HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1073 Mitigation
SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Truenow
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	15 Y, 0 N, As CS	Guy-Hudson	Curtin
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Byrd	Pigott
3) Infrastructure Strategies Committee		Guy-Hudson	Harrington

SUMMARY ANALYSIS

Wetlands are transitional areas between land and deep water, and are sufficiently inundated with water to support vegetation which grows in saturated soils. Approximately 11 million acres of wetlands cover Florida. The Department of Environmental Protection (DEP) regulates surface water flows and protects wetlands through the Environmental Resource Permitting Program (ERP). The ERP program requires avoidance and minimization measures to reduce impacts to wetlands and any remaining adverse impacts to be offset by mitigation.

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity according to an ERP permit and federal authorization to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. There are currently 131 state-authorized mitigation banks in Florida that cover 227,496 acres.

Water quality credit trading allows one source of pollution, the seller, to control a pollutant at levels greater than required and sell credits to another source, the buyer, which uses the credits to supplement their level of water treatment in order to comply with regulatory requirements. A Water Quality Enhancement Area (WQEA) is used to address pollutants in a watershed, basin, sub-basin, targeted restoration area or waterbody in which the WQEA is located that do not meet applicable state water quality criteria through the award of water quality enhancement credits by DEP. Credits may only be sold to governmental entities.

The bill provides that a governmental entity may, through a public procurement process, solicit proposals from private-sector sponsors for a mitigation bank project on public lands purchased for conservation purposes. The governmental entity and private-sector sponsor must enter into a sponsorship agreement and the private-sector sponsor must pay a usage fee, reflecting the market value of the land that accounts for the cost of the use of public land in the pricing of mitigation credits.

The bill provides that, in determining the number of mitigation bank credits assigned to a mitigation bank, DEP or the water management district (WMD) must reflect the conservation status of the land in the location factor set forth in the uniform mitigation assessment method (UMAM).

The bill expands the WQEA program to allow private entities to purchase water quality credits and sponsor mitigation projects. Additionally, the bill prohibits DEP and the WMDs from participating in the establishment of public mitigation banks.

The bill will have an indeterminate fiscal impact on state and local government. *See* Fiscal Analysis.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Wetlands are transitional areas between land and deep water, and they are sufficiently inundated with water so that they support vegetation which grows in saturated soils.[1] "Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes,[2] tidal marshes, mangrove swamps and other similar areas."[3] Prior to development, wetlands covered approximately one half of Florida.[4] Today, approximately 11 million acres of wetlands cover Florida and the state boasts more wetlands than any of the other 47 conterminous States.[5]

Regulation of Activities in Wetlands

The Clean Water Act (CWA) is the primary federal law that regulates water pollution in the United States and it prohibits the discharge of any pollutant[6] into waters of the United States (WOTUS).[7] The discharge of dredged or fill material into WOTUS, including wetlands, is regulated by a program established in Section 404 of the CWA.[8] States may apply to the U.S. Environmental Protection Agency (EPA) to assume the federal dredge and fill permitting program; Florida assumed the 404 permitting program in 2020.[9] On February 15th of this year a judge in the United States District Court for the District of Columbia vacated the EPA's approval of Florida's assumption package as violative of the Endangered Species Act.[10] The ruling applies to pending and future 404 permit applications; however, the State 404 Program may be preserved for those applications which are not likely to adversely affect listed species.[11]

DEP regulates surface water flows via the Environmental Resource Permit (ERP) Program, a permitting process that addresses and regulates impacts to the landscape including clearing, grading, construction of structures and filling and dredging, whether the work occurs in uplands, wetlands or other surface waters.[12] An ERP permit may be issued by DEP, a WMD or a local government to which DEP delegated ERP permitting authority.[13] ERPs are designed to prevent flooding, protect wetlands and other surface waters and protect Florida's water quality from stormwater pollution.[14]

---

[1] Melanie R. Darst, Helen M. Light, and Benjamin F. McPherson, U.S. Geological Survey (USGS) Water-Supply Paper 2425, *Florida Wetland Resources*, https://www.fws.gov/media/wetland-resources-florida, p. 153 (last visited Jan. 25, 2024); S. 373.019(27), F.S.

