

By the Committees on Rules; and Environment and Natural Resources; and Senator Truenow

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A bill to be entitled

An act relating to stormwater treatment; amending s. 311.106, F.S.; prohibiting certain stormwater treatment and net improvement activities; prohibiting certain water quality enhancement areas from conveying enhancement credits to provide stormwater treatment or achieve net improvement; amending s. 373.413, F.S.; defining the term "regional stormwater management system"; requiring that the Department of Environmental Protection or a water management district require an applicant to provide certain documentation of adequate financial responsibility in order to meet certain requirements; providing requirements for such financial responsibility; providing construction; requiring an environmental resource permit authorizing a regional stormwater management system to establish and include a specified graphic depiction; authorizing certain environmental resource permit applicants to purchase and use pollution reduction allocations from a regional stormwater management system to meet certain performance criteria; requiring the department or water management district to use a specified identifier to establish the drainage area; providing an exception; amending s. 373.403, F.S.; defining terms; amending s. 373.4134, F.S.; revising legislative findings; deleting the definition of the term "enhancement credit"; authorizing water quality enhancement credits to be used by governmental

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30 entities to meet environmental resource permit
31 stormwater treatment performance standards or achieve
32 net improvement, pursuant to specified provisions;
33 providing that the use of enhancement credits from a
34 water quality enhancement area constitutes
35 compensating stormwater treatment under the
36 environmental resource permitting program; prohibiting
37 the term "credit" from being used to refer to
38 pollutant reduction under certain circumstances;
39 requiring the department to adopt rules by a specified
40 date; requiring the department to take certain action
41 pending the adoption of certain rules; requiring the
42 department to issue a provisional permit under certain
43 circumstances; authorizing enhancement credits to be
44 used from certain water quality enhancement areas;
45 providing construction; authorizing the department to
46 modify permits after the adoption of rules; requiring
47 the department and water management districts to
48 recognize any enhancement credit used from a water
49 quality enhancement area established pursuant to a
50 provisional permit; amending s. 373.414, F.S.;
51 clarifying the types of mitigation measures for
52 compensating stormwater treatment which the department
53 or a water management district governing board must
54 consider under certain circumstances; making technical
55 changes; reenacting s. 373.4136(6)(d), F.S., relating
56 to establishment and operation of mitigation banks, to
57 incorporate the amendment made to s. 373.414, F.S., in
58 a reference thereto; providing an effective date.

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

Section 1. Section 311.106, Florida Statutes, is amended to read:

311.106 Seaport stormwater permitting and mitigation.—

(1) A seaport listed in s. 403.021(9)(b) is authorized to provide for onsite or offsite stormwater treatment for water quality impacts caused by a proposed port activity that requires a permit and that causes or contributes to pollution from stormwater runoff. Offsite stormwater treatment may occur outside of the established boundaries of the port, but must be within the same drainage basin in which the port activity occurs. A port offsite stormwater treatment project must be constructed and maintained by the seaport or by the seaport in conjunction with an adjacent local government. In order to limit stormwater treatment from individual parcels within a port, a seaport may provide for a regional stormwater treatment facility that must be constructed and maintained by the seaport or by the seaport in conjunction with an adjacent local government.

(2) For a proposed port activity with water quality impacts that causes or contributes to pollution from stormwater runoff from a seaport not listed in s. 403.021(9)(b), a regional stormwater management system, as defined in Rule 62-330, Florida Administrative Code, operated by a non-local governmental entity independently or under contract with a seaport or local government, may not provide stormwater treatment or achieve net improvement under s. 373.414(1)(b)3. For a proposed port activity with water quality impacts that causes or contributes

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88 to pollution from stormwater runoff from a seaport not listed in
89 s. 403.021(9)(b), a water quality enhancement area as defined in
90 s. 373.4134 and operated by a non-local governmental entity
91 independently or under contract with a seaport or local
92 government may not convey enhancement credits to provide
93 stormwater treatment or achieve net improvement under s.
94 373.414(1)(b)3.

95 Section 2. Subsection (7) is added to section 373.413,
96 Florida Statutes, to read:

97 373.413 Permits for construction or alteration.—

98 (7) REGIONAL STORMWATER MANAGEMENT SYSTEMS.—

99 (a) A "regional stormwater management system" is a method
100 of compensating stormwater treatment that creates pollution
101 reduction allocations and is designed, constructed, operated and
102 maintained to collect, convey, store, absorb, inhibit, treat, or
103 harvest stormwater to prevent or reduce flooding, overdrainage,
104 environmental degradation and water pollution or otherwise
105 affect the quantity and quality of discharges within the
106 drainage area served by the regional system which is the land or
107 development that is served by or contributes stormwater to the
108 regional system.

