

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; prohibiting
5 certain water quality enhancement areas from conveying
6 enhancement credits to provide stormwater treatment or
7 achieve net improvement; amending s. 373.403, F.S.;
8 defining terms; amending s. 373.413, F.S.; defining
9 the term "regional stormwater management system";
10 requiring that the Department of Environmental
11 Protection or a water management district require an
12 applicant to provide certain documentation of adequate
13 financial responsibility in order to meet certain
14 requirements; providing requirements for such
15 financial responsibility; providing construction;
16 requiring an environmental resource permit authorizing
17 a regional stormwater management system to establish
18 and include a specified graphic depiction; authorizing
19 certain environmental resource permit applicants to
20 purchase and use pollution reduction allocations from
21 a regional stormwater management system to meet
22 certain performance criteria; requiring the department
23 or water management district to use a specified
24 identifier to establish the drainage area; providing
25 an exception; amending s. 373.4134, F.S.; revising

26 | legislative findings; deleting the definition of the
27 | term "enhancement credit"; authorizing water quality
28 | enhancement credits to be used by governmental
29 | entities to meet environmental resource permit
30 | stormwater treatment performance standards or achieve
31 | net improvement, pursuant to specified provisions;
32 | providing that the use of enhancement credits from a
33 | water quality enhancement area constitutes
34 | compensating stormwater treatment under the
35 | environmental resource permitting program; requiring
36 | the boundaries of the enhancement service area to
37 | include a certain type of sub-basin; prohibiting the
38 | term "credit" from being used to refer to pollutant
39 | reduction under certain circumstances; requiring the
40 | department to adopt rules by a specified date;
41 | requiring the department to take certain action
42 | pending the adoption of certain rules; requiring the
43 | department to issue a provisional permit under certain
44 | circumstances; authorizing enhancement credits to be
45 | used from certain water quality enhancement areas;
46 | providing construction; authorizing the department to
47 | modify permits after the adoption of rules; requiring
48 | the department and water management districts to
49 | recognize any enhancement credit used from a water
50 | quality enhancement area established pursuant to a

51 provisional permit; amending s. 373.414, F.S.;

52 clarifying the types of mitigation measures for

53 compensating stormwater treatment which the department

54 or a water management district governing board must

55 consider under certain circumstances; making technical

56 changes; reenacting s. 373.4136(6)(d), F.S., relating

57 to establishment and operation of mitigation banks, to

58 incorporate the amendment made to s. 373.414, F.S., in

59 a reference thereto; providing an effective date.

60

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

62

63 **Section 1. Section 311.106, Florida Statutes, is amended**

64 **to read:**

65 311.106 Seaport stormwater permitting and mitigation.—

66 (1) A seaport listed in s. 403.021(9)(b) is authorized to

67 provide for onsite or offsite stormwater treatment for water

68 quality impacts caused by a proposed port activity that requires

69 a permit and that causes or contributes to pollution from

70 stormwater runoff. Offsite stormwater treatment may occur

71 outside of the established boundaries of the port, but must be

72 within the same drainage basin in which the port activity

73 occurs. A port offsite stormwater treatment project must be

74 constructed and maintained by the seaport or by the seaport in

75 conjunction with an adjacent local government. In order to limit

76 stormwater treatment from individual parcels within a port, a
 77 seaport may provide for a regional stormwater treatment facility
 78 that must be constructed and maintained by the seaport or by the
 79 seaport in conjunction with an adjacent local government.

80 (2) For a proposed port activity with water quality
 81 impacts that causes or contributes to pollution from stormwater
 82 runoff from a seaport not listed in s. 403.021(9)(b), and not
 83 including ports in Citrus or Putnam Counties, a regional
 84 stormwater management system, as defined in s. 373.413(7)(a),
 85 operated by a non-local governmental entity independently or
 86 under contract with a seaport or local government, may not
 87 provide stormwater treatment or achieve net improvement under s.
 88 373.414(1)(b)3. For a proposed port activity with water quality
 89 impacts that causes or contributes to pollution from stormwater
 90 runoff from a seaport not listed in s. 403.021(9)(b), and not
 91 including ports in Citrus or Putnam Counties, a water quality
 92 enhancement area as defined in s. 373.4134 and operated by a
 93 non-local governmental entity independently or under contract
 94 with a seaport or local government may not convey enhancement
 95 credits to provide stormwater treatment or achieve net
 96 improvement under s. 373.414(1)(b)3.