[2] Seepage slopes are wetlands located on the sides of rolling hills. "Unusual hydrology and frequent fires combine to create an environment that supports a variety of carnivorous and other sun-loving herbaceous plants" and "there are many rare or endemic species . . . that can be found in seepage slopes in the Florida Panhandle." UF, IFAS Extension, *Florida's Seepage Slope Wetlands* (Apr. 11, 2018), https://edis.ifas.ufl.edu/publication/UW367 (last visited Jan. 25, 2024).

[3] S. 373.019(27), F.S.; *see also* Department of Environmental Protection (DEP), *Wetland Evaluation and Delineation* (last updated Feb. 17, 2023), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/wetland-evaluation-and (last visited Jan. 25, 2024).

[4] Darst, *supra* note 1.

[5] *Id.*

[6] 33 U.S.C. § 1311(a). The definition of the term "pollutant" is quite broad. 33 U.S.C. § 1362(6).

[7] 33 U.S.C. § 1362(12)(A). "The term 'navigable waters' means the waters of the United States, including the territorial seas." 33 U.S.C. §1362(7).

[8] EPA, *Section 404 of the Clean Water Act, Permit Program under CWA Section 404* (last updated Mar. 31, 2023), https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404 (last visited Jan. 25, 2024).

[9] 40 C.F.R. § 233.1. *See also* DEP, *State 404 Program* (last updated Oct. 17, 2023), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program (last visited Jan. 25, 2024).

[10] *Ctr. for Biological Diversity v. Regan*, No. 21-119 (D.C. Feb. 15, 2024), on file with the Water Quality, Supply & Treatment Subcommittee.

[11] *Id.*

[12] DEP, *Environmental Resource Permitting Online Help* (last updated Feb. 8, 2022), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-0 (last visited Jan. 25, 2024).

[13] *Id.*

[14] *Id.*

While the State 404 Program and the ERP Program are separate programs, approximately 85 percent of review requirements of the two programs overlap.[15] DEP's Submerged Lands and Environmental Resources Coordination Program is responsible for the consistent implementation of both the State 404 Program and the ERP Program.[16] Both programs require avoidance and minimization measures to reduce impacts to wetlands and any remaining adverse impacts to be offset by mitigation. The methodology ratified by the Legislature for identifying and delineating the extent of wetlands and surface waters[17] is also the methodology used to establish the boundary of state-assumed waters under the State 404 Program.[18] Provisions of state law that conflict with federal requirements under the CWA do not apply to state-administered 404 permits.[19]

ERP permitting is governed by s. 373.4131, F.S. DEP implements this section of law in ch. 62-330, F.A.C., which provides for the permitting rules, application process and standards by which applications are considered and approved or denied. The ERP Applicant's Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP program, which includes all permitted activities governed by ch. 373, part IV, F.S., relating to management and storage of surface waters, as well as stormwater management systems-specific activities.[20] Applicants for an ERP must adhere to requirements in both the ERP Applicant's Handbook, Vol. I, which governs general permitting while WMD-specific permitting requirements are contained in the ERP Applicant's Handbook, Vol. II, for which there is one per WMD.[21]

Mitigation Banks

Some permitted projects result in unavoidable adverse impacts to wetlands and other surface waters. Mitigation activities for such projects include activities that preserve, create, enhance and/or restore wetlands and other surface waters.[22] Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area.[23]

A mitigation bank consists of a wetland, stream or other aquatic resource area that has been restored, established or preserved to offset such environmental impacts.[24] Mitigation banks are an alternative to permittee-responsible mitigation.[25] Permittee-responsible mitigation refers to mitigation undertaken by the permittee to provide compensatory mitigation for which the permittee retains full responsibility.[26] If mitigation credits are not available, state law allows permittee-responsible mitigation consisting of the restoration and enhancement of lands owned by a local government.[27]