109 (b) As part of meeting the requirement to demonstrate that
110 an applicant for an environmental resource permit for a regional
111 stormwater management system has the financial, legal, and
112 administrative capability of ensuring such regional stormwater
113 management system will be undertaken according to the terms and
114 conditions of an issued permit, the department or a water
115 management district shall require such applicant to provide
116 documentation of adequate financial responsibility. This

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117 financial responsibility may consist of performance bonds,
118 letters of credit, insurance policies, trust agreements, or
119 similar, ensuring completion of construction; the amount of
120 which shall be based on cost estimates of completing the
121 construction; and an endowment or other long-term financial
122 assurance mechanism sufficient to ensure operation and
123 maintenance for the entire period the regional stormwater
124 management system is anticipated to be relied upon to provide
125 stormwater treatment, attenuation, or regulatory pollutant load
126 reduction allocations, the amount of which shall be based on
127 cost estimates of such long-term operation and maintenance. The
128 cost estimates and associated financial responsibility
129 mechanisms shall be updated every five years to reflect current
130 costs. This section shall not be construed to impose additional
131 financial responsibility requirements on stormwater management
132 systems that are not regional stormwater management systems.

133 (c) An environmental resource permit authorizing a regional
134 stormwater management system shall establish and include a
135 graphic depicting the drainage area to be served by such system.
136 Environmental resource permit applicants located within the
137 drainage area may purchase and use pollution reduction
138 allocations from a regional stormwater management system to meet
139 stormwater treatment performance criteria. The department or
140 water management district shall use Hydrologic Unit Code 12 (HUC
141 12) subbasin as set forth by the United States Geological Survey
142 to establish the drainage area, unless the regional stormwater
143 management system applicant provides justification demonstrating
144 the proposed off-site area outside of the HUC 12 would provide
145 the same degree of compensating treatment for a common

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146 downstream receiving waterbody without causing or contributing
147 to any localized adverse impact to any downstream waters,
148 through water quality monitoring, modeling, or a combination
149 thereof.

150 Section 3. Subsections (23), (24), and (25) are added to
151 section 373.403, Florida Statutes, to read:

152 373.403 Definitions.—When appearing in this part or in any
153 rule, regulation, or order adopted pursuant thereto, the
154 following terms mean:

155 (23) "Compensating stormwater treatment" means a method of
156 stormwater treatment for discharges from multiple parcels.

157 (24) "Enhancement credit" means a standard unit of measure
158 that represents a quantity of pollutant removed by a water
159 quality enhancement area.

160 (25) "Pollutant reduction allocation" means a standard unit
161 of measure that represents a quantity of pollutant removed by a
162 regional stormwater management system for purposes of providing
163 compensating stormwater treatment under the environmental
164 resource permitting program.

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

172 373.4134 Water quality enhancement areas.—

173 (1) LEGISLATIVE FINDINGS AND INTENT.— The Legislature finds
174 that:

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(e) Water quality enhancement areas that provide water quality enhancement credits to applicants seeking permits under ss. 373.403-373.443 and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067 are considered an appropriate and permittable option. The use of an enhancement credit as specified herein transfers the legal responsibility for complying with the applicable regulatory water quality treatment requirement from the purchaser and user of such enhancement credit to the generator of such enhancement credit.

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

~~(b) "Enhancement credit" means a standard unit of measure that represents a quantity of pollutant removed.~~

(3) WATER QUALITY ENHANCEMENT AREAS.—

(b) Water quality enhancement credits may be sold to and used by governmental entities ~~seeking~~ to meet an assigned basin management action plan allocation or reasonable assurance plan or to permit applicants to meet environmental resource permit stormwater treatment performance standards or to achieve for the purpose of achieving net improvement or meeting environmental resource permit performance standards under s. 373.414(1)(b)3. ~~after reasonable assurances have been provided for the design and construction of all onsite stormwater management, as required by law.~~

(d) The use of enhancement credits from a water quality enhancement area constitutes compensating stormwater treatment under the environmental resource permitting program.

(7) ENHANCEMENT CREDITS.—

(e) Reductions in pollutant loading required under any

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state regulatory program are not eligible to be considered as enhancement credits. In addition, the term "credit" shall not be used to refer to pollutant reduction achieved through compensating stormwater treatment to meet environmental resource permitting stormwater performance standards or as a mitigation measure to achieve net improvement under s. 373.414(1)(b)3. outside of enhancement credits generated from a water quality enhancement area.

