The mitigation must offset the adverse effects  
260 caused by the regulated activity.

261 1. The department or water management districts may accept  
262 the donation of money as mitigation only where the donation is  
263 specified for use in a duly noticed environmental creation,  
264 preservation, enhancement, or restoration project, endorsed by  
265 the department or the governing board of the water management  
266 district, which offsets the impacts of the activity permitted  
267 under this part. However, this subsection does not apply to  
268 projects undertaken pursuant to s. 373.4137 or chapter 378.  
269 Where a permit is required under this part to implement any  
270 project endorsed by the department or a water management  
271 district, all necessary permits must be have been issued before  
272 ~~prior to~~ the acceptance of any cash donation. After the  
273 effective date of this act, when money is donated to either the  
274 department or a water management district to offset impacts  
275 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

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

331 **Section 6. For the purpose of incorporating the amendment  
332 made by this act to section 373.414, Florida Statutes, in a  
333 reference thereto, paragraph (d) of subsection (6) of section  
334 373.4136, Florida Statutes, is reenacted to read:**

335 373.4136 Establishment and operation of mitigation banks.—

336 (6) MITIGATION SERVICE AREA.—The department or water  
337 management district shall establish a mitigation service area  
338 for each mitigation bank permit. The department or water  
339 management district shall notify and consider comments received  
340 on the proposed mitigation service area from each local  
341 government within the proposed mitigation service area. Except  
342 as provided in this section, mitigation credits may be withdrawn  
343 and used only to offset adverse impacts in the mitigation  
344 service area. The boundaries of the mitigation service area  
345 shall depend upon the geographic area where the mitigation bank  
346 could reasonably be expected to offset adverse impacts.  
347 Mitigation service areas may overlap, and mitigation service  
348 areas for two or more mitigation banks may be approved for a  
349 regional watershed.

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

351 and an insufficient number or type of credits from banks whose  
352 permitted service area overlays in whole or in part the regional  
353 watershed in which the impacts occur, the permit applicant is  
354 entitled to a one-time use of credits released from a mitigation  
355 bank outside the mitigation bank service area to offset impacts  
356 pursuant to s. 373.414(1)(b), as established by the procedure in  
357 paragraph (f). The department or water management district must  
358 have determined that the mitigation service area lacked the  
359 appropriate credit type. Priority must be given to mitigation  
360 banks whose permitted service area fully includes the impacted  
361 site. If the number of released credits within a mitigation  
362 service area only partially offsets the impacts associated with  
363 a proposed project in the mitigation service area, the permit  
364 applicant may only use out-of-service-area credits to account  
365 for the difference between the released credits available in the  
366 mitigation bank service area and the credits required to offset  
367 the impacts associated with the proposed project. In  
368 implementing this subsection, the department and water  
369 management districts shall apply a proximity factor to determine  
370 adequate compensatory mitigation as follows:

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

373 2. A 1.0 multiplier shall be applied for use of in-kind  
374 and out-of-service-area credits when the service area overlays  
375 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.