

1   A bill to be entitled  
 2           An act relating to mitigation credits; amending s.  
 3           373.4136, F.S.; authorizing the Department of  
 4           Environmental Protection and water management  
 5           districts to release mitigation credits to certain  
 6           mitigation banks under specified conditions; requiring  
 7           the department and water management districts to  
 8           authorize the use of mitigation credits available  
 9           within surrounding basins or specified regions;  
 10          conforming provisions to changes made by the act;  
 11          providing circumstances under which mitigation credits  
 12          are deemed unavailable in a basin; requiring  
 13          affidavits from mitigation banks before certain  
 14          mitigation credits are released; authorizing certain  
 15          projects to use mitigation banks regardless of whether  
 16          they are located within the mitigation service area;  
 17          requiring the department to begin rulemaking on a  
 18          specified date; providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

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 22           Section 1. Subsection (5) and paragraph (d) of subsection  
 23          (6) of section 373.4136, Florida Statutes, are amended to read:  
 24           373.4136 Establishment and operation of mitigation banks.—  
 25           (5) SCHEDULE FOR CREDIT RELEASE.—After awarding mitigation

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26 | credits to a mitigation bank, the department or the water  
27 | management district shall set forth a schedule for the release  
28 | of those credits in the mitigation bank permit. A mitigation  
29 | credit that has been released may be sold or used to offset  
30 | adverse impacts from an activity regulated under this part.

31 | (a) The department or the water management district shall  
32 | allow a portion of the mitigation credits awarded to a  
33 | mitigation bank to be released for sale or use before ~~prior to~~  
34 | meeting all of the performance criteria specified in the  
35 | mitigation bank permit. The department or the water management  
36 | district shall allow the release of all ~~of a mitigation bank's~~  
37 | awarded mitigation credits only after the bank meets the  
38 | mitigation success criteria specified in the permit. If  
39 | mitigation credits are not available in sufficient quantities to  
40 | be sold or used to offset imminent and otherwise allowable  
41 | adverse impacts within a mitigation service area, the department  
42 | or water management district may release credits to a mitigation  
43 | bank before the bank meets the mitigation success criteria  
44 | specified in the mitigation bank permit if the bank has been  
45 | successfully constructed and there is a high degree of  
46 | confidence that the required ecological performance standards  
47 | will be met.

48 | (b) The number of credits and schedule for release shall  
49 | be determined by the department or water management district  
50 | based upon the performance criteria for the mitigation bank and

51 the success criteria for each mitigation activity. The release  
52 schedule for a specific mitigation bank or phase thereof shall  
53 be related to the actions required to implement the bank, such  
54 as site protection, site preparation, earthwork, removal of  
55 wastes, planting, removal or control of nuisance and exotic  
56 species, installation of structures, and annual monitoring and  
57 management requirements for success. In determining the specific  
58 release schedule for a bank, the department or water management  
59 district shall consider, at a minimum, the following factors:

60 1. Whether the mitigation consists solely of preservation  
61 or includes other types of mitigation.

62 2. The length of time anticipated to be required before a  
63 determination of success can be achieved.

64 3. The ecological value to be gained from each action  
65 required to implement the bank.

66 4. The financial expenditure required for each action to  
67 implement the bank.

68 ~~(c) Notwithstanding the provisions of this subsection, no~~  
69 ~~credit shall be released for freshwater wetland creation until~~  
70 ~~the success criteria included in the mitigation bank permit are~~  
71 ~~met.~~

72 (c)-(d) The withdrawal of mitigation credits from a  
73 mitigation bank shall be accomplished as a minor modification of  
74 the mitigation bank permit. A processing fee may ~~shall~~ not be  
75 required by the department or water management district for this

76 | minor modification.

77 |       (d) If mitigation credits are not available in a basin,  
78 | the department or water management district shall allow the use  
79 | of mitigation credits available within surrounding basins or  
80 | within the appropriate United States Geological Survey  
81 | hydrological unit code in the appropriate buffer region.

82 |       (e) Wetland mitigation credits are deemed unavailable in a  
83 | basin if the party requesting the credits provides an affidavit  
84 | to the department or water management district signed by the  
85 | mitigation banks within the basin attesting that credits are not  
86 | available. The affidavit must be signed by each mitigation bank  
87 | within the 30 days preceding the date the request is submitted  
88 | to the department or water management district. Mitigation banks  
89 | without available wetland mitigation credits shall sign an  
90 | affidavit at the request of the party seeking the credits. If a  
91 | mitigation bank owner or agent is unable to release wetland  
92 | mitigation credits within 30 days after a request is made, the  
93 | mitigation bank is deemed to not have wetland mitigation credits  
94 | available.

95 |       (6) MITIGATION SERVICE AREA.—The department or water  
96 | management district shall establish a mitigation service area  
97 | for each mitigation bank permit. The department or water  
98 | management district shall notify and consider comments received  
99 | on the proposed mitigation service area from each local  
100 | government within the proposed mitigation service area. Except

101 as provided herein, mitigation credits may be withdrawn and used  
 102 only to offset adverse impacts in the mitigation service area.  
 103 The boundaries of the mitigation service area shall depend upon  
 104 the geographic area where the mitigation bank could reasonably  
 105 be expected to offset adverse impacts. Mitigation service areas  
 106 may overlap, and mitigation service areas for two or more  
 107 mitigation banks may be approved for a regional watershed.

108 (d) If the requirements in s. 373.414(1)(b) and (8) are  
 109 met, the following projects or activities regulated under this  
 110 part shall be eligible to use a mitigation bank, regardless of  
 111 whether they are located within the mitigation service area:

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

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

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

119 4. Projects approved by the department or water management  
 120 district on a case-by-case basis if sufficient quantities of  
 121 mitigation credits are not available to be sold or used to  
 122 offset imminent and otherwise allowable adverse impacts within a  
 123 mitigation service area.

124 Section 2. The Department of Environmental Protection  
 125 shall begin rulemaking to implement this act on August 1, 2023.

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Section 3. This act shall take effect July 1, 2023.