(9) RULES.—The department shall adopt rules to implement this section which shall be filed for adoption no later than October 1, 2026. ~~This section may not be implemented until the department adopts such rules.~~ Pending the adoption of rules to implement this section, the department shall accept, review and take final agency action on applications for water quality enhancement area provisional permits. The department shall issue a water quality enhancement provisional permit in response to a submitted application if the applicant provides reasonable assurance of meeting the statutory criteria in this section. Enhancement credits may be used from a water quality enhancement area established under a provisional permit as provided in this section subject to compliance with s. 373.4134 and the terms of the provisional permit. Notwithstanding any other provision of law or rule, the department or a water management district reviewing an environmental resource permit application that seeks to satisfy stormwater treatment performance standards or achieve net improvement under s. 373.414(1)(b)3. shall allow the use of enhancement credits from a water quality enhancement area with a provisional permit pursuant to the terms of such provisional permit. After the department adopts rules to

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233 implement this section, the department may modify a water
234 quality enhancement area provisional permit to conform such
235 permit to such rules. Any enhancement credits used from a water
236 quality enhancement area established under a provisional permit
237 shall continue to be recognized by the department and water
238 management districts without change regardless of whether the
239 provisional permit is subsequently modified to conform to the
240 adopted rules.

241 Section 5. Paragraph (b) of subsection (1) of section
242 373.414, Florida Statutes, is amended to read:

243 373.414 Additional criteria for activities in surface
244 waters and wetlands.—

245 (1) As part of an applicant's demonstration that an
246 activity regulated under this part will not be harmful to the
247 water resources or will not be inconsistent with the overall
248 objectives of the district, the governing board or the
249 department shall require the applicant to provide reasonable
250 assurance that state water quality standards applicable to
251 waters as defined in s. 403.031 will not be violated and
252 reasonable assurance that such activity in, on, or over surface
253 waters or wetlands, as delineated in s. 373.421(1), is not
254 contrary to the public interest. However, if such an activity
255 significantly degrades or is within an Outstanding Florida
256 Water, as provided by department rule, the applicant must
257 provide reasonable assurance that the proposed activity will be
258 clearly in the public interest.

259 (b) If the applicant is unable to otherwise meet the
260 criteria set forth in this subsection, the governing board or
261 the department, in deciding to grant or deny a permit, must

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consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It is the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, this subsection does not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must be ~~have been~~ issued before ~~prior to~~ the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land

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291 acquisition, land restoration or enhancement, perpetual land
292 management, and general overhead consisting of costs such as
293 staff time, building, and vehicles. The department or the water
294 management district may use a multiplier or percentage to add to
295 other direct or indirect costs to estimate general overhead.
296 Mitigation credit for such a donation may be given only to the
297 extent that the donation covers the full cost to the agency of
298 undertaking the project intended to mitigate the adverse
299 impacts. However, nothing herein may be construed to prevent the
300 department or a water management district from accepting a
301 donation representing a portion of a larger project, provided
302 that the donation covers the full cost of that portion and
303 mitigation credit is given only for that portion. The department
304 or water management district may deviate from the full cost
305 requirements of this subparagraph to resolve a proceeding
306 brought pursuant to chapter 70 or a claim for inverse
307 condemnation. ~~Nothing in~~ This section may not be construed to
308 require the owner of a private mitigation bank, permitted under
309 s. 373.4136, to include the full cost of a mitigation credit in
310 the price of the credit to a purchaser of such ~~said~~ credit.

311 2. The department and each water management district shall
312 report by March 1 of each year, as part of the consolidated
313 annual report required by s. 373.036(7), all cash donations
314 accepted under subparagraph 1. during the preceding water
315 management district fiscal year for wetland mitigation purposes.
316 The report must exclude those contributions pursuant to s.
317 373.4137. The report must include a description of the endorsed
318 mitigation projects and, except for projects governed by s.
319 373.4135(6), must address, as applicable, success criteria,

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project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department must consider mitigation measures, such as compensating stormwater treatment as defined in s. 373.403(23), proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts are controlled by the permit issued under this part.

Section 6. For the purpose of incorporating the amendment made by this act to section 373.414, Florida Statutes, in a reference thereto, paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is reenacted to read:

373.4136 Establishment and operation of mitigation banks.—

(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

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on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided in this section, 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.

(d) If the provisions of s. 373.414(1)(b) and (8) are met and an insufficient number or type of credits from banks whose permitted service area overlays in whole or in part the regional watershed in which the impacts occur, the permit applicant is entitled to a one-time use of credits released from a mitigation bank outside the mitigation bank service area to offset impacts pursuant to s. 373.414(1)(b), as established by the procedure in paragraph (f). The department or water management district must have determined that the mitigation service area lacked the appropriate credit type. Priority must be given to mitigation banks whose permitted service area fully includes the impacted site. If the number of released credits within a mitigation service area only partially offsets the impacts associated with a proposed project in the mitigation service area, the permit applicant may only 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. In implementing this subsection, the department and water

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management districts shall apply a proximity factor to determine adequate compensatory mitigation as follows:

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

2. A 1.0 multiplier shall be applied for use of in-kind and out-of-service-area credits when the service area overlays part of the same regional watershed as the proposed impacts only after credit deficiency has been established by the procedure set forth in paragraph (f).

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

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

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

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