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1
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

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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

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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 to
64 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 impacts
81 that causes or contributes to pollution from stormwater runoff
82 from a seaport not listed in s. 403.021(9)(b), and not including
83 ports in Citrus or Putnam Counties, a regional stormwater
84 management system, as defined in s. 373.413(7)(a), operated by a
85 nonlocal governmental entity independently or under contract
86 with a seaport or local government, may not provide stormwater
87 treatment or achieve net improvement under s. 373.414(1)(b)3.

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88 For a proposed port activity with water quality impacts that
89 causes or contributes to pollution from stormwater runoff from a
90 seaport not listed in s. 403.021(9) (b), and not including ports
91 in Citrus or Putnam Counties, a water quality enhancement area
92 as defined in s. 373.4134 and operated by a nonlocal
93 governmental entity independently or under contract with a
94 seaport or local government may not convey enhancement credits
95 to provide stormwater treatment or achieve net improvement under
96 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 unit
108 of measure that represents a quantity of pollutant removed by a
109 regional stormwater management system for purposes of providing
110 compensating stormwater treatment under the environmental
111 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

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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

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

167 Section 4. Present paragraphs (d) through (g) of subsection
168 (3) of section 373.4134, Florida Statutes, are redesignated as
169 paragraphs (e) through (h), respectively, a new paragraph (d) is
170 added to that subsection, and paragraph (e) of subsection (1),
171 paragraph (b) of subsection (2), paragraph (b) of subsection
172 (3), subsection (5), paragraph (e) of subsection (7), and
173 subsection (9) of that section are amended, to read:

174 373.4134 Water quality enhancement areas.—

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

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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

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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

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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

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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

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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 government
347 for surface water and wetland impacts of an activity regulated
348 under this part cannot be reconciled with mitigation

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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

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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 and
398 out-of-service-area credits when the service area overlays part
399 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 and
403 out-of-service-area credits located within a regional watershed
404 immediately adjacent to the regional watershed overlain by a
405 bank service area in which proposed impacts are located only
406 after credit deficiency has been established by the procedure

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407 set forth in paragraph (f).

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

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

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