



309240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
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Appropriations Subcommittee on Agriculture, Environment, and
General Government (Burgess) recommended the following:

1 **Senate Substitute for Amendment (442316) (with title**
2 **amendment)**

3
4 Delete lines 52 - 317

5 and insert:

6 by governmental entities to address impacts regulated under this
7 part is needed.

8 (c) The construction, operation, maintenance, and long-term
9 management of water quality enhancement areas pursuant to this
10 section will improve the certainty and long-term viability of



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11 water quality treatment systems.

12 (d) Water quality enhancement areas are a valuable tool to
13 assist governmental entities in satisfying the net improvement
14 performance standard pursuant to s. 373.414(1)(b)3. to ensure
15 significant reductions of pollutant loadings.

16 (e) Water quality enhancement areas that provide water
17 quality enhancement credits to governmental entities seeking
18 permits under this part and to governmental entities seeking to
19 meet an assigned basin management action plan allocation or
20 reasonable assurance plan pursuant to s. 403.067 are considered
21 an appropriate and permissible option.

22 (2) DEFINITIONS.—As used in this section, the term:

23 (a) "Enhancement credit" means a standard unit of measure
24 which represents a quantity of pollutant removed.

25 (b) "Governmental entity" means any political subdivision
26 of the state, including any state agency, department, agency of
27 the state, county, municipality, special district, school
28 district, utility authority, or other authority or
29 instrumentality, agency, unit, or department thereof.

30 (c) "Natural system" means an ecological system supporting
31 aquatic and wetland-dependent natural resources, including fish
32 and aquatic and wetland-dependent wildlife habitats.

33 (d) "Water quality enhancement area" means a natural system
34 constructed, operated, managed, and maintained for the purpose
35 of providing offsite regional treatment for which enhancement
36 credits may be provided pursuant to a water quality enhancement
37 area permit issued under this section.

38 (e) "Water quality enhancement area permit" means an
39 environmental resource permit issued for a water quality



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40 enhancement area which authorizes the construction, operation,
41 management, and maintenance of an enhancement area and the
42 purchase and sale of enhancement credits.

43 (3) WATER QUALITY ENHANCEMENT AREAS.—

44 (a) The construction, operation, management, and
45 maintenance of a water quality enhancement area must be approved
46 through the environmental resource permitting process.

47 (b) Water quality enhancement credits may be sold only to
48 governmental entities.

49 (c) A water quality enhancement area must be used to
50 address contributions of one or more pollutants or other
51 constituents in the watershed in which the water quality
52 enhancement area is located which do not meet applicable state
53 water quality criteria.

54 (d) A water quality enhancement area must be employed to
55 use, create, or improve natural systems in order to improve
56 water quality.

57 (e) A governmental entity may use a water quality
58 enhancement area for its own water quality needs. However, a
59 governmental entity may not act as a sponsor to construct,
60 operate, manage, or maintain a water quality enhancement area or
61 market enhancement credits to third parties.

62 (f) A local government may not require a permit or
63 otherwise impose regulations governing the operation of a water
64 quality enhancement area.

65 (g) This section does not eliminate the obligation of an
66 applicant for a water quality enhancement area permit or an
67 applicant proposing to use enhancement credits to comply with
68 all requirements of this part pertaining to adverse impacts to



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69 water quality in receiving waters and adjacent lands or
70 wetlands.

71 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

72 (a) To obtain a water quality enhancement area permit, the
73 applicant must provide reasonable assurances that the proposed
74 water quality enhancement area will be used to:

75 1. Meet the requirements for issuance of an environmental
76 resource permit;

77 2. Benefit water quality in the watershed in which the
78 water quality enhancement area is located;

79 3. Meet defined performance or success criteria for the
80 reduction of one or more pollutants or other constituents that
81 prevent receiving waters from meeting applicable state water
82 quality criteria;

83 4. Ensure long-term pollutant reduction through effective
84 operation and maintenance in perpetuity by designation of a
85 responsible long-term maintenance entity supported by an
86 endowment or other long-term financial assurance sufficient to
87 assure perpetual operation and maintenance;

88 5. Demonstrate sufficient legal or equitable interest in
89 the property to ensure access and perpetual protection and
90 management of the land within the water quality enhancement
91 area; and

92 6. Provide for permanent preservation of the water quality
93 enhancement area which meets the requirements of s. 704.06.

