

1 A bill to be entitled
2 An act relating to mitigation banks; amending s.
3 373.4136, F.S.; revising provisions for the release
4 and use of mitigation bank credits; providing
5 conditions for the use of out-of-service-area
6 mitigation credits; providing a methodology for
7 determining the award of such credits; authorizing
8 alternative credit release schedules; requiring
9 mitigation banks to submit specified accountings to
10 the Department of Environmental Protection or water
11 management district; requiring the department or water
12 management district to submit specified annual reports
13 to the Legislature; amending s. 704.06, F.S.;
14 requiring certain water management districts, upon
15 application by the owner of a parcel subject to a
16 conservation easement, to release the conservation
17 easement if specified conditions are met; providing
18 for the valuation of the property upon such release;
19 authorizing land released from the conservation
20 easement to be used for development consistent with
21 certain zoning; providing an effective date.

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23 Be It Enacted by the Legislature of the State of Florida:
24

25 **Section 1. Subsections (5) and (6) of section 373.4136,**

26 **Florida Statutes, are amended to read:**

27 373.4136 Establishment and operation of mitigation banks.—

28 (5) SCHEDULE FOR CREDIT RELEASE.—After July 1, 2025, when
29 issuing ~~awarding mitigation credits to~~ a mitigation bank permit,
30 the department or the water management district shall adhere to
31 the credit release schedule set forth in this subsection a
32 schedule for the release of ~~those~~ credits awarded by ~~in~~ the
33 mitigation bank permit. A mitigation credit that has been
34 released may be sold or used to offset adverse impacts from an
35 activity regulated under this part.

36 (a) Thirty percent of awarded credits shall be released
37 for the recordation of the conservation easement and
38 establishment of financial assurances required by the mitigation
39 bank permit. If a preservation-only assessment area is used, 100
40 percent of awarded credits shall be released for the recordation
41 of the conservation easement and establishment of financial
42 assurances required by the mitigation bank permit ~~The department~~
43 ~~or the water management district shall allow a portion of the~~
44 ~~mitigation credits awarded to a mitigation bank to be released~~
45 ~~for sale or use prior to meeting all of the performance criteria~~
46 ~~specified in the mitigation bank permit. The department or the~~
47 ~~water management district shall allow release of all of a~~
48 ~~mitigation bank's awarded mitigation credits only after the bank~~
49 ~~meets the mitigation success criteria specified in the permit.~~

50 (b) Thirty percent of awarded credits shall be released

51 following completion of initial construction activities as
52 established by the mitigation bank permit.

53 (c) Twenty percent of awarded credits shall be released in
54 increments as monitoring indicates interim performance criteria
55 established by the mitigation bank permit are being met.

56 (d) Twenty percent of awarded credits shall be released
57 upon meeting final success criteria established by the
58 mitigation bank permit.

59 (e) A permit applicant may propose an alternative credit
60 release schedule and the department or water management district
61 shall consider the proposed alternative credit release schedule

62 ~~The number of credits and schedule for release shall be~~
63 ~~determined by the department or water management district based~~
64 ~~upon the performance criteria for the mitigation bank and the~~
65 ~~success criteria for each mitigation activity. The release~~
66 ~~schedule for a specific mitigation bank or phase thereof shall~~
67 ~~be related to the actions required to implement the bank, such~~
68 ~~as site protection, site preparation, earthwork, removal of~~
69 ~~wastes, planting, removal or control of nuisance and exotic~~
70 ~~species, installation of structures, and annual monitoring and~~
71 ~~management requirements for success. In determining the specific~~
72 ~~release schedule for a bank, the department or water management~~
73 ~~district shall consider, at a minimum, the following factors:~~

74 ~~1. Whether the mitigation consists solely of preservation~~
75 ~~or includes other types of mitigation.~~

76 ~~2. The length of time anticipated to be required before a~~
77 ~~determination of success can be achieved.~~

78 ~~3. The ecological value to be gained from each action~~
79 ~~required to implement the bank.~~

80 ~~4. The financial expenditure required for each action to~~
81 ~~implement the bank.~~

82 (f)~~(e)~~ Notwithstanding the provisions of this subsection,
83 a mitigation ~~no~~ credit may not shall be released for freshwater
84 wetland creation until the success criteria established ~~included~~
85 in the mitigation bank permit for initial construction
86 activities are met.

