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1
2 An act relating to mitigation banks; amending s.
3 373.4136, F.S.; beginning on a specified date,
4 revising the schedule for credit release upon issuance
5 of a mitigation bank credit permit; providing
6 specifications for such schedule; authorizing a
7 mitigation bank applicant to propose an alternative
8 credit release schedule; requiring the Department of
9 Environmental Protection or water management district
10 to modify an existing permitted credit release
11 schedule upon request under certain circumstances;
12 prohibiting mitigation credits from being released for
13 freshwater wetland creation until certain conditions
14 are met; authorizing one-time use of mitigation
15 credits outside the mitigation bank service area in
16 certain circumstances; requiring the department and
17 water management districts to apply proximity factor
18 multipliers in a specified manner; specifying that the
19 use of certain multipliers meets certain requirements;
20 requiring the department or water management district
21 to request an accounting of credit availability from
22 mitigation banks within a specified timeframe;
23 specifying the timeframe to reply to such request;
24 requiring the permit applicant to be notified of
25 credits available; providing a presumption if a
26 mitigation bank does not respond within a certain
27 timeframe; limiting the timeframe for the permit
28 applicant to rely on a credit availability
29 determination for specified purposes; requiring each

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mitigation bank to submit an accounting of credits;
requiring the department or water management district
to compile such accountings for a specified purpose
and to submit a report including certain information
to the Legislature on a specified date and annually
thereafter; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 373.4136,
Florida Statutes, are amended to read:

373.4136 Establishment and operation of mitigation banks.—

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

(a)1. Thirty percent of awarded credits shall be released
upon the recordation of the conservation easement and
establishment of financial assurances required by the mitigation
bank permit. If a preservation-only assessment area is used, 100
percent of awarded credits shall be released for the recordation
of the conservation easement and establishment of financial
assurances required by the mitigation bank permit.

2. Thirty percent of awarded credits shall be released
following completion of initial construction activities as

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59 established by the mitigation bank permit.

60 3. Twenty percent of awarded credits shall be released in
61 increments as monitoring indicates interim performance criteria
62 established by the mitigation bank permit are being met.

63 4. Twenty percent of awarded credits shall be released upon
64 meeting final success criteria established by the mitigation
65 bank permit.

66 (b) The mitigation bank applicant may propose an
67 alternative credit release schedule and the department or water
68 management district shall consider the proposed alternative
69 credit release schedule.

70 (c) Upon request by a mitigation bank permittee for
71 modification of the credit release schedule of a permitted
72 mitigation bank, the department or relevant water management
73 district shall modify the credit release schedule to conform it
74 to paragraph (a) if such permitted mitigation bank has not yet
75 had mitigation credits released for the completion of
76 construction activities. The department or water management
77 district may not alter, change, or modify any other provision of
78 the mitigation bank permit unrelated to the credit release
79 schedule ~~The department or the water management district shall~~
80 ~~allow a portion of the mitigation credits awarded to a~~
81 ~~mitigation bank to be released for sale or use prior to meeting~~
82 ~~all of the performance criteria specified in the mitigation bank~~
83 ~~permit. The department or the water management district shall~~
84 ~~allow release of all of a mitigation bank's awarded mitigation~~
85 ~~credits only after the bank meets the mitigation success~~
86 ~~criteria specified in the permit.~~

87 ~~(b) The number of credits and schedule for release shall be~~

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88 ~~determined by the department or water management district based~~
89 ~~upon the performance criteria for the mitigation bank and the~~
90 ~~success criteria for each mitigation activity. The release~~
91 ~~schedule for a specific mitigation bank or phase thereof shall~~
92 ~~be related to the actions required to implement the bank, such~~
93 ~~as site protection, site preparation, earthwork, removal of~~
94 ~~wastes, planting, removal or control of nuisance and exotic~~
95 ~~species, installation of structures, and annual monitoring and~~
96 ~~management requirements for success. In determining the specific~~
97 ~~release schedule for a bank, the department or water management~~
98 ~~district shall consider, at a minimum, the following factors:~~

99 ~~1. Whether the mitigation consists solely of preservation~~
100 ~~or includes other types of mitigation.~~

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

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

105 ~~4. The financial expenditure required for each action to~~
106 ~~implement the bank.~~

107 ~~(d)(e)~~ Notwithstanding the provisions of this subsection, a
108 mitigation ~~no~~ credit may not ~~shall~~ be released for freshwater
109 wetland creation until the success criteria established ~~included~~
110 in the mitigation bank permit for initial construction
111 activities are met.