94 (b) The water quality enhancement area permit must provide
95 for the assessment, valuation, and award of credits based on
96 units of pollutant removed.

97 (c) The department shall base its determination of the



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98 award of enhancement credits on standard numerical models or
99 analytical tools that establish the water quality enhancement
100 area's ability to remove pollutants or constituents.

101 1. Where a basin management action plan exists for the
102 watershed in which the water quality enhancement area is
103 located, the applicant must use the same numerical models or
104 analytical tools used for that basin management action plan in
105 the water quality enhancement area permit application.

106 2. If a basin management action plan does not exist for the
107 watershed in which the water quality enhancement area is
108 located, the applicant, with the approval of the department, may
109 submit as part of the water quality enhancement area permit
110 application model parameters and results used in a numerical
111 model or analytical tool used by the department to develop a
112 basin management action plan for a watershed with similar
113 physical characteristics and pollutants as that where the
114 proposed water quality enhancement area is to be located.

115 3. If the department determines that its numerical model or
116 analytical tool used for a basin management action plan is not
117 appropriate for the proposed water quality enhancement area, the
118 applicant must use a standard numerical model or analytical tool
119 for the proposed water quality enhancement area.

120 4. To assist the department in evaluating and determining
121 enhancement credits, a water quality enhancement area permit
122 application must include the numerical model or analytical tool
123 results used to establish the water quality enhancement area's
124 efficacy. Supporting information must include, but need not be
125 limited to:

126 a. Rainfall data over the longest period of record



127 available, collected from the closest site to the proposed water
128 quality enhancement area, preferably within the same drainage
129 basin.

130 b. Anticipated average annual water quality and quantity
131 inflows to the proposed water quality enhancement area, based on
132 published local data collected over a period of record which
133 most closely matches the rainfall data under this paragraph.

134 c. Site-specific conditions affecting the anticipated
135 performance of the proposed water quality enhancement area,
136 including the proposed treatment type and the anticipated
137 associated reduction rates, as demonstrated by the performance
138 of other areas where the treatment type has been established and
139 operating over a minimum of two consecutive wet and dry seasons.

140 d. Data provided pursuant to sub-subparagraphs a. and b.
141 must be from monitoring stations the department deems sufficient
142 to determine flows and local water quality conditions.

143 (d) The issuance of a water quality enhancement area permit
144 under this section does not preclude the responsibility of an
145 applicant to obtain other applicable federal, state, and local
146 permits for the construction activities associated with the
147 water quality enhancement area.

148 (5) MONITORING AND VERIFICATION.-

149 (a) An applicant for a water quality enhancement area
150 permit must propose a performance and success criteria
151 monitoring and verification plan, with protocols to be
152 implemented once the water quality enhancement area is
153 operational. The protocols must be appropriate for the water
154 quality enhancement area and sufficient to demonstrate that the
155 area is meeting defined performance or success criteria for the



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156 reduction of pollutants or contaminants for which credits are
157 awarded by the department.

158 (b) If a permittee fails to comply with the conditions of a
159 water quality enhancement area permit, the department must
160 revoke the permittee's ability to sell enhancement credits until
161 the water quality enhancement area is compliant with the permit
162 conditions.

163 (6) ENHANCEMENT CREDITS.—

164 (a) The department or water management district shall
165 authorize the sale and use of enhancement credits to
166 governmental entities to address adverse water quality impacts
167 of activities regulated under this part or to assist
168 governmental entities seeking to meet required nonpoint source
169 contribution reductions assigned in a basin management action
170 plan or reasonable assurance plan pursuant to s. 403.067.

171 (b) Before approving the use of enhancement credits, the
172 department or water management district must determine that the
173 enhancement credits used by an applicant seeking a permit under
174 this part are appropriate for a specific permit use.

175 (c) Water quality improvement projects using natural
176 systems or land use modifications, including, but not limited
177 to, constructed wetlands or minor impoundments that reduce
178 pollutants to a receiving water body, may be used by an
179 applicant to generate enhancement credits if approved by the
180 department. Water quality enhancement areas may not be located
181 on lands purchased for conservation pursuant to the Florida
182 Forever Act or the Florida Preservation 2000 Act.

183 (d) The department shall provide for and maintain a ledger
184 that tracks the award, release, and use of enhancement credits.



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185 1. A water management district that authorizes applicants
186 seeking permits under this part to use enhancement credits to
187 address water quality impacts must report to the department the
188 amount of enhancement credits used by the applicants.

