

# FLORIDA HOUSE OF REPRESENTATIVES

## BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [CS/HB 1175](#)

**TITLE:** Mitigation Banks

**SPONSOR(S):** Duggan

**COMPANION BILL:** [SB 492](#) (McClain)

**LINKED BILLS:** None

**RELATED BILLS:** [SB 1142](#) (Rodriguez)

### Committee References

[Natural Resources & Disasters](#)

12 Y, 3 N, As CS



[Agriculture & Natural Resources  
Budget](#)



[State Affairs](#)

## SUMMARY

### Effect of the Bill:

The bill revises requirements related to mitigation banking. Specifically, the bill:

- Creates a standardized schedule for releasing mitigation credits and removes the requirement that the Department of Environmental Protection (DEP) and water management districts (WMDs) determine the release schedule on a case-by-case basis based on statutorily enumerated factors.
- Allows project applicants to use mitigation credits from outside a mitigation service area when an insufficient number or type of credits are available within the impacted area.
- Requires DEP or a WMD to verify the availability, or lack thereof, of mitigation banking credits within the impacted watershed.
- Establishes multipliers that must be applied for out-of-service-area and out-of-kind mitigation credits.
- Requires all mitigation banks in the state to provide accounting reports of mitigation credits to DEP or a WMD, which must be compiled and reported to the Governor and Legislature.

The bill also requires a WMD, upon application by the fee simple owner of parcel for which a WMD owns a conservation easement, to release the conservation easement if certain criteria are met.

### Fiscal or Economic Impact:

The bill may have an indeterminate negative fiscal impact on DEP associated with the reporting requirements of the bill. The bill may have a positive fiscal impact on mitigation bankers who may be able to sell out-of-service-area credits to individuals under the new regulations of the bill. The bill may also have a positive fiscal impact on developers that are able to proceed with projects through the use of out-of-service-area credits.

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## ANALYSIS

### EFFECT OF THE BILL:

#### Mitigation Bank Credit Release Schedule

Beginning July 1, 2025, the bill creates a standardized schedule for releasing [mitigation credits](#) that have been awarded to [mitigation banks](#) through a permit approved by the Department of Environmental Protection (DEP) or a Water Management District (WMD) and removes the requirement that DEP and WMDs determine the release schedule on a case-by-case basis based on statutorily enumerated factors. The bill requires DEP or a WMD to release the credits as follows:

- 30 percent of credits must be released for the recording of the conservation easement and establishment of financial assurances required by the mitigation bank permit.
- For preservation-only banks 100 percent of the awarded credits must be released for recording the conservation easement and the establishment of financial assurances required by the mitigation bank permit.

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- 30 percent of awarded credits must be released following completion of initial construction activities as established by the mitigation bank permit.
- 20 percent of awarded credits must be released in increments as monitoring indicates interim performance criteria established by the mitigation bank permit are being met.
- 20 percent of awarded credits must be released upon meeting the final success criteria established in the mitigation bank permit. (Section [1](#))

The bill revises a provision that prohibits a mitigation credit from being released for freshwater wetland creation until the success criteria established in the mitigation bank permit are met. Instead, the bill prohibits such credits from being released until the success criteria established in the mitigation bank permit for initial construction activities are met. (Section [1](#))

### **Mitigation Service Area**

The bill specifies that a mitigation bank service area established by DEP or a WMD for a mitigation bank is considered to have met the [cumulative impact requirements](#) for wetland and surface waters within any regional watershed included in the mitigation bank service area and deems the mitigation bank service area regionally ecologically significant. (Section [1](#))

### **Out-of-Service-Area Credits**

The bill authorizes credits released from a mitigation bank to be used to offset impacts resulting from a project if the project meets current established mitigation requirements and the out-of-service-area criteria established by the bill. (Section [1](#))