87 (g)~~(d)~~ The withdrawal of mitigation credits from a
88 mitigation bank shall be accomplished as a minor modification of
89 the mitigation bank permit. A processing fee is not ~~shall not be~~
90 required by the department or water management district for this
91 minor modification.

92 (6) MITIGATION SERVICE AREA.—The department or water
93 management district shall establish a mitigation service area
94 for each mitigation bank permit. The department or water
95 management district shall notify and consider comments received
96 on the proposed mitigation service area from each local
97 government within the proposed mitigation service area. Except
98 as provided in this section ~~herein~~, mitigation credits may be
99 withdrawn and used only to offset adverse impacts in the
100 mitigation service area. The boundaries of the mitigation

101 service area shall depend upon the geographic area where the
102 mitigation bank could reasonably be expected to offset adverse
103 impacts. Mitigation service areas may overlap, and mitigation
104 service areas for two or more mitigation banks may be approved
105 for a regional watershed.

106 (a) In determining the boundaries of the mitigation
107 service area, the department or the water management district
108 shall consider the characteristics, size, and location of the
109 mitigation bank and, at a minimum, the extent to which the
110 mitigation bank:

111 1. Contributes to a regional integrated ecological
112 network;

113 2. Will significantly enhance the water quality or
114 restoration of an offsite receiving water body that is
115 designated as an Outstanding Florida Water, a Wild and Scenic
116 River, an aquatic preserve, a water body designated in a plan
117 approved pursuant to the Surface Water Improvement and
118 Management Act, or a nationally designated estuarine preserve;

119 3. Will provide for the long-term viability of endangered
120 or threatened species or species of special concern;

121 4. Is consistent with the objectives of a regional
122 management plan adopted or endorsed by the department or water
123 management districts; and

124 5. Can reasonably be expected to offset specific types of
125 wetland impacts within a specific geographic area. A mitigation

126 bank need not be able to offset all expected impacts within its
127 service area.

128 (b) The department and water management districts shall
129 use regional watersheds to guide the establishment of mitigation
130 service areas. Drainage basins established pursuant to s.
131 373.414(8) may be used as regional watersheds when they are
132 established based on the hydrological or ecological
133 characteristics of the basin. A mitigation service area may
134 extend beyond the regional watershed in which the bank is
135 located into all or part of other regional watersheds when the
136 mitigation bank has the ability to offset adverse impacts
137 outside that regional watershed. Similarly, a mitigation service
138 area may be smaller than the regional watershed in which the
139 mitigation bank is located when adverse impacts throughout the
140 regional watershed cannot reasonably be expected to be offset by
141 the mitigation bank because of local ecological or hydrological
142 conditions.

143 (c) Once a mitigation bank service area has been
144 established by the department or a water management district for
145 a mitigation bank, such mitigation bank shall be deemed to
146 implement a plan that provides regional ecological value; such
147 service area shall be accepted by all water management
148 districts, local governments, and the department; and the use of
149 credits from such mitigation bank to offset impacts within that
150 bank's service area shall be considered to have met the

151 cumulative impact requirements of s. 373.414(8)(a).

152 (d) If the requirements in s. 373.414(1)(b) and (8) are
153 met, the following projects or activities regulated under this
154 part shall be eligible to use credits released from a mitigation
155 bank to offset impacts resulting from such projects or
156 activities ~~a mitigation bank, regardless of whether they are~~
157 ~~located within the mitigation service area:~~

158 1. Projects with adverse impacts partially located within
159 the mitigation service area.

160 2. Linear projects, such as roadways, transmission lines,
161 distribution lines, pipelines, railways, or seaports listed in
162 s. 311.09(1).

163 3. Projects with total adverse impacts of less than 1 acre
164 in size.

165 4. Projects that meet the requirements of s. 373.414(1)(b)
166 and the criteria in paragraphs (e)-(g).