---

[15] DEP, *State 404 Program, supra* note 9.
[16] DEP, *Submerged Lands and Environmental Resources Coordination Program*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination (last visited Jan. 25, 2024).
[17] S. 373.4211, F.S.
[18] R. 62-331.010(3), F.A.C.
[19] S. 373.4146(3), F.S.
[20] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, p. 1-4 (Dec. 22, 2020) Modified Document, 1/6/2021, https://www.flrules.org/gateway/reference.asp?No=Ref-12078 (last visited Jan. 21, 2024).
[21] DEP, *ERP Stormwater* (last updated June 7, 2022), ERP Stormwater | Florida Department of Environmental Protection (last visited Jan.. 25, 2024).
[22] DEP, *Mitigation and Mitigation Banking* (last updated May 31, 2023), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Jan. 24, 2024).
[23] *Id*. "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part. S. 373.403(21), F.S.
[24] EPA, *Mitigation Banks under CWA Section 404* (last updated Oct. 31, 2023), Mitigation Banks under CWA Section 404 | US EPA (last visited Jan. 25, 2024).
[25] S. 373.4135(1)(b), F.S.
[26] EPA, *Mechanisms for Providing Compensatory Mitigation under CWA Section 404* (last updated Apr. 6, 2023), https://www.epa.gov/cwa-404/mechanisms-providing-compensatory-mitigation-under-cwa-section-404 (last visited Jan. 25, 2024).
[27] S. 373.4135(1)(b), F.S.

State law directs DEP and the WMDs "to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation."[28] In general, a governmental entity may not create or provide mitigation for a project other than its own except when a local government has allowed a public or private mitigation project to be created on land it purchased for conservation purposes.[29]

The mitigation bank is the site itself and the currency sold by the banker to the impacted permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.[30] The permitting agencies determine the number of potential credits permitted for the bank and the credit debits required for impact permits.[31]

Mitigation banks are authorized by an ERP permit issued by DEP, the St. Johns River WMD, the Southwest Florida WMD, and/or the South Florida WMD, depending on the location of the bank and the Operating and Delegation Agreements between DEP and the WMDs.[32] DEP is responsible for permitting mitigation banks within the Northwest Florida WMD and the Suwannee River WMD.[33] Mitigation banks also require federal authorization[34]; a number of agencies are involved in processing the federal authorization[35] - called a Mitigation Banking Instrument - and the U.S. Army Corps of Engineers (USACE) typically serves as the lead agency.[36]

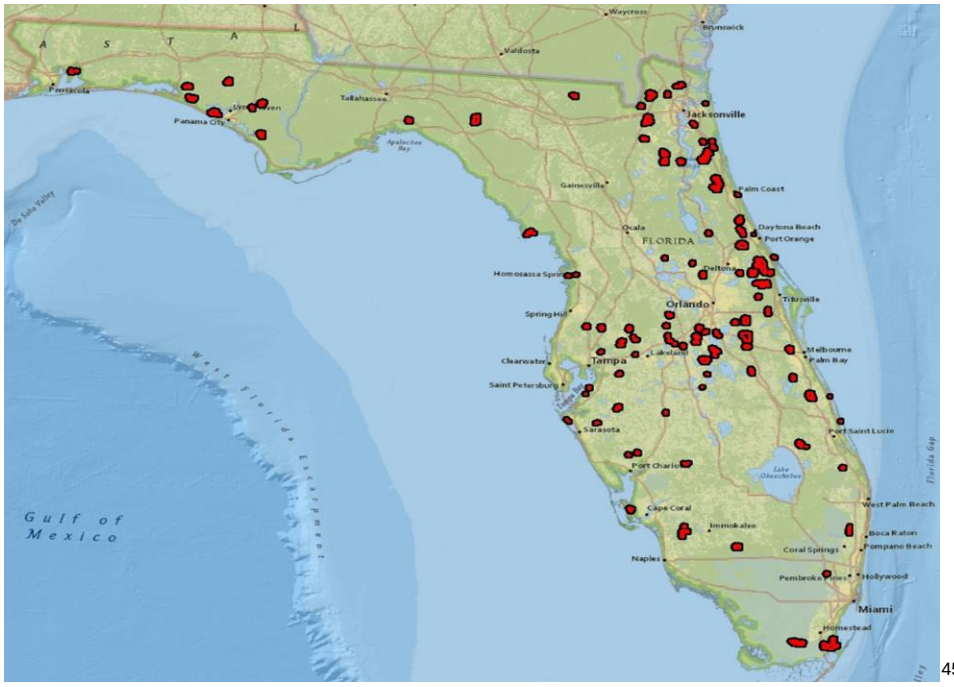
Requirements for mitigation bank permits differ between mitigation bank instruments issued by the USACE and state permits issued by DEP or the WMDs. Under the federal process, a mitigation banking instrument serves as the legal document for the establishment, operation and use of a mitigation bank.[37] They are approved by an interagency review team, through procedures involving public notice and comment.[38] Mitigation banking instruments must include certain detailed elements, such as a comprehensive mitigation plan including financial assurances and a credit release schedule that is tied to the achievement of specific milestones.[39]