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

99 373.403 Definitions.—When appearing in this part or in any
 100 rule, regulation, or order adopted pursuant thereto, the
 101 following terms mean:

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

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

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

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

114 373.413 Permits for construction or alteration.—

115 (7) REGIONAL STORMWATER MANAGEMENT SYSTEMS.—

116 (a) A "regional stormwater management system" is a method
 117 of compensating stormwater treatment that creates pollution
 118 reduction allocations and is designed, constructed, operated,
 119 and maintained to collect, convey, store, absorb, inhibit,
 120 treat, or harvest stormwater to prevent or reduce flooding,
 121 overdrainage, environmental degradation and water pollution or
 122 otherwise affect the quantity and quality of discharges within
 123 the drainage area served by the regional system which is the

124 land or development that is served by or contributes stormwater
125 to the regional system.

126 (b) As part of meeting the requirement to demonstrate that
127 an applicant for an environmental resource permit for a regional
128 stormwater management system has the financial, legal, and
129 administrative capability of ensuring such regional stormwater
130 management system will be undertaken according to the terms and
131 conditions of an issued permit, the department or a water
132 management district shall require such applicant to provide
133 documentation of adequate financial responsibility. This
134 financial responsibility may consist of performance bonds,
135 letters of credit, insurance policies, trust agreements, or
136 similar, ensuring completion of construction; the amount of
137 which shall be based on cost estimates of completing the
138 construction; and an endowment or other long-term financial
139 assurance mechanism sufficient to ensure operation and
140 maintenance for the entire period the regional stormwater
141 management system is anticipated to be relied upon to provide
142 stormwater treatment, attenuation, or regulatory pollutant load
143 reduction allocations, the amount of which shall be based on
144 cost estimates of such long-term operation and maintenance. The
145 cost estimates and associated financial responsibility
146 mechanisms shall be updated every 5 years to reflect current
147 costs. This section shall not be construed to impose additional

148 financial responsibility requirements on stormwater management
149 systems that are not regional stormwater management systems.

150 (c) An environmental resource permit authorizing a
151 regional stormwater management system shall establish and
152 include a graphic depicting the drainage area to be served by
153 such system. Environmental resource permit applicants located
154 within the drainage area may purchase and use pollution
155 reduction allocations from a regional stormwater management
156 system to meet stormwater treatment performance criteria. The
157 department or water management district shall use Hydrologic
158 Unit Code 12 (HUC 12) sub-basin as set forth by the United
159 States Geological Survey to establish the drainage area, unless
160 the regional stormwater management system applicant provides
161 justification demonstrating the proposed off-site area outside
162 of the HUC 12 would provide the same degree of compensating
163 treatment for a common downstream receiving waterbody without
164 causing or contributing to any localized adverse impact to any
165 downstream waters, through modeling, other evaluations, or a
166 combination thereof.

167 **Section 4. Present paragraphs (d) through (g) of**
168 **subsection (3) of section 373.4134, Florida Statutes, are**
169 **redesignated as paragraphs (e) through (h), respectively, a new**
170 **paragraph (d) is added to that subsection, and paragraph (e) of**
171 **subsection (1), paragraph (b) of subsection (2), paragraph (b)**
172 **of subsection (3), subsection (5), paragraph (e) of subsection**

173 **(7), and subsection (9) of that section are amended, to read:**

174 373.4134 Water quality enhancement areas.—

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

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

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

188 ~~(b) "Enhancement credit" means a standard unit of measure~~
189 ~~that represents a quantity of pollutant removed.~~

190 (3) WATER QUALITY ENHANCEMENT AREAS.—

191 (b) Water quality enhancement credits may be sold to and
192 used by governmental entities ~~seeking~~ to meet an assigned basin
193 management action plan allocation or reasonable assurance plan
194 or to permit applicants to meet environmental resource permit
195 stormwater treatment performance standards or to achieve ~~for the~~
196 ~~purpose of achieving~~ net improvement ~~or meeting environmental~~
197 ~~resource permit performance standards~~ under s. 373.414(1)(b)3.

198 ~~after reasonable assurances have been provided for the design~~
199 ~~and construction of all onsite stormwater management, as~~
200 ~~required by law.~~

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

204 (5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department
205 shall establish a water quality enhancement service area for
206 each water quality enhancement area. Enhancement credits may be
207 withdrawn and used only to address adverse impacts in the
208 enhancement service area. The boundaries of the enhancement
209 service area shall depend upon the geographic area in which the
210 water quality enhancement area could reasonably be expected to
211 address adverse impacts and must, at a minimum, consist of a
212 Hydrologic Unit Code 8 (HUC 8) sub-basin as set forth by the
213 United States Geological Survey. Enhancement service areas may
214 overlap, and enhancement service areas for two or more water
215 quality enhancement areas may be approved for a regional
216 watershed.

