

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Infrastructure Strategies
 2 Committee

3 Representative Truenow offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present paragraphs (a) through (e) of
 8 subsection (2) of section 373.4134, Florida Statutes, are
 9 redesignated as paragraphs (b) through (f), respectively, a new
 10 paragraph (a) is added to that subsection, and paragraphs (b),
 11 (d), and (e) of subsection (1), paragraphs (b) and (c) of
 12 subsection (3), and paragraphs (a) and (j) of subsection (7) of
 13 that section are amended, to read:

14 373.4134 Water quality enhancement areas.—

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

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17 (b) An expansion of existing authority for regional
18 treatment to include offsite compensatory treatment in water
19 quality enhancement areas to make enhancement credits available
20 for purchase by an applicant or a governmental entity ~~entities~~
21 to address impacts regulated under ss. 373.403-373.443 ~~this part~~
22 is needed.

23 (d) Water quality enhancement areas are a valuable tool to
24 assist an applicant ~~governmental entities~~ in providing a
25 satisfying the net improvement of the water quality in a
26 receiving waterbody that does not meet standards or in
27 satisfying the environmental resource permit performance
28 standard under s. 373.414(1)(b)3. to ensure significant
29 reductions of pollutant loadings.

30 (e) Water quality enhancement areas that provide water
31 quality enhancement credits to applicants ~~governmental entities~~
32 seeking permits under ss. 373.403-373.443 ~~this part~~ and to
33 governmental entities seeking to meet an assigned basin
34 management action plan allocation or reasonable assurance plan
35 under s. 403.067 are considered an appropriate and permissible
36 option.

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

38 (a) "Applicant" means a governmental entity that seeks to
39 purchase water quality enhancement credits to meet an assigned
40 basin management action plan allocation or reasonable assurance
41 plan or a governmental entity or a private sector entity that

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42 seeks to purchase water quality enhancement credits for the
43 purpose of achieving net improvement under s. 373.414(1)(b)3. or
44 satisfying environmental resource permit performance standards.

45 (3) WATER QUALITY ENHANCEMENT AREAS.—

46 (b) Water quality enhancement credits may be sold ~~only~~ to
47 governmental entities seeking to meet an assigned basin
48 management action plan allocation or reasonable assurance plan
49 or to applicants for the purpose of achieving net improvement or
50 meeting environmental resource permit performance standards
51 under s. 373.414(1)(b)3. after the governmental entity has
52 provided reasonable assurances have been provided for the
53 assurance of meeting department rules for design and
54 construction of all onsite stormwater management, as required by
55 law.

56 (c) A water quality enhancement area must be used to
57 address contributions of one or more pollutants or other
58 constituents in the watershed, basin, sub-basin, targeted
59 restoration area, waterbody, or section of waterbody, as
60 determined by the department, in which the water quality
61 enhancement area is located that do not meet applicable state
62 water quality standards or environmental resource permit
63 performance standards ~~criteria.~~

64 (7) ENHANCEMENT CREDITS.—

65 (a) The department or water management district shall
66 authorize the sale and use of enhancement credits to applicants

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67 ~~governmental entities~~ to address adverse water quality impacts
68 of activities regulated under ss. 373.403-373.443 ~~this part~~ or
69 to assist governmental entities seeking to meet required
70 nonpoint source contribution reductions assigned in a basin
71 management action plan or reasonable assurance plan under s.
72 403.067.

73 (j) Notwithstanding any other law, this section does not
74 limit or restrict the authority of the department to deny the
75 use of enhancement credits when the department is not reasonably
76 assured that the use of the credits will not cause or contribute
77 to a violation of water quality standards, even if the project
78 being implemented by the applicant ~~governmental entity~~ is within
79 the enhancement service area. The department may allow the use
80 of enhancement credits if the department receives a request for
81 the use of enhancement credits and determines that such use will
82 not cause or contribute to a violation of water quality
83 standards.

