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. 373.403, F.S.; defining terms; 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. 373.4134, F.S.; revising

legislative findings; deleting the definition of the term "enhancement credit"; authorizing water quality enhancement credits to be used by governmental entities to meet environmental resource permit stormwater treatment performance standards or achieve net improvement, pursuant to specified provisions; providing that the use of enhancement credits from a water quality enhancement area constitutes compensating stormwater treatment under the environmental resource permitting program; requiring the boundaries of the enhancement service area to include a certain type of sub-basin; prohibiting the term "credit" from being used to refer to pollutant reduction under certain circumstances; requiring the department to adopt rules by a specified date; requiring the department to take certain action pending the adoption of certain rules; requiring the department to issue a provisional permit under certain circumstances; authorizing enhancement credits to be used from certain water quality enhancement areas; providing construction; authorizing the department to modify permits after the adoption of rules; 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; making technical changes; 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), and not including ports in Citrus or Putnam Counties, a regional stormwater management system, as defined in s. 373.413(7)(a), 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), and not including ports in Citrus or Putnam Counties, a water quality enhancement area as defined in s. 373.4134 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) REGIONAL STORMWATER MANAGEMENT SYSTEMS.—

(a) A "regional stormwater management system" is a method of compensating stormwater treatment that creates pollution reduction allocations and 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 drainage area served by the regional system which is the

land or development that is served by or contributes stormwater to the regional 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. This financial responsibility may consist of performance bonds, letters of credit, insurance policies, trust agreements, or similar, 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 section 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 depicting the drainage area to be served by such 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 (HUC 12) sub-basin as set forth by the United States Geological Survey to establish the drainage area, unless the regional stormwater management system applicant provides justification demonstrating the proposed off-site area outside of the HUC 12 would provide the same degree of compensating treatment for a common downstream receiving waterbody without causing or contributing to any localized adverse impact to any downstream waters, through modeling, other evaluations, or a combination thereof.

Section 4. Present paragraphs (d) through (g) of subsection (3) of section 373.4134, Florida Statutes, 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), subsection (5), 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.

(5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department shall establish a water quality enhancement service area for each water quality enhancement area. Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic area in which the water quality enhancement area could reasonably be expected to address adverse impacts and must, at a minimum, consist of a Hydrologic Unit Code 8 (HUC 8) sub-basin as set forth by the United States Geological Survey. Enhancement service areas may overlap, and enhancement service areas for two or more water quality enhancement areas may be approved for a regional watershed.

(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, 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

implement this section, the department may modify a water quality enhancement area provisional permit to conform such permit to such rules. Any enhancement credits 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 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, nothing herein may 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.