217 (7) ENHANCEMENT CREDITS.—

218 (e) Reductions in pollutant loading required under any
219 state regulatory program are not eligible to be considered as
220 enhancement credits. In addition, the term "credit" shall not be
221 used to refer to pollutant reduction achieved through
222 compensating stormwater treatment to meet environmental resource

223 permitting stormwater performance standards or as a mitigation
224 measure to achieve net improvement under s. 373.414(1)(b)3.
225 outside of enhancement credits generated from a water quality
226 enhancement area.

227 (9) RULES.—The department shall adopt rules to implement
228 this section which shall be filed for adoption no later than
229 October 1, 2026. This section may not be implemented until the
230 department adopts such rules. Pending the adoption of rules to
231 implement this section, the department shall accept, review and
232 take final agency action on applications for water quality
233 enhancement area provisional permits. The department shall issue
234 a water quality enhancement provisional permit in response to a
235 submitted application if the applicant provides reasonable
236 assurance of meeting the statutory criteria in this section.
237 Enhancement credits may be used from a water quality enhancement
238 area established under a provisional permit as provided in this
239 section subject to compliance with s. 373.4134 and the terms of
240 the provisional permit. Notwithstanding any other provision of
241 law or rule, the department or a water management district
242 reviewing an environmental resource permit application that
243 seeks to satisfy stormwater treatment performance standards or
244 achieve net improvement under s. 373.414(1)(b)3. shall allow the
245 use of enhancement credits from a water quality enhancement area
246 with a provisional permit pursuant to the terms of such
247 provisional permit. After the department adopts rules to

248 implement this section, the department may modify a water
249 quality enhancement area provisional permit to conform such
250 permit to such rules. Any enhancement credits used from a water
251 quality enhancement area established under a provisional permit
252 shall continue to be recognized by the department and water
253 management districts without change regardless of whether the
254 provisional permit is subsequently modified to conform to the
255 adopted rules.

256 **Section 5. Paragraph (b) of subsection (1) of section**
257 **373.414, Florida Statutes, is amended to read:**

258 373.414 Additional criteria for activities in surface
259 waters and wetlands.—

260 (1) As part of an applicant's demonstration that an
261 activity regulated under this part will not be harmful to the
262 water resources or will not be inconsistent with the overall
263 objectives of the district, the governing board or the
264 department shall require the applicant to provide reasonable
265 assurance that state water quality standards applicable to
266 waters as defined in s. 403.031 will not be violated and
267 reasonable assurance that such activity in, on, or over surface
268 waters or wetlands, as delineated in s. 373.421(1), is not
269 contrary to the public interest. However, if such an activity
270 significantly degrades or is within an Outstanding Florida
271 Water, as provided by department rule, the applicant must

272 provide reasonable assurance that the proposed activity will be
273 clearly in the public interest.

274 (b) If the applicant is unable to otherwise meet the
275 criteria set forth in this subsection, the governing board or
276 the department, in deciding to grant or deny a permit, must
277 consider measures proposed by or acceptable to the applicant to
278 mitigate adverse effects that may be caused by the regulated
279 activity. Such measures may include, but are not limited to,
280 onsite mitigation, offsite mitigation, offsite regional
281 mitigation, and the purchase of mitigation credits from
282 mitigation banks permitted under s. 373.4136. It is the
283 responsibility of the applicant to choose the form of
284 mitigation. The mitigation must offset the adverse effects
285 caused by the regulated activity.

286 1. The department or water management districts may accept
287 the donation of money as mitigation only where the donation is
288 specified for use in a duly noticed environmental creation,
289 preservation, enhancement, or restoration project, endorsed by
290 the department or the governing board of the water management
291 district, which offsets the impacts of the activity permitted
292 under this part. However, this subsection does not apply to
293 projects undertaken pursuant to s. 373.4137 or chapter 378.
294 Where a permit is required under this part to implement any
295 project endorsed by the department or a water management
296 district, all necessary permits must be ~~have been~~ issued before