167 (e) If the requirements of s. 373.414(1)(a) are met and an
168 insufficient number or type of credits from banks whose
169 permitted service area overlays in whole or in part the regional
170 watershed in which the impacts occur, the project applicant is
171 entitled to a one-time use of credits released from a mitigation
172 bank outside the mitigation bank service area to offset impacts
173 pursuant to s. 373.414(1)(b), as established by the procedure in
174 paragraph (g), and upon verification by the department or water
175 management district that mitigation banks within the regional

176 watershed in which the adverse impacts are located lack the
177 appropriate credit type to offset impacts associated with the
178 proposed project. If the number of released credits within a
179 mitigation service area only partially offset the impacts
180 associated with a proposed project in the mitigation service
181 area, the permit applicant may only use out-of-service-area
182 credits to account for the difference between the released
183 credits available in the mitigation bank service area and the
184 credits required to offset the impacts associated with the
185 proposed project. In implementing this subsection, the
186 department and water management districts shall apply a
187 proximity factor to determine adequate compensatory mitigation
188 as follows:

189 1. A 1.0 multiplier shall be applied for use of in-kind
190 credits within any regional watershed overlain in whole or in
191 part by the bank service area.

192 2. A 1.0 multiplier shall be applied for use of in-kind
193 and out-of-service-area credits if the bank service area
194 overlays part of the same regional watershed as the proposed
195 impacts.

196 3. A 1.2 multiplier shall be applied for use of in-kind
197 and out-of-service-area credits located within a regional
198 watershed immediately adjacent to the regional watershed
199 overlain by a bank service area in which the proposed impacts
200 are located.

201 4. An additional 0.25 multiplier shall be applied for each
202 additional regional watershed boundary crossed if in-kind
203 credits are not available to offset impacts in the regional
204 watershed immediately adjacent to the regional watershed
205 overlain by a bank service area in which the proposed impacts
206 are located, as established by the procedure in paragraph (g).

207 5. An additional 0.50 multiplier shall be applied after
208 any multipliers required in subparagraphs 1.-4., if the
209 mitigation used to offset impacts entails out-of-kind
210 replacement which does not replace the same type of freshwater
211 wetland or fresh surface water impacted.

212 (f) Use of the multipliers in subparagraphs (e)2.-4. meets
213 the requirements of s. 373.414(8)(a) for addressing cumulative
214 impacts.

215 (g) Once a permit applicant requests to use out-of-kind or
216 out-of-service-area credits, the department or water management
217 district shall contact all mitigation banks with a mitigation
218 service area encompassing the location of the proposed impacts
219 within 3 business days after receipt of the request from the
220 permit applicant and request an accounting of available credits.
221 The accounting may not include credits reserved for other permit
222 applicants. The mitigation banks contacted by the department or
223 water management district shall be allowed 15 business days to
224 reply after receipt of the request by the department or water
225 management district. If a mitigation bank does not reply within

the 15-business-day timeframe, it is presumed credits are not available. Upon receipt of the accounting from the mitigation banks, the department or water management district shall determine if sufficient credits are available to offset impacts associated with the proposed project and notify the permit applicant of such determination within 15 business days. The permit applicant, and no other entity, may rely on the determination from the department or water management district for a period of 1 year beginning on the date the department or water management district notifies the permit applicant of such determination, but only for purposes relating to the pending application producing such determination and not for any extensions, renewals, or modifications of any permit issued pursuant to the pending application or any other permit application.

(h) Beginning July 1, 2026, and each July 1 thereafter, each mitigation bank in this state shall submit to the department or water management district an accounting of the number and type of credits the mitigation has available for sale. The accounting may not include names of parties for which credits have been reserved or the contract price paid for the credits. The department or water management district shall compile the information to provide an assessment of this state's mitigation banking system and submit a report to the President of the Senate and the Speaker of the House of Representatives on

October 1, 2026, and each October 1 thereafter.

Section 2. Subsection (14) is added to section 704.06, Florida Statutes, to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(14) (a) Upon application by the fee simple owner of a parcel of land subject to a conservation easement to a water management district, a water management district shall release the conservation easement if the following conditions are met:

1. The land subject to the easement is less than 15 acres and is bordered on three or more sides by impervious surfaces;

2. Any undeveloped adjacent parcels of land are less than 15 acres and similarly bordered on three or more sides by impervious surfaces;

3. The land contains no historical, architectural, archeological, or cultural significance; and

4. 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 this state to offset the loss of wetlands located on the land subject to the conservation easement.

(b) Upon the water management district's release of the conservation easement, the ad valorem taxes on the property shall be based on the just value of the property, and the property may be used for development consistent with the zoning

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276 | designation of the adjacent lands.

277 | **Section 3.** This act shall take effect July 1, 2025.