Once mitigation credits have been awarded to a mitigation bank, the permitting agency is required to establish a schedule, in the permit, for the release of credits.[40] Once a credit is released it may be sold or used to offset adverse impacts associated with a permitted project.[41] The permitting agency is prohibited from releasing all of a mitigation bank's credits until the bank meets the mitigation success criteria established in its mitigation bank permit.[42] In addition, with certain exceptions, credits may only be withdrawn and used to offset impacts in the mitigation service area.[43]

---

[28] S. 373.4135(1), F.S.
[29] S. 373.4135(1)(b), F.S.
[30] DEP, *Mitigation and Mitigation Banking, supra* note 22.
[31] *Id*.
[32] R. 62-342.100(2), F.A.C.; DEP, *Mitigation Banking Rule and Procedure Synopsis* (last updated Feb. 17, 2023), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Dec. 20, 2023).
[33] DEP, *Mitigation Banks and Mitigation Banking* (last updated Feb. 17, 2023), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Jan. 25, 2024).
[34] DEP, *Mitigation and Mitigation Banking, supra* note 22.
[35] 33 C.F.R. § 332.8(b)(2).
[36] 33 C.F.R. § 332.8(b)(1).
[37] 33 C.F.R. s. 332.2.
[38] 33 C.F.R. s. 332.8; 40 C.F.R. s. 230.98.
[39] *See generally* 33 C.F.R. s. 332.8(d)(6); *see also* 40 C.F.R. s. 230.98(d)(6).
[40] S. 373.4136(5), F.S.
[41] *Id*.
[42] S. 373.4136(5)(b), F.S.
[43] S. 373.4136(6), F.S.; S. 373.4136(6)(d), F.S.

Currently, there are 131 state-authorized mitigation banks in Florida that cover 227,496 acres.[44]



[45]

Water Quality Credit Trading

Water quality credit trading is a market-based approach that can be used to attain water quality improvements.[46] Water quality credit trading allows one source of pollution to control a pollutant at levels greater than required and sell credits to another source, the buyer, which uses the credits to supplement their level of water treatment in order to comply with regulatory requirements.[47] Pollutant reductions achieved through water quality credit trading must result in water quality that is as good as or better than what would be achieved through treatment.[48]

DEP is responsible for regulating water quality credit trading.[49] Water quality credits[50] can only be traded within the boundaries of a basin management action plan[51] (BMAP) or a Reasonable Assurance Plan (RAP) area.[52] Credits cannot be generated for a reduction in nutrient loading that is required under a regulatory program, including BMAPs or RAPs, but can be generated if reductions are made beyond what is required in the BMAP or RAP.[53] Additionally, credits cannot be generated from the

