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; amending s. 373.403, F.S.; providing definitions; amending s. 373.413, F.S.; defining the term "regional stormwater management system"; requiring the Department of Environmental Protection to require specified documentation for issuance of an environmental resource permit for a regional stormwater management system; requiring that environmental resource permits authorizing a regional stormwater management system establish and include certain graphic depictions; authorizing certain environmental resource permit applicants to purchase and use certain pollution reduction allocations; requiring the department and water management districts to use specified information to establish drainage areas; providing an exception; amending s. 373.4134, F.S.; revising legislative findings and intent; removing the definition of the term "enhancement credit"; authorizing the use of water quality enhancement credits by certain permit applicants; providing that certain use of enhancement credits constitutes certain stormwater treatment; providing that certain pollutant

load reductions may not be referred to as enhancement credits; requiring the department to file specified rules for adoption by a specified date; providing for water quality enhancement provisional permits; providing for the use of certain enhancement credits under such permits; providing for the modification of such permits under certain conditions; requiring the department and water management districts to recognize any enhancement credit used from a water quality enhancement area established pursuant to a provisional permit; amending s. 373.414, F.S.; clarifying the types of mitigation measures for compensating stormwater treatment which the department or a water management district governing board must consider under certain circumstances; reenacting s. 373.4136(6)(d), F.S., relating to establishment and operation of mitigation banks, to incorporate the amendment made to s. 373.414, F.S., in a reference thereto; providing an effective date.

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 to pollution from stormwater runoff from a seaport not listed in s. 403.021(9)(b), a water quality enhancement area as defined in

s. 373.4134(2) and operated by a non-local governmental entity independently or under contract with a seaport or local government may not convey enhancement credits to provide stormwater treatment or achieve net improvement under s. 373.414(1)(b)3.

Section 2. Subsections (23), (24), and (25) are added to section 373.403, Florida Statutes, to read:

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

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

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

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

Section 3. Subsection (7) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(7)(a) As used in this subsection, the term "regional stormwater management system" means a method of compensating

stormwater treatment that creates pollution reduction allocations and that is designed, constructed, operated, and maintained to collect, convey, store, absorb, inhibit, treat, or harvest stormwater to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges within the area served by the regional stormwater management system, which is the land or development that is served by or contributes stormwater to the regional stormwater management system.

(b) As part of meeting the requirement to demonstrate that an applicant for an environmental resource permit for a regional stormwater management system has the financial, legal, and administrative capability of ensuring such regional stormwater management system will be undertaken according to the terms and conditions of an issued permit, the department or a water management district shall require such applicant to provide documentation of adequate financial responsibility. The documentation may consist of, but is not limited to, performance bonds, letters of credit, insurance policies, or trust agreements ensuring completion of construction, the amount of which shall be based on cost estimates of completing the construction, and an endowment or other long-term financial assurance mechanism sufficient to ensure operation and maintenance for the entire period the regional stormwater management system is anticipated to be relied upon to provide

stormwater treatment, attenuation, or regulatory pollutant load reduction allocations, the amount of which shall be based on cost estimates of such long-term operation and maintenance. The cost estimates and associated financial responsibility mechanisms shall be updated every 5 years to reflect current costs. This subsection shall not be construed to impose additional financial responsibility requirements on stormwater management systems that are not regional stormwater management systems.

(c) An environmental resource permit authorizing a regional stormwater management system shall establish and include a graphic depiction of the drainage area to be served by the regional stormwater management system. Environmental resource permit applicants located within the drainage area may purchase and use pollution reduction allocations from a regional stormwater management system to meet stormwater treatment performance criteria. The department or water management district shall use Hydrologic Unit Code 12 subbasin as set forth by the United States Geological Survey to establish the drainage area, unless the applicant provides justification demonstrating the proposed offsite area outside of the Hydrologic Unit Code 12 subbasin would provide the same degree of compensating treatment for a common downstream receiving waters without causing or contributing to any localized adverse impact to any downstream waters through water quality monitoring, modeling, or a

combination thereof.

Section 4. Paragraphs (c) through (f) of subsection (2) of section 373.4134, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, paragraphs (d) through (g) of subsection (3) are redesignated as paragraphs (e) through (h), respectively, a new paragraph (d) is added to that subsection, and paragraph (e) of subsection (1), paragraph (b) of subsection (2), paragraph (b) of subsection (3), paragraph (e) of subsection (7), and subsection (9) of that section are amended, to read:

373.4134 Water quality enhancement areas.—

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

(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 state regulatory program are not eligible to be considered as enhancement credits. In addition, pollutant reductions achieved though 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 may not be referred to as enhancement credits.

(9) RULES.—The department shall adopt rules to implement this section. The department shall file the rules for adoption by October 1, 2026. Pending the adoption of the 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 of this section. The department shall allow the use of enhancement credits from a water quality enhancement area established under a provisional permit as provided in this section and subject to compliance with s. 373.4134 and the terms of the provisional permit. Notwithstanding any other provision of law or rule, when 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., the department or a water management district 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 implement this section, the department may modify an issued water quality enhancement provisional permit to conform such permit to such adopted rules. Any enhancement credit used from a water quality enhancement area established under a provisional permit shall

continue to be recognized by the department and water management districts without change regardless of whether the provisional permit is subsequently modified to conform to the adopted ~~This section may not be implemented until the department adopts such~~ rules.

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

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

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

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or

the department, in deciding to grant or deny a permit, must 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 acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation may be given only to the extent that the donation covers the full cost to the agency of undertaking the project intended to mitigate the adverse impacts. However, this section ~~nothing herein~~ may not be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. ~~Nothing in~~ This section may not be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of

such ~~said~~ credit.

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