297 ~~prior to~~ the acceptance of any cash donation. After the
298 effective date of this act, when money is donated to either the
299 department or a water management district to offset impacts
300 authorized by a permit under this part, the department or the
301 water management district shall accept only a donation that
302 represents the full cost to the department or water management
303 district of undertaking the project that is intended to mitigate
304 the adverse impacts. The full cost shall include all direct and
305 indirect costs, as applicable, such as those for land
306 acquisition, land restoration or enhancement, perpetual land
307 management, and general overhead consisting of costs such as
308 staff time, building, and vehicles. The department or the water
309 management district may use a multiplier or percentage to add to
310 other direct or indirect costs to estimate general overhead.
311 Mitigation credit for such a donation may be given only to the
312 extent that the donation covers the full cost to the agency of
313 undertaking the project intended to mitigate the adverse
314 impacts. However, nothing herein may be construed to prevent the
315 department or a water management district from accepting a
316 donation representing a portion of a larger project, provided
317 that the donation covers the full cost of that portion and
318 mitigation credit is given only for that portion. The department
319 or water management district may deviate from the full cost
320 requirements of this subparagraph to resolve a proceeding
321 brought pursuant to chapter 70 or a claim for inverse

322 condemnation. ~~Nothing in~~ This section may not be construed to
323 require the owner of a private mitigation bank, permitted under
324 s. 373.4136, to include the full cost of a mitigation credit in
325 the price of the credit to a purchaser of such ~~said~~ credit.

326 2. The department and each water management district shall
327 report by March 1 of each year, as part of the consolidated
328 annual report required by s. 373.036(7), all cash donations
329 accepted under subparagraph 1. during the preceding water
330 management district fiscal year for wetland mitigation purposes.
331 The report must exclude those contributions pursuant to s.
332 373.4137. The report must include a description of the endorsed
333 mitigation projects and, except for projects governed by s.
334 373.4135(6), must address, as applicable, success criteria,
335 project implementation status and timeframe, monitoring, long-
336 term management, provisions for preservation, and full cost
337 accounting.

338 3. If the applicant is unable to meet water quality
339 standards because existing ambient water quality does not meet
340 standards, the governing board or the department must consider
341 mitigation measures, such as compensating stormwater treatment
342 as defined in s. 373.403(23), proposed by or acceptable to the
343 applicant that cause net improvement of the water quality in the
344 receiving body of water for those parameters which do not meet
345 standards.

346 4. If mitigation requirements imposed by a local

347 government for surface water and wetland impacts of an activity
 348 regulated under this part cannot be reconciled with mitigation
 349 requirements approved under a permit for the same activity
 350 issued under this part, including application of the uniform
 351 wetland mitigation assessment method adopted pursuant to
 352 subsection (18), the mitigation requirements for surface water
 353 and wetland impacts are controlled by the permit issued under
 354 this part.

355 **Section 6. For the purpose of incorporating the amendment**
 356 **made by this act to section 373.414, Florida Statutes, in a**
 357 **reference thereto, paragraph (d) of subsection (6) of section**
 358 **373.4136, Florida Statutes, is reenacted to read:**

359 373.4136 Establishment and operation of mitigation banks.—

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

372 areas for two or more mitigation banks may be approved for a
373 regional watershed.

374 (d) If the provisions of s. 373.414(1)(b) and (8) are met
375 and an insufficient number or type of credits from banks whose
376 permitted service area overlays in whole or in part the regional
377 watershed in which the impacts occur, the permit applicant is
378 entitled to a one-time use of credits released from a mitigation
379 bank outside the mitigation bank service area to offset impacts
380 pursuant to s. 373.414(1)(b), as established by the procedure in
381 paragraph (f). The department or water management district must
382 have determined that the mitigation service area lacked the
383 appropriate credit type. Priority must be given to mitigation
384 banks whose permitted service area fully includes the impacted
385 site. If the number of released credits within a mitigation
386 service area only partially offsets the impacts associated with
387 a proposed project in the mitigation service area, the permit
388 applicant may only use out-of-service-area credits to account
389 for the difference between the released credits available in the
390 mitigation bank service area and the credits required to offset
391 the impacts associated with the proposed project. In
392 implementing this subsection, the department and water
393 management districts shall apply a proximity factor to determine
394 adequate compensatory mitigation as follows:

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

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

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

408 4. When in-kind credits are not available to offset
409 impacts in the regional watershed immediately adjacent to the
410 regional watershed overlain by a mitigation bank service area in
411 which the proposed impacts are located, an additional 0.25
412 multiplier shall be applied for each additional regional
413 watershed boundary crossed only after credit deficiency has been
414 established by the procedure set forth in paragraph (f).

415 5. An additional 0.50 multiplier shall be applied after
416 any multipliers required in subparagraphs 1.-4., if the
417 mitigation used to offset impacts entails out-of-kind
418 replacement.

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