84 Section 2. Subsection (1) of section 373.4135, Florida
85 Statutes, is amended, and subsection (8) is added to that
86 section, to read:

87 373.4135 Mitigation banks and offsite regional
88 mitigation.—

89 (1) The Legislature finds that the adverse impacts of
90 activities regulated under this part may be offset by the
91 creation, maintenance, and use of mitigation banks and offsite

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92 regional mitigation. Mitigation banks and offsite regional
93 mitigation can enhance the certainty of mitigation and provide
94 ecological value due to the improved likelihood of environmental
95 success associated with their proper construction, maintenance,
96 and management. Therefore, the department and the water
97 management districts are directed to ~~participate in and~~
98 encourage the establishment of private ~~and public~~ mitigation
99 banks and offsite regional mitigation on lands owned by a local
100 government, when such lands are located in a credit-deficient
101 basin as defined in paragraph (8) (a) and the proposed mitigation
102 bank or offsite regional mitigation would provide one or more of
103 the deficient habitat type credits described in subparagraph
104 (8) (a)2. Mitigation banks and offsite regional mitigation should
105 emphasize the restoration and enhancement of degraded ecosystems
106 and the preservation of uplands and wetlands as intact
107 ecosystems rather than alteration of landscapes to create
108 wetlands. This is best accomplished through restoration of
109 ecological communities that were historically present.

110 (a) The Legislature intends that the provisions for
111 establishing mitigation banks apply equally to both public and
112 private entities, except that the rules of the department and
113 water management districts may set forth different measures
114 governing financial responsibility, and different measures
115 governing legal interest, needed to ensure the construction and
116 perpetual protection of a mitigation bank.

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117 (b) The Legislature recognizes the importance of
118 mitigation banks as an appropriate and allowable mitigation
119 alternative to permittee-responsible mitigation. However, the
120 Legislature also recognizes that certain timing and geographical
121 constraints could result in the unavailability of mitigation
122 bank credits for a certain project upon completion of the
123 project's application. If state and federal mitigation credits
124 are not available to offset the adverse impacts of a project, a
125 local government may allow permittee-responsible mitigation
126 consisting of the restoration or enhancement of lands purchased
127 and owned by a local government for conservation purposes, and
128 such mitigation must conform to the permitting requirements of
129 s. 373.4136. Except when a local government has allowed a public
130 or private mitigation project to be created on land it has
131 purchased for conservation purposes pursuant to this paragraph,
132 a governmental entity may not create or provide mitigation for a
133 project other than its own unless the governmental entity uses
134 land that was not previously purchased for conservation and
135 unless the governmental entity provides the same financial
136 assurances as required for mitigation banks permitted under s.
137 373.4136. This paragraph does not apply to:

138 1. Mitigation banks permitted before December 31, 2011,
139 under s. 373.4136;

140 2. Offsite regional mitigation areas established before
141 December 31, 2011, under subsection (6) or, when credits are not

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142 available at a mitigation bank permitted under s. 373.4136,
143 mitigation areas created by a local government which were
144 awarded mitigation credits pursuant to the uniform mitigation
145 assessment method as provided in chapter 62-345, Florida
146 Administrative Code, under a permit issued before December 31,
147 2011;

148 3. Mitigation for transportation projects under ss.
149 373.4137 and 373.4139;

150 4. Mitigation for impacts from mining activities under s.
151 373.41492;

152 5. Mitigation provided for single-family lots or
153 homeowners under subsection (7);

154 6. Entities authorized in chapter 98-492, Laws of Florida;

155 7. Mitigation provided for electric utility impacts
156 certified under part II of chapter 403; or

157 8. Mitigation provided on sovereign submerged lands under
158 subsection (6).

159 (c) It is the further intent of the Legislature that
160 mitigation banks and offsite regional mitigation be considered
161 appropriate and a permissible mitigation option under the
162 conditions specified by the rules of the department and water
163 management districts.

164 (d) Offsite mitigation, including offsite regional
165 mitigation, may be located outside the regional watershed in
166 which the adverse impacts of an activity regulated under this

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167 part are located, if such adverse impacts are offset by the
168 offsite mitigation.

169 (e) The department or water management district may allow
170 the use of a mitigation bank or offsite regional mitigation
171 alone or in combination with other forms of mitigation to offset
172 adverse impacts of activities regulated under this part.