If the requirements to determine that a project is not contrary to the public interest are met and there is an insufficient number or type of credits available within the mitigation bank service area that the impacts associated with a proposed project are located, the bill allows a project applicant to apply for a one-time use of credits from a mitigation bank outside the mitigation bank service area to offset impacts of the project. If the number of credits within a mitigation service area only partially offset the impacts associated with a proposed project in the mitigation service area, the bill authorizes the project applicant to use out-of-service-area credits to account for the difference between the released credits available in the mitigation bank service area and the credits required to offset the impacts associated with the proposed project. (Section [1](#))

In order to use out-of-service-area credits, the project applicant must request approval for such use from DEP or the WMD within which the impacted regional watershed is located. Upon receiving such request, the bill requires DEP or a WMD to contact all mitigation banks within the mitigation service area encompassing the location of the proposed impacts within three business days and request an accounting of available credits. The accounting may not include credits reserved for other project applicants. The bill requires mitigation banks that have been contacted by DEP or a WMD to provide the accounting within five business days. Once DEP or a WMD has received the accounting from the mitigation banks, the bill requires DEP or a WMD to determine if sufficient credits are available to offset impacts associated with the proposed project and notify the project applicant of such determination. The bill authorizes a project applicant to rely on such determination for a period of one year after the determination. (Section [1](#))

The bill requires DEP or a WMD to apply a proximity factor to determine the adequacy of mitigation credits by applying multipliers to the credits in the following manner:

- A 1.2 multiplier must be applied for the use of out-of-service-area credits located within a regional watershed immediately adjacent to the regional watershed in which the proposed impacts are located.
- When credits are not available in the regional watershed immediately adjacent to the regional watershed in which the proposed impacts are located, an additional 0.25 multiplier must be applied for each additional regional watershed located outside the regional watershed immediately adjacent to the watershed in which the proposed impacts are located.
- An additional 0.50 multiplier must be applied after any other required multipliers if the mitigation used to offset impacts entails out-of-kind replacement which does not replace the same type of freshwater wetland or surface water impacted. (Section [1](#))

The bill prohibits multipliers from being applied for use of out-of-service-area credits located within the same regional watershed as the proposed impacts. The bill specifies that the use of multipliers meets the cumulative impact requirements for wetland and surface waters. (Section [1](#))

### **Annual Reporting**

Beginning July 1, 2026, and each July 1 thereafter, the bill requires every mitigation bank in the state to submit a report to DEP or a WMD with an accounting of the number and type of credits the mitigation bank has available for sale. The report may not include names of parties who have reserved credits or the contract price paid for the credits. The bill requires DEP or a WMD to compile the annual reports to provide an assessment of the state's mitigation banking system and submit a report to the Governor and Legislature by October 1, 2026, and each October 1 thereafter. (Section [1](#))

### **Water Management District Conservation Easements**

The bill requires a WMD, upon the application by the fee simple owner of a parcel of land subject to a [conservation easement](#) with a WMD, to release the conservation easement if the following conditions are met:

- The land subject to the easement is less than 15 acres and is bordered on three or more sides by impervious surfaces;
- Any undeveloped adjacent parcels of land are less than 15 acres and similarly bordered on three or more sides by impervious surfaces;
- The land contains no historical, architectural, archeological, or cultural significance; and
- Before the release of the conservation easement, the applicant must have secured sufficient mitigation credits using the [uniform mitigation assessment method](#) from a mitigation bank located in the state to offset the loss of wetlands located on the land subject to the conservation easement. (Section [2](#))

The bill requires the ad valorem taxes on property released from a WMD's conservation easement to be assessed based on the just value of the property. The bill authorizes such property to be used for development consistent with the zoning designation of the adjacent lands. (Section [2](#))

### **Effective Date**

The effective date of the bill is July 1, 2025. (Section [3](#))

### **FISCAL OR ECONOMIC IMPACT:**

#### **STATE GOVERNMENT:**

The bill may have an indeterminate negative fiscal impact on DEP associated with providing a report to the Governor and Legislature as required by the bill.