---

[44] Presentation by Christine Wentzel, Regulatory Manager, Environmental Resource Program, St. Johns River WMD, *Mitigation Banks*, to the House Water Quality, Supply & Treatment Subcommittee (Sept. 19, 2023), https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3251&Session=2024&DocumentType=Meeting+Packets&FileName=wst+9-19-23.pdf, slide 24, (last visited Jan. 25, 2024).
[45] *Id.*
[46] EPA, *Water Quality Trading* (last updated Nov. 28, 2023), https://www.epa.gov/npdes/water-quality-trading (last visited Jan. 25, 2024).
[47] *Id.*
[48] *Id.*
[49] S. 403.067(8), F.S.
[50] R. 62-306.200(3), F.A.C. defines "credit" to mean the amount of an entity's nutrient load reduction below the baseline that will be available for trading purposes. Credits are in units of pounds per year or kilograms per year.
[51] A BMAP is a restoration plan for the watersheds and basins connected to an impaired waterbody. S. 403.067(7)(a)1., F.S.
[52] R. 62-306.300(1), F.A.C. A Reasonable Assurance Plan is a control measure the DEP may implement for Category 4b impaired waterbodies. DEP, *Alternative Restoration Plans*, Alternative Restoration Plans | Florida Department of Environmental Protection (last visited Jan. 25, 2024).
[53] R. 62-306.400(2)(a), F.A.C.

implementation of best management practices (BMPs)[54] that are required under a BMAP or RAP.[55] An entity must fully comply with its baseline nutrient load to be eligible for credits resulting from management actions that reduce the nutrient load below the baseline.[56] In the past, water quality credits have been traded in the state; however, currently there are no water quality credits available for trade.[57]

Water Quality Enhancement Areas[58]

Water quality enhancement areas (WQEAs) are "natural systems constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a WQEA permit . . . ."[59] Awarded by DEP, an enhancement credit represents a quantity of pollutant removed.[60] An enhancement credit may be sold only to governmental entities seeking to meet an assigned BMAP or RAP, or for the purpose of achieving net improvement.[61] It may be sold only after the governmental entity provides reasonable assurance of meeting DEP rules for design and construction of all onsite stormwater management.[62]

A WQEA is used to address pollutants in a watershed, basin, sub-basin, targeted restoration area or waterbody in which the WQEA is located that do not meet applicable state water quality criteria.[63] Construction, operation, management and maintenance of a WQEA must be approved through the ERP permit process[64] and must be used to create, improve or use natural systems to improve water quality.[65] A WQEA permit provides for the assessment, valuation and award of credits based on units of pollutants removed.[66] DEP must base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the WQEA's ability to remove pollutants or constituents.[67] If the watershed within the WQEA has a BMAP, then the applicant must use the BMAP numerical models and analytical tools.[68]

"To obtain a WQEA permit, the applicant must provide reasonable assurances that the proposed WQEA will be used to:

- Meet the requirements for issuance of an ERP;
- Benefit water quality in the watershed in which the WQEA is located;
- Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;
- Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to ensure perpetual operation and maintenance;

---

[54] The EPA's National Pollutant Discharge Elimination System (NPDES) regulations include a definition of BMPs as applied to water quality protection to mean, "[s]chedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." 40 C.F.R. §122.2

[55] R. 62-306.400(2)(b), F.A.C.

[56] R. 62-306.400(4), F.A.C.

[57] DEP, *Florida Water Quality Credit Trading Registry* (last updated Feb. 21, 2023), https://floridadep.gov/dear/water-quality-restoration/content/florida-water-quality-credit-trading-registry (last visited Feb. 19, 2024).

[58] The Water Quality Enhancement Area Program (Program) was created in Ch. 2022-215, Laws of Fla., and required DEP to initiate rulemaking to implement the Program. DEP held one rule development workshop on Nov. 8, 2023. DEP, *Water Quality Enhancement Are Rulemaking* (last updated Dec. 7, 2023) Water Quality Enhancement Area Rulemaking | Florida Department of Environmental Protection (last visited Feb. 19, 2024). Until rules are adopted, the Program is not operational.

[59] S. 373.4134(2)(d), F.S.

[60] S. 373.434(2)(a), F.S.

[61] S. 373.4134(3)(b), F.S.

[62] *Id*.

[63] S. 373.4134(3)(c), F.S.

[64] S. 373.4134(3(a), F.S.

[65] S. 373.4134(3)(d), F.S.

[66] S. 373.4134(4)(b), F.S.

[67] S. 373.4134(4)(c), F.S.

[68] S. 373.4134(4)(c)1., F.S.

- Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the WQEA; and,
- Provide for permanent preservation of the WQEA . . . ."[69]

The WQEA permit applicant must propose performance and success criteria monitoring and a verification plan and protocols for once the WQEA is operational.[70] The protocols must be appropriate for the WQEA and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded.[71] Permit applications must include site-specific water data and conditions information to assist DEP in determining the number of credits to issue.[72] An applicant for a WQEA permit or an applicant proposing to use enhancement credits must comply with all requirements pertaining to adverse impacts to water quality in receiving waters and adjacent lands or wetlands.[73] If a permittee fails to comply with the conditions of a WQEA, DEP must revoke the ability of the permittee to sell enhancement credits until the WQEA complies with the conditions of the permit.[74]

DEP must establish a water quality enhancement service area for each WQEA.[75] Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area.[76] The boundaries of such enhancement service areas depend on the geographic area in which the WQEA could reasonably be expected to address adverse impacts.[77]

DEP must track the award, release and use of enhancement credits by maintaining a ledger.[78] If credits are sold or used, the WQEA operator must notify DEP within 30 days after the date the enhancement credit transaction is completed.[79] A WMD that authorizes applicants seeking permits to use enhancement credits to address water quality impacts must report to DEP the amount of enhancement credits used by the applicants.[80]

A WQEA may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.[81] Pollutant loading reductions required under any state regulatory program are not eligible to be considered as enhancement credits.[82] Credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of the surface water management system of the site.[83]

[69] S. 373.4134(4)(a)1.-6., F.S.
[70] S. 373.4134(6)(a), F.S.
[71] *Id*.
[72] S. 373.4134(4)(C)4., F.S.
[73] S. 373.4134(3)(g), F.S.
[74] S. 373.4134(6)(b), F.S.
[75] S. 373.4134(5), F.S.
[76] *Id*.
[77] *Id*.
[78] S. 373.4134(7)(d), F.S.
[79] S. 373.4134(7)(d)2., F.S.
[80] S. 373.4134(7)(d)1., F.S.
[81] S. 373.4134(7)(c), F.S.
[82] S. 373.4134(7)(e), F.S.
[83] S. 373.4134(7)(e) and (f), F.S.

Effect of the Bill

For the purposes of ch. 373, part IV, F.S., relating to management and storage of surface waters, the bill defines "private-sector sponsor" as an individual or entity that establishes and operates a wetland mitigation bank project and is responsible for compliance with any permit or authorization, including, but not limited to, funding and undertaking wetland enhancement, restoration or creation activities, and the provision of financial assurances, as well as any required monitoring, reporting, and maintenance of the mitigation bank.

The bill adds "applicants" as eligible entities that may purchase WQEA credits and defines applicants to mean a governmental entity or private sector entity that wishes to purchase water quality enhancement credits to meet an assigned BMAP allocation or RAP or for the purpose of achieving the net improvement performance standard.

The bill directs DEP and the WMDs to encourage the establishment of private mitigation banks and offsite regional mitigation on *private and public lands owned by a local government*. Current law allows DEP and the WMDs to also participate in private and public mitigation banks. The bill removes the authorization for DEP and the WMDs to participate in the establishment of public mitigation banks. When a local government allows a public or private mitigation project to be created on land it has purchased for conservation purposes, the bill clarifies that the exception applies to instances when a local government has allowed a public or private mitigation project, *including permittee-responsible mitigation*, to be created on land it has purchased for conservation purposes.

The bill provides that a local government may, through a public procurement process, solicit proposals from private-sector sponsors for a mitigation bank on public lands purchased for conservation purposes. If such a mitigation bank is to be established and operated on public land, the local government and private-sector sponsor must enter into an agreement requiring the private-sector sponsor to establish and operate the mitigation bank according to the mitigation banking permitting requirements. The bill provides that the agreement must require the private-sector sponsor to pay a usage fee to the local government which reflects the market value of the public land, as determined by a competitive process in accordance with state law or such other method of assuring that the cost of the use of the public land is fully accounted for in the pricing of mitigation credits.