173 (f) When an applicant seeking ~~for~~ a permit under ~~the~~
174 ~~provisions of~~ this part other than this section and s. 373.4136
175 submits more than one mitigation proposal to the department or a
176 water management district, the department or water management
177 district shall, in evaluating each proposal, ensure that such
178 proposal adequately offsets the adverse impacts.

179 (8) It is the intent of the Legislature to allow limited
180 use of local government land, including lands acquired for
181 conservation, for private sector mitigation banks, provided that
182 the private mitigation banks are located in credit-deficient
183 basins and would produce the habitat type credits that are
184 unavailable or insufficient in such basins. As used in this
185 subsection, the term "local government" includes a county,
186 municipality, or special district as those terms are defined in
187 s. 165.031. This subsection does not apply to lands owned by the
188 state or a water management district.

189 (a) A basin is considered to be a credit-deficient basin
190 if it is a drainage basin or a corresponding hydrologic unit
191 code, and has all of the following features:

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192 1. At least one mitigation bank has been permitted and
193 established on lands not owned by a governmental entity, and
194 that mitigation bank no longer has one of the habitat type
195 credits listed in subparagraph 2. available for purchase;

196 2. There is a documented shortage of either forested
197 freshwater, non-forested freshwater, forested saltwater, or non-
198 forested saltwater habitat type credits; and

199 3. Pending mitigation bank applications on private land or
200 pending credit releases from mitigation banks on nongovernmental
201 land are unlikely to alleviate the credit shortage.

202 (b) A local government with land in a credit-deficient
203 basin may, through the public procurement processes identified
204 in chapter 287 or other established competitive procurement
205 processes, consider a proposal from a private entity applicant
206 for the right to establish a mitigation bank on the local
207 government land, including such lands purchased for conservation
208 purposes, provided acquisition encumbrances do not exist to the
209 contrary.

210 (c) If such a mitigation bank is to be established and
211 operated on local government land, the local government and
212 private applicant must enter into a use agreement that meets the
213 requirements of this paragraph and that requires the private
214 applicant to establish and operate the mitigation bank in
215 conformance with the permitting requirements of s. 373.4136, and
216 the rules adopted thereunder. The use agreement must:

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- 217 1. Include a requirement that the local government
218 landowner assume the role of long-term steward of the property,
219 and state that the landowner will grant a conservation easement
220 or substantially similar recordable instrument pursuant to s.
221 704.06, in favor of the permitting agency, if a conservation
222 easement or substantially similar recordable instrument
223 acceptable to the permitting agency does not already exist; and
224 2. Include a requirement for the private applicant to do
225 all of the following:
226 a. Provide bid and performance security instruments for a
227 minimum of 5 percent of the total bid amount, to ensure that a
228 use agreement with the local government is executed and a
229 mitigation bank permit is applied for by the private applicant.
230 b. Operate and maintain the mitigation bank until final
231 permit success criteria are met, as permitted by the department
232 or water management district.
233 c. Agree to establish financial assurance for long-term
234 management in an amount agreeable to the local government
235 landowner and as provided for in rules adopted pursuant to this
236 section and s. 373.4136, for use by the local government as the
237 long-term steward of the land, after the mitigation bank final
238 environmental resource permit success criteria are met. The
239 private sector applicant may also use an endowment to provide
240 financial assurances.

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241 d. Acknowledge that denial of the state mitigation bank
242 permit application will terminate the use agreement.

243 e. Acknowledge that failure to obtain the mitigation bank
244 permit within 2 years after the use agreement execution date
245 will terminate the use agreement, unless it is extended for good
246 cause by the local government.

247 (d) Public funds may not be used to fund the financial
248 assurances for construction and implementation of the mitigation
249 bank or for the establishment of the long-term management
250 financial assurances.

251 (e) In determining the number of mitigation bank credits
252 to be awarded to a mitigation bank established pursuant to this
253 subsection, the proposed mitigation bank's location in or
254 adjacent to the local government conservation lands may not
255 increase the uniform mitigation assessment method location
256 factor assessment and scoring value, even if the conservation
257 status of the mitigation bank land is improved due to such
258 location.

259 (f) Credit deficiency is confirmed at the time the use
260 agreement is executed by the parties. Once confirmed, the
261 mitigation bank application may proceed, even if the deficiency
262 is relieved.