#### **PRIVATE SECTOR:**

The bill may have a positive fiscal impact on mitigation bankers who may be able to sell out-of-service-area credits to individuals under the new regulations of the bill. The bill may also have a positive fiscal impact on developers that are able to proceed with projects through the use of out-of-service-area credits.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

#### **Regulation of Surface Waters and Wetlands**

DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.<sup>1</sup> ERP applications are processed by either DEP

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<sup>1</sup> South Florida WMD (SFWMD), *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 10, 2025).

or one of the state's WMDs in accordance with the division of responsibilities specified in operating agreements between DEP and the WMDs.<sup>2</sup>

### **Cumulative Impact Requirements**

DEP and WMDs are required to consider the cumulative impacts upon surface water and wetlands in the same basin when determining whether to grant or deny an ERP.<sup>3</sup> These considerations include the cumulative impacts of:

- The activity for which the permit is sought.
- Projects that are existing, wetland or surface water alteration activities that are under construction, or projects for which permits or determinations of wetland delineation have been sought within that basin.
- Activities that are under review, approved, or vested as a development of regional impact,<sup>4</sup> or other surface water or wetland alteration activities that may reasonably be expected to be located within surface waters or wetlands in the same drainage basin, based on the comprehensive plans of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.<sup>5</sup>

### **Mitigation**

Mitigation serves as the third step in a sequence of permitting actions, which must be followed to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP.<sup>6</sup> When evaluating a proposed project for permitting, DEP or a WMD must consider whether the project is not contrary to the public interest or clearly in the public interest.<sup>7</sup> If a project is contrary to the public interest or cannot be considered as clearly in the public interest, an applicant may still be granted a permit if the applicant proposes mitigation for such activities.<sup>8</sup>

Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof and is accomplished by providing onsite mitigation, offsite mitigation, or purchasing mitigation credits from permitted mitigation banks.<sup>9</sup> The ecological benefits of mitigation compensate for the functional loss resulting from the ERP impact.<sup>10</sup>

### **Mitigation Banking**

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit.<sup>11</sup> A mitigation bank can be established and operated in phases if each phase independently meets the requirements for the establishment and operation of a mitigation bank.<sup>12</sup> Mitigation banks are authorized by a state permit, which is issued by either a WMD or DEP depending on the location of the bank and the activity it mitigates, and by the United States Army Corps of Engineers.<sup>13</sup>

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<sup>2</sup> DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 10, 2025).

<sup>3</sup> Section [373.414\(8\)\(a\), F.S.](#)

<sup>4</sup> A development of regional impact means any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety or welfare of citizens of more than one county. Section [380.06, F.S.](#)

<sup>5</sup> Section [373.414\(8\)\(a\), F.S.](#)

<sup>6</sup> Environmental Protection Agency (EPA), *Wetlands Compensatory Mitigation*, available at [https://www.epa.gov/sites/production/files/2015-08/documents/compensatory\\_mitigation\\_factsheet.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf) (last visited Mar. 10, 2025).

<sup>7</sup> Section [373.414\(1\), F.S.](#); See Section [373.414\(1\)\(a\), F.S.](#), for the criteria DEP or WMD must consider to determine if something is contrary to the public interest or clearly in the public interest.

<sup>8</sup> Section [373.414\(1\)\(b\), F.S.](#)

<sup>9</sup> *Id.*; Section [373.4135, F.S.](#)

<sup>10</sup> DEP, *Mitigation*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited Mar. 10, 2025).

<sup>11</sup> "Mitigation credit" means a standard unit of measure that represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities. Section [372.4136\(19\), F.S.](#)

<sup>12</sup> Section [373.4136\(2\), F.S.](#)

<sup>13</sup> DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Mar. 10, 2025).

The [uniform mitigation assessment method](#) (UMAM) provides a standardized procedure for assessing the ecological functions provided by surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.<sup>14</sup> The UMAM evaluates functions by considering an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk. The UMAM is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.<sup>15</sup>

To obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.<sup>16</sup>

The applicant must also provide reasonable assurances that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and adopted rules;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.<sup>17</sup>

A banker applying for a permit to establish a mitigation bank must provide documentation of financial responsibility and financial assurance mechanisms for the construction and implementation of the bank, and the perpetual management and maintenance of the bank.<sup>18</sup> This can be achieved by obtaining a surety or performance bond, irrevocable letter of credit, or insurance policy. The banker is required to demonstrate continuous fiscal responsibility until all of the permit conditions are completely satisfied and approved for release by DEP.<sup>19</sup> Further, the financial responsibility mechanisms must guarantee that the banker will perform all of its obligations under the permit.<sup>20</sup>