112 ~~(e)(d)~~ The withdrawal of mitigation credits from a
113 mitigation bank shall be accomplished as a minor modification of
114 the mitigation bank permit. A processing fee is not ~~shall not be~~
115 required by the department or water management district for this
116 minor modification.

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(6) MITIGATION SERVICE AREA.—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided in this section ~~herein~~, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

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

1. Contributes to a regional integrated ecological network;
2. Will significantly enhance the water quality or restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan approved pursuant to the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve;
3. Will provide for the long-term viability of endangered or threatened species or species of special concern;
4. Is consistent with the objectives of a regional

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management plan adopted or endorsed by the department or water management districts; and

5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not be able to offset all expected impacts within its service area.

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

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

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

176 (d) If the provisions of ~~requirements in~~ s. 373.414(1)(b)
177 and (8) are met and an insufficient number or type of credits
178 from banks whose permitted service area overlays in whole or in
179 part the regional watershed in which the impacts occur, the
180 permit applicant is entitled to a one-time use of credits
181 released from a mitigation bank outside the mitigation bank
182 service area to offset impacts pursuant to s. 373.414(1)(b), as
183 established by the procedure in paragraph (f). The department or
184 water management district must have determined that the
185 mitigation service area lacked the appropriate credit type.
186 Priority must be given to mitigation banks whose permitted
187 service area fully includes the impacted site. If the number of
188 released credits within a mitigation service area only partially
189 offsets the impacts associated with a proposed project in the
190 mitigation service area, the permit applicant may only use out-
191 of-service-area credits to account for the difference between
192 the released credits available in the mitigation bank service
193 area and the credits required to offset the impacts associated
194 with the proposed project. In implementing this subsection, the
195 department and water management districts shall apply a
196 proximity factor to determine adequate compensatory mitigation
197 as follows:

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

200 2. A 1.0 multiplier shall be applied for use of in-kind and
201 out-of-service-area credits when the service area overlays part
202 of the same regional watershed as the proposed impacts only
203 after credit-deficiency has been established by the procedure

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204 set forth in paragraph (f).

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

211 4. When in-kind credits are not available to offset impacts
212 in the regional watershed immediately adjacent to the regional
213 watershed overlain by a mitigation bank service area in which
214 the proposed impacts are located, an additional 0.25 multiplier
215 shall be applied for each additional regional watershed boundary
216 crossed only after credit-deficiency has been established by the
217 procedure set forth in paragraph (f).

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

221 (e) Use of the multipliers in subparagraphs (d)2., 3., 4.,
222 and 5. meets the requirements of s. 373.414(8)(a) for addressing
223 cumulative impacts.

224 (f) Once the amount of mitigation required to offset
225 impacts has been determined, and the department or water
226 management district determines that out-of-service-area or out-
227 of-kind mitigation is necessary, the department or water
228 management district shall contact all mitigation banks with a
229 mitigation service area encompassing the location of the
230 proposed impacts within 7 business days after receipt of the
231 request from the permit applicant and request an accounting of
232 available credits, including out-of-kind credits. The accounting

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may not include credits reserved for other permit applicants.
The mitigation banks contacted by the department or water
management district shall be allowed 15 business days after
receipt of the request by the department or water management
district to reply to such request. If one or more mitigation
banks replying to the request notifies the department or the
water management district that out-of-kind credits are available
to offset the proposed impact and the department or a water
management district determines that such out-of-kind credits are
appropriate to offset all or part of the proposed impact, the
department or the water management district shall notify the
permit applicant that sufficient credits are available within
that bank's service area to offset the proposed impacts and the
use of credits from another mitigation bank outside of that
other mitigation bank's service area may not occur until use of
all of the out-of-kind credits occurs as allowed by the
department or water management district. If a mitigation bank
does not reply within the 15 business day timeframe, it is
presumed credits from that bank 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 6 months 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

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determination and not any extensions, nor renewals, nor
modifications of any permit issued pursuant to that pending
application, nor for any other permit application.

(g) 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 bank 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, ~~the following
projects or activities regulated under this part shall be
eligible to use a mitigation bank, regardless of whether they
are located within the mitigation service area:~~

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

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

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

Section 2. This act shall take effect July 1, 2025.