263 (g) While not required, the department, in coordination
264 with the water management districts, may adopt rules to
265 implement this subsection.

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266 Section 3. For the purpose of incorporating the amendment
267 made by this act to section 373.4135, Florida Statutes, in
268 references thereto, paragraphs (a) and (c) of subsection (1) of
269 section 403.9332, Florida Statutes, are reenacted to read:

270 403.9332 Mitigation and enforcement.—

271 (1)(a) Any area in which 5 percent or more of the trimmed
272 mangrove trees have been trimmed below 6 feet in height, except
273 as provided in s. 403.9326(1)(c), (d), (f), (g), and (h),
274 destroyed, defoliated, or removed as a result of trimming
275 conducted under s. 403.9326 or s. 403.9327 must be restored or
276 mitigated. Restoration must be accomplished by replanting
277 mangroves, in the same location and of the same species as each
278 mangrove destroyed, defoliated, removed, or trimmed, to achieve
279 within 5 years a canopy area equivalent to the area destroyed,
280 removed, defoliated, or trimmed; or mitigation must be
281 accomplished by replanting offsite, in areas suitable for
282 mangrove growth, mangroves to achieve within 5 years a canopy
283 area equivalent to the area destroyed, removed, defoliated, or
284 trimmed. Where all or a portion of the restoration or mitigation
285 is not practicable, as determined by the department or delegated
286 local government, the impacts resulting from the destruction,
287 defoliation, removal, or trimming of the mangroves must be
288 offset by donating a sufficient amount of money to offset the
289 impacts, which must be used for the restoration, enhancement,
290 creation, or preservation of mangrove wetlands within a

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291 restoration, enhancement, creation, or preservation project
292 approved by the department or delegated local government; or by
293 purchasing credits from a mitigation bank created under s.
294 373.4135 at a mitigation ratio of 2-to-1 credits to affected
295 area. The donation must be equivalent to the cost, as verified
296 by the department or delegated local government, of creating
297 mangrove wetlands at a 2-to-1, created versus affected ratio,
298 based on canopy area. The donation may not be less than \$4 per
299 square foot of created wetland area.

300 (c) If mangroves are to be trimmed or altered under a
301 permit issued under s. 403.9328, the department or delegated
302 local government may require mitigation. The department or
303 delegated local government shall establish reasonable mitigation
304 requirements that must include, as an option, the use of
305 mitigation banks created under s. 373.4135, where appropriate.
306 The department's mitigation requirements must ensure that
307 payments received as mitigation are sufficient to offset impacts
308 and are used for mangrove creation, preservation, protection, or
309 enhancement.

310 Section 4. This act shall take effect July 1, 2024.

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313

T I T L E A M E N D M E N T

314

Remove everything before the enacting clause and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1073 (2024)

Amendment No.

315 An act relating to mitigation; amending s. 373.4134, F.S.;
316 revising legislative findings; defining the term "applicant";
317 revising the entities to whom and purposes for which water
318 quality enhancement credits may be sold; requiring the
319 Department of Environmental Protection or water management
320 districts to authorize the sale and use of such credits to
321 applicants, rather than to governmental entities, to address
322 adverse water quality impacts of certain activities; revising
323 construction; amending s. 373.4135, F.S.; revising legislative
324 findings; providing legislative intent; defining the term "local
325 government"; providing applicability; providing circumstances
326 under which basins are considered to be credit-deficient basins;
327 authorizing local governments with land in credit-deficient
328 basins to consider bids from private-sector applicants to
329 establish mitigation banks on such lands; requiring use
330 agreements that meet certain requirements for such mitigation
331 banks; prohibiting the use of public funds to fund financial
332 assurances for certain purposes; providing that specified
333 factors may not increase the uniform mitigation assessment
334 method location factor assessment and scoring value in
335 determining the number of mitigation bank credits to be awarded;
336 providing that credit deficiency is confirmed at the time of
337 filing a permit application; authorizing the department, in
338 coordination with the water management districts, to adopt
339 rules; reenacting s. 403.9332(1)(a) and (c), F.S., relating to

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1073 (2024)

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340 mitigation and enforcement, to incorporate the amendments made
341 to s. 373.4135, F.S., in references thereto; providing an
342 effective date.