### **Mitigation Credits**

The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a WMD.<sup>21</sup> The credits are awarded to the proposed mitigation bank, or a phase of such bank.<sup>22</sup> A banker may apply to modify the mitigation bank permit to obtain additional mitigation credits.<sup>23</sup> Once DEP or a WMD has approved the total number of credits for a mitigation bank, the credits must be released in a schedule as prescribed in the mitigation banking permit.<sup>24</sup> This release can include a portion of credits released for sale or use prior to a mitigation bank meeting all of the performance criteria specified in the mitigation bank permit.<sup>25</sup> The release schedule for a specific mitigation bank or phase must be related to the actions required to implement the bank,

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<sup>14</sup> DEP, *Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited Mar. 10, 2025).

<sup>15</sup> *Id.*

<sup>16</sup> Section [373.4136\(1\), F.S.](#); Rule 62-342.400, F.A.C.

<sup>17</sup> *Id.*; see also rule 62-342.700, F.A.C.

<sup>18</sup> Rule 62-342.700(3), F.A.C.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section [373.4136\(4\), F.S.](#)

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Section [373.4136\(5\), F.S.](#)

<sup>25</sup> Section [373.4136\(5\)\(a\), F.S.](#)



such as site protection, site preparation, earthwork, removal of wastes, planting, removal or control of nuisance and exotic species, installation of structures, and annual monitoring and management requirements for success.<sup>26</sup>

### **Mitigation Service Areas**

DEP and WMDs are responsible for establishing mitigation service areas for each mitigation bank permit.<sup>27</sup> A mitigation service area is the geographic area within which mitigation credits from a mitigation bank can be purchased.<sup>28</sup> When determining the boundaries for a mitigation service area, DEP or a WMD is required to consider certain factors<sup>29</sup> and must use regional watersheds<sup>30</sup> to guide the establishment of such areas.<sup>31</sup> Generally, mitigation credits may only be withdrawn and used to offset adverse impacts in the mitigation service area.<sup>32</sup> However, if an applicant for an ERP is required to engage in mitigation activities, and meets the cumulative impact requirements for impacts on surface waters and wetlands within the same drainage basin, the following exceptions apply, allowing an applicant to obtain credits from outside their mitigation service area:

- Projects with adverse impacts partially located within the mitigation service area.
- Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports.
- Projects with a total adverse impact of less than one acre in size.<sup>33</sup>

### **Federal Mitigation Banking Regulations**

For projects requiring a federal permit, a U.S. Army Corps of Engineers district engineer determines the mitigation to be required in a mitigation bank permit based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity.<sup>34</sup> In general, the required mitigation should be located within the same watershed as the impact site and where it is most likely to successfully replace lost functions and services, taking into account watershed scale features such as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, and compatibility with adjacent land uses.<sup>35</sup>

### **Federal Mitigation Bank Credits**

When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from a mitigation bank.<sup>36</sup> An approved instrument, including an approved mitigation plan and appropriate real estate and financial assurances, must be in place before credits can be used to compensate for authorized impacts.<sup>37</sup> Mitigation bank credits are not released until specific milestones associated with the mitigation bank site's protection and development are achieved.<sup>38</sup>

### **Federal Mitigation Service Area**

A federal mitigation service area is the watershed, ecoregion,<sup>39</sup> physiographic province, or other geographic area within which the mitigation bank is authorized to provide compensatory mitigation required by U.S. Army Corps of Engineers permits.<sup>40</sup> The U.S. Geological Survey uses a coding system called a hydrological unit code (HUC),<sup>41</sup>

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<sup>26</sup> Section [373.4136\(5\)\(b\), F.S.](#)

<sup>27</sup> Section [373.4136\(6\), F.S.](#)

<sup>28</sup> Section [373.403\(21\), F.S.](#)

<sup>29</sup> Section [373.4136\(6\)\(a\), F.S.](#)

<sup>30</sup> "Watershed" means the land area that contributes to the flow of water into a receiving body of water. Section [373.403\(12\), F.S.](#)

<sup>31</sup> Section [373.4136\(6\)\(b\), F.S.](#)

<sup>32</sup> Section [373.4136\(6\), F.S.](#)

<sup>33</sup> Section [373.4136\(6\)\(d\), F.S.](#)

<sup>34</sup> 33 C.F.R. §332.3(a)(1) (2025).