189 2. The operator of a water quality enhancement area shall
190 notify the department of the amount of enhancement credits sold
191 or used within 30 days after the date the enhancement credit
192 transaction is completed.

193 (e) Reductions in pollutant loading required under any
194 state regulatory program are not eligible to be considered as
195 enhancement credits.

196 (f) Enhancement credits may not be used by point source
197 dischargers to satisfy regulatory requirements other than those
198 necessary to obtain an environmental resource permit for
199 construction and operation of the surface water management
200 system of the site.

201 (g) Use of enhancement credits made available by water
202 quality enhancement areas is voluntary.

203 (h) Any landowner, discharger, or other responsible person
204 regulated under this part or s. 403.067 implementing applicable
205 management strategies specified in an adopted basin management
206 action plan or reasonable assurance plan may not be required by
207 any permit or other enforcement action to use enhancement
208 credits to reduce pollutant loads to achieve the pollutant
209 reductions established pursuant to s. 403.067.

210 (i) A local government may not deny the use of enhancement
211 credits due to the location of the water quality enhancement
212 area outside the jurisdiction of the local government.

213 (7) AUTHORITY.—The authority granted to the department



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214 under this section is supplemental to the authority granted
215 under s. 403.067(8).

216 (8) RULES.—The department may adopt rules to implement this
217 section.

218 Section 2. Paragraph (b) of subsection (1) and paragraphs
219 (a), (b), and (d) of subsection (3) of section 403.892, Florida
220 Statutes, are amended, and subsection (6) is added to that
221 section, to read:

222 403.892 Incentives for the use of graywater technologies.—

223 (1) As used in this section, the term:

224 (b) "Graywater" has the same meaning as in s.

225 381.0065(2)(f) s. ~~381.0065(2)(e).~~

226 (3) To qualify for the incentives under subsection (2), the
227 developer or homebuilder must certify to the applicable
228 governmental entity as part of its application for development
229 approval or amendment of a development order that all of the
230 following conditions are met:

231 (a) The proposed or existing development has at least 25
232 single-family residential homes that are either detached or
233 multifamily dwellings. ~~This paragraph does not apply to~~
234 ~~multifamily projects over five stories in height.~~

235 (b) Each single-family residential home or residence will
236 have its own residential graywater system ~~that is~~ dedicated for
237 its use. Each residence forming part of a multifamily project
238 will be serviced by either its own residential graywater system
239 dedicated for its use or a master graywater collection and reuse
240 system for the entire project.

241 (d) The required maintenance of the graywater system will
242 be the responsibility of the owner ~~residential homeowner.~~



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243 (6) This section does not apply to multifamily projects
244 more than five stories in height. Whether a dwelling is occupied
245 by an owner is not an eligibility criterion for a developer or
246 homebuilder to receive the incentives authorized pursuant to
247 this section.

248 Section 3. The Department of Environmental Protection shall
249 adopt and modify rules adopted pursuant to ss. 373.4136 and
250 373.414, Florida Statutes, to ensure that required financial
251 assurances are equivalent and sufficient to provide for the
252 long-term management of mitigation permitted under ss. 373.4136
253 and 373.414, Florida Statutes. The department, in consultation
254 with the water management districts, shall include the
255 rulemaking required by this section in existing active
256 rulemaking or shall complete rule development by June 30, 2023.

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259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete lines 5 - 34

262 and insert:

263 enhancement areas; providing requirements for water
264 quality enhancement areas and permits; requiring
265 applicants to propose performance and success criteria
266 monitoring and verification plans that meet certain
267 requirements; providing requirements for enhancement
268 credits; requiring the Department of Environmental
269 Protection to revoke a permit under certain
270 conditions; requiring the department and water
271 management districts to authorize the sale and use of



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272 enhancement credits to governmental entities to
273 address certain adverse water quality impacts and to
274 meet certain water quality requirements; requiring the
275 department to maintain enhancement credit ledgers;
276 providing construction; authorizing the department to
277 adopt rules; amending s. 403.892, F.S.; correcting a
278 cross-reference; revising the conditions that a
279 developer or homebuilder must certify it meets as part
280 of its application for development approval or
281 amendment of a development order; providing
282 applicability; requiring the department to adopt and
283 modify specified rules, as applicable; providing
284 requirements for such rulemaking;