

CHAPTER 2025-191

Committee Substitute for Committee Substitute for Senate Bill No. 492

An act relating to mitigation banks; amending s. 373.4136, F.S.; beginning on a specified date, revising the schedule for credit release upon issuance of a mitigation bank credit permit; providing specifications for such schedule; authorizing a mitigation bank applicant to propose an alternative credit release schedule; requiring the Department of Environmental Protection or water management district to modify an existing permitted credit release schedule upon request under certain circumstances; prohibiting mitigation credits from being released for freshwater wetland creation until certain conditions are met; authorizing one-time use of mitigation credits outside the mitigation bank service area in certain circumstances; requiring the department and water management districts to apply proximity factor multipliers in a specified manner; specifying that the use of certain multipliers meets certain requirements; requiring the department or water management district to request an accounting of credit availability from mitigation banks within a specified timeframe; specifying the timeframe to reply to such request; requiring the permit applicant to be notified of credits available; providing a presumption if a mitigation bank does not respond within a certain timeframe; limiting the timeframe for the permit applicant to rely on a credit availability determination for specified purposes; requiring each 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 established by the mitigation bank permit.

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

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

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

(c) Upon request by a mitigation bank permittee for modification of the credit release schedule of a permitted mitigation bank, the department or relevant water management district shall modify the credit release schedule to conform it to paragraph (a) if such permitted mitigation bank has not yet had mitigation credits released for the completion of construction activities. The department or water management district may not alter, change, or modify any other provision of the mitigation bank permit unrelated to the credit release schedule. The department or the water management district shall allow a portion of the mitigation credits awarded to a mitigation bank to be released for sale or use prior to meeting all of the performance criteria specified in the mitigation bank permit. The department or the water management district shall allow release of all of a mitigation bank's awarded mitigation credits only after the bank meets the mitigation success criteria specified in the permit.

~~(b)—The number of credits and schedule for release shall be determined by the department or water management district based upon the performance criteria for the mitigation bank and the success criteria for each mitigation activity. The release schedule for a specific mitigation bank or phase thereof shall be related to the actions required to implement the bank, 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. In determining the specific release schedule for a bank, the department or water management district shall consider, at a minimum, the following factors:~~

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

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

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

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

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

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

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

(d) If the provisions of requirements in 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 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.

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

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

Approved by the Governor June 26, 2025.

Filed in Office Secretary of State June 26, 2025.