<sup>35</sup> 33 C.F.R. §332.3(b)(1) (2025).

<sup>36</sup> *Id.*

<sup>37</sup> 33 C.F.R. §332.3(b)(2) (2025).

<sup>38</sup> *Id.*

<sup>39</sup> Ecoregions are areas where ecosystems, including the type, quality, and quantity of environmental resources, are generally similar. A Roman numeral classification scheme has been adopted for different hierarchical levels of ecoregions, ranging from general regions to more detailed. EPA, *Ecoregions*, <https://www.epa.gov/eco-research/ecoregions> (last visited Mar. 18, 2025).

<sup>40</sup> 33 C.F.R. §332.8(d)(6)(ii)(A) (2025).

which assigns a two, four, six, eight, 10, or 12 digit code for an area to reflect a region, subregion, basin, sub-basin, watershed, or sub-watershed.<sup>42</sup> The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area.<sup>43</sup> For example, in urban areas, a U.S. Geological Survey 8-digit HUC watershed or a smaller watershed may be an appropriate service area.<sup>44</sup> In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area.<sup>45</sup> Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable.<sup>46</sup> The economic viability of the mitigation bank may also be considered in determining the size of the service area.<sup>47</sup>

### ***U.S. Army Corps of Engineers Proximity Factor Tool***

The U.S. Army Corps of Engineers developed a proximity factor tool that may be used when there are insufficient mitigation credits within the approved mitigation bank service area. The tool is used to assess the number of credits required for any compensatory mitigation proposed outside of approved mitigation bank service areas.<sup>48</sup> The proximity factor is based on ratio multipliers for multiple variables.<sup>49</sup> The tool is only applied when the U.S. Army Corps of Engineers has determined that mitigation outside of the approved mitigation service area is the most environmentally preferable mitigation option.<sup>50</sup>

The proximity factor tool applies the following multipliers:

- No multiplier if the impact site is outside of a mitigation bank service area boundary, but within the same 8-digit HUC that contains the mitigation bank location.
- A 1.5 multiplier if the impact site is outside of a mitigation bank service area boundary and one 8-digit HUC away from the mitigation bank service area boundary.
- A 0.25 multiplier for each additional 8-digit HUC away from the mitigation bank location.
- A 0.75 multiplier if mitigation entails out-of-kind replacement (there is no multiplier if the mitigation entails in-kind replacement).
- A 0.25 multiplier if mitigation occurs within a different EPA Level IV Ecoregion.<sup>51</sup>

The sum of the applicable multipliers provides the proximity factor.<sup>52</sup> The resulting proximity factor is then multiplied by the number of credits required by the U.S. Army Corps of Engineers to compensate for unavoidable adverse effects to aquatic resources.<sup>53</sup> The U.S. Army Corps of Engineers has the discretion to consider and approve use of the proximity factor tool on a case-by-case basis.<sup>54</sup>

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<sup>41</sup> “HUC” means the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. Each unit is assigned a two- to 12-digit number that uniquely identifies each of the six levels of classification within six two-digit fields. United States Geological Survey (USGS), *Hydrologic Unit Codes (HUCs) Explained*, <https://nas.er.usgs.gov/hucs.aspx> (last visited Mar. 18, 2025).

<sup>42</sup> EPA, Hydrologic Unit Codes: HUC 4, HUC 8, and HUC 12, available at <https://enviroatlas.epa.gov/enviroatlas/datafactsheets/pdf/Supplemental/HUC.pdf> (last visited Mar. 18, 2025). DEP, *About the Florida National Hydrography Dataset*, <https://floridadep.gov/dear/watershed-services-program/content/about-florida-national-hydrography-dataset> (last visited Mar. 18, 2025).