The bill provides that, in determining the number of mitigation bank credits assigned to the mitigation bank, DEP or the WMD must reflect the conservation status of the land in the location factor set forth in the uniform mitigation assessment method.[84] The bill provides that these requirements apply to drainage basins or corresponding hydrologic units[85] if the private-sector sponsor demonstrates to DEP or the WMD that in-kind credits are not available. The bill specifies that rulemaking is not required to implement this subsection.

The bill reenacts s. 403.9332(1)(a) and (c), F.S., relating to mitigation and enforcement, for the purpose of incorporating the amendment to s. 373.4135, F.S., relating to mitigation banks and offsite regional mitigation. The bill conforms cross-references in ss. 330.41, 373.414 and 373.461, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 373.403, F.S., relating to management and storage of surface waters.

Section 2: Amends s. 373.4134, F.S., relating to water quality enhancement areas.

[84] The Uniform Mitigation Assessment Method (UMAM) is a methodology in state law to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. S. 373.414(18), F.S. *See also* DEP, *The Uniform Mitigation Assessment Method (UMAM)* (last updated Feb. 8, 2022), https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment (last visited Jan. 25, 2024).

[85] A hydrologic unit is a geographic area defined by an area's natural hydrological properties, primarily its drainage patterns. U.S. Geological Survey (USGS), *Hydrologic Unit Maps* (last updated Jan. 9, 2024), https://water.usgs.gov/GIS/huc.html (last visited Jan. 25, 2024). The U.S. is divided and sub-divided into successively smaller hydrologic units which are classified into four levels: regions, subregions, accounting units, and cataloging units. *Id.*

Section 3: Amends s. 373.4135, F.S., relating to mitigation banks and offsite regional mitigation.

Section 4: Amends s. 330.41, F.S., relating to the Unmanned Aircraft Systems Act.

Section 5: Amends s. 373.414, F.S., relating to additional criteria for activities in surface waters and wetlands.

Section 6: Amends s. 373.461, F.S., relating to Lake Apopka improvement and management.

Section 7: Amends s. 403.9332, F.S., relating to mitigation and enforcement.

Section 8: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact to the state from additional WQEA permitting fees.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact relating to the expansion of the WQEA Program. DEP indicated the additional workload can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on local governments from the collection of usage fees from private sector sponsors who operate a mitigation bank.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on local governments through the additional workload associated with the procurement process and entering into agreements with private sector sponsors.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive fiscal impact to private entities participating in the expanded WQEA program and maintaining mitigation banks on public lands. The fiscal impact is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 29, 2024, the Water Quality, Supply & Treatment Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Adds a definition of "private sector sponsor" in s. 373.403, F.S., relating to the management and storage of surface waters, and "applicant" to s. 373.4134, F.S., relating to WQEAs, to expand mitigation banking and the Water Quality Enhancement Area Program, respectively, to include private sector entities. For both, the bill requires any participating private sector entities to comply with all laws, regulations, permits and/or authorizations.
    - For a wetland mitigation project permitted pursuant to ch. 373, pt. IV, F.S., the bill requires the private sector sponsor to provide certain financial assurances and any required monitoring, reporting and maintenance of the mitigation bank.
    - For a private entity purchasing WQEA credits, the bill authorizes such an entity to do so to meet an assigned BMAP allocation or RAP or for the purpose of achieving the net improvement performance standard.
- Clarifies that permittee-responsible mitigation may be included in a mitigation project authorized for land a local government purchased for conservation purposes.
- Authorizes a local government, through a public procurement process, to solicit proposals from private-sector sponsors for a mitigation bank on public lands purchased for conservation purposes. If a private-sector sponsor is going to operate a mitigation bank, then the local government and the private-sector sponsor must enter into an agreement that requires the private-sector sponsor to:
    - Establish and operate the mitigation bank according to mitigation banking permitting requirements.
    - Pay a usage fee to the local government which reflects the market value of the public land and assures that the cost of the use of the public land is fully accounted for in the pricing of mitigation credits.
- Reenacts s. 409.9332, F.S., relating to mitigation and enforcement, to incorporate the amendment made by the bill and conforms cross-references in ss. 330.41, 373.414 and 373.461, F.S.

This analysis is drafted to the committee substitute as approved by the Water Quality, Supply & Treatment Subcommittee.