<sup>43</sup> 33 C.F.R. §332.8(d)(6)(ii)(A) (2025).

<sup>44</sup> EPA, Hydrologic Unit Codes: HUC 4, HUC 8, and HUC 12, available at <https://enviroatlas.epa.gov/enviroatlas/datafactsheets/pdf/Supplemental/HUC.pdf> (last visited Mar. 18, 2025).

<sup>45</sup> *Id.*

<sup>46</sup> 33 C.F.R. §332.8(d)(6)(ii)(A) (2025).

<sup>47</sup> *Id.*

<sup>48</sup> U.S. Army Corps of Engineers, *Standard Operating Procedure—Assessing a Proximity Factor for Compensatory Mitigation Required to Offset Unavoidable Impacts to Waters of the United States*, 1 (2023), available at <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll15/id/1998> (last visited Mar. 18, 2025).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 3.

<sup>51</sup> *Id.*

<sup>52</sup> U.S. Army Corps of Engineers, *Standard Operating Procedure—Assessing a Proximity Factor for Compensatory Mitigation Required to Offset Unavoidable Impacts to Waters of the United States* at 1, 4, available at <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll15/id/1998> (last visited Mar. 18, 2025).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 5.

Mitigation should be performed within the same 6-digit HUC.<sup>55</sup> When assessing the location of the mitigation site relative to the impact site, the calculation starts at the 8-digit HUC that contains the mitigation bank site.<sup>56</sup>

### Conservation Easements

A conservation easement is a legal agreement that provide a perpetual,<sup>57</sup> undivided interest in property to protect natural, scenic, or open space values of real property.<sup>58</sup> A WMD may hold a conservation easement through donation or sale of property to that district. Conservation easements may also be proposed to offset environmental impacts from development and be a required component of a mitigation plan for a permit issued by a WMD.<sup>59</sup> To protect wetlands or to offset impacts from permitted construction projects, the wetlands that remain on a permitted property, along with natural areas bordering them, often are placed in a conservation easement.<sup>60</sup> Frequently, these easements are located on or behind future home lots.<sup>61</sup>

### OTHER RESOURCES:

[Map of Mitigation Bank Service Areas](#)

[Interactive Map of Florida HUC Sub-Basins](#)

## BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Natural Resources &amp; Disasters Subcommittee</a>	12 Y, 3 N, As CS	3/18/2025	Moore	Gawin
THE CHANGES ADOPTED BY THE COMMITTEE:		<ul style="list-style-type: none"><li>Specified that changes to the mitigation bank credit release schedule apply to permits issued after July 1, 2025.</li><li>Specified that mitigation bank service areas established by DEP are considered to be regionally ecologically significant.</li><li>Specified that the 0.50 multiplier for out-of-kind credits is applied for out-of-kind replacements which does not replace the same type of freshwater wetland or surface water impacted.</li><li>Required the 0.50 multiplier for out-of-kind credits to be applied after any other required multipliers.</li><li>Specified that the use of multipliers meets the requirements for addressing cumulative impacts.</li></ul>		
<a href="#">Agriculture &amp; Natural Resources Budget Subcommittee</a>				
<a href="#">State Affairs Committee</a>				

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**THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.**  
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<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.*

<sup>57</sup> A perpetual easement is specific to a parcel, meaning that even if the land is exchanged and there is a new owner, the conservation easement agreement remains. St. Johns River WMD (SJRWMD), *Conservation Easements*, <https://www.sjrwmd.com/permitting/conservation-easements/#FAQ-01> (last visited Mar. 10, 2025).

<sup>58</sup> DEP, *Conservation Easements*, <https://floridadep.gov/lands/environmental-services/content/conservation-easements> (last visited Mar. 10, 2025).

<sup>59</sup> SJRWMD, *Conservation Easements*, <https://www.sjrwmd.com/permitting/conservation-easements/> (last visited Mar. 10, 2025).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*



