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576-03100-22

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Agriculture, Environment, and
General Government)

A bill to be entitled

An act relating to environmental management; creating
s. 373.4134, F.S.; providing legislative findings and
intent; defining terms; providing for water quality
enhancement areas; providing requirements for water
quality enhancement areas and permits; requiring
applicants to propose performance and success criteria
monitoring and verification plans that meet certain
requirements; providing requirements for enhancement
credits; requiring the Department of Environmental
Protection to revoke a permit under certain
conditions; requiring the department and water
management districts to authorize the sale and use of
enhancement credits to governmental entities to
address certain adverse water quality impacts and to
meet certain water quality requirements; requiring the
department to maintain enhancement credit ledgers;
providing construction; authorizing the department to
adopt rules; amending s. 403.892, F.S.; correcting a
cross-reference; revising the conditions that a
developer or homebuilder must certify it meets as part
of its application for development approval or
amendment of a development order; providing
applicability; requiring the department to adopt and
modify specified rules, as applicable; providing
requirements for such rulemaking; providing an



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27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:

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31 Section 1. Section 373.4134, Florida Statutes, is created
32 to read:

33 373.4134 Water quality enhancement areas.-

34 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
35 that:

36 (a) Water quality will be improved and adverse water
37 quality impacts of activities regulated under this part may be
38 offset by the construction, operation, maintenance, and long-
39 term management of water quality enhancement areas that provide
40 offsite compensatory treatment.

41 (b) An expansion of existing authority for regional
42 treatment to include offsite compensatory treatment in water
43 quality enhancement areas to make credits available for purchase
44 by governmental entities to address impacts regulated under this
45 part is needed.

46 (c) The construction, operation, maintenance, and long-term
47 management of water quality enhancement areas pursuant to this
48 section will improve the certainty and long-term viability of
49 water quality treatment systems.

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

54 (e) Water quality enhancement areas that provide water
55 quality enhancement credits to governmental entities seeking



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56 permits under this part and to governmental entities seeking to
57 meet an assigned basin management action plan allocation or
58 reasonable assurance plan pursuant to s. 403.067 are considered
59 an appropriate and permissible option.

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

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

63 (b) "Governmental entity" means any political subdivision
64 of the state, including any state agency, department, agency of
65 the state, county, municipality, special district, school
66 district, utility authority, or other authority or
67 instrumentality, agency, unit, or department thereof.

68 (c) "Natural system" means an ecological system supporting
69 aquatic and wetland-dependent natural resources, including fish
70 and aquatic and wetland-dependent wildlife habitats.

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

76 (e) "Water quality enhancement area permit" means an
77 environmental resource permit issued for a water quality
78 enhancement area which authorizes the construction, operation,
79 management, and maintenance of an enhancement area and the
80 purchase and sale of enhancement credits.

81 (3) WATER QUALITY ENHANCEMENT AREAS.—

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



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85 (b) Water quality enhancement credits may be sold only to
86 governmental entities.

87 (c) A water quality enhancement area must be used to
88 address contributions of one or more pollutants or other
89 constituents in the watershed in which the water quality
90 enhancement area is located which do not meet applicable state
91 water quality criteria.

92 (d) A water quality enhancement area must be employed to
93 use, create, or improve natural systems in order to improve
94 water quality.

95 (e) A governmental entity may use a water quality
96 enhancement area for its own water quality needs. However, a
97 governmental entity may not act as a sponsor to construct,
98 operate, manage, or maintain a water quality enhancement area or
99 market enhancement credits to third parties.

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

103 (g) This section does not eliminate the obligation of an
104 applicant for a water quality enhancement area permit or an
105 applicant proposing to use enhancement credits to comply with
106 all requirements of this part pertaining to adverse impacts to
107 water quality in receiving waters and adjacent lands or
108 wetlands.

109 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

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

113 1. Meet the requirements for issuance of an environmental



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- 114 resource permit;
- 115 2. Benefit water quality in the watershed in which the
116 water quality enhancement area is located;
- 117 3. Meet defined performance or success criteria for the
118 reduction of one or more pollutants or other constituents that
119 prevent receiving waters from meeting applicable state water
120 quality criteria;
- 121 4. Ensure long-term pollutant reduction through effective
122 operation and maintenance in perpetuity by designation of a
123 responsible long-term maintenance entity supported by an
124 endowment or other long-term financial assurance sufficient to
125 assure perpetual operation and maintenance;
- 126 5. Demonstrate sufficient legal or equitable interest in
127 the property to ensure access and perpetual protection and
128 management of the land within the water quality enhancement
129 area; and
- 130 6. Provide for permanent preservation of the water quality
131 enhancement area which meets the requirements of s. 704.06.
- 132 (b) The water quality enhancement area permit must provide
133 for the assessment, valuation, and award of credits based on
134 units of pollutant removed.
- 135 (c) The department shall base its determination of the
136 award of enhancement credits on standard numerical models or
137 analytical tools that establish the water quality enhancement
138 area's ability to remove pollutants or constituents.
- 139 1. Where a basin management action plan exists for the
140 watershed in which the water quality enhancement area is
141 located, the applicant must use the same numerical models or
142 analytical tools used for that basin management action plan in



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143 the water quality enhancement area permit application.

144 2. If a basin management action plan does not exist for the
145 watershed in which the water quality enhancement area is
146 located, the applicant, with the approval of the department, may
147 submit as part of the water quality enhancement area permit
148 application model parameters and results used in a numerical
149 model or analytical tool used by the department to develop a
150 basin management action plan for a watershed with similar
151 physical characteristics and pollutants as that where the
152 proposed water quality enhancement area is to be located.

153 3. If the department determines that its numerical model or
154 analytical tool used for a basin management action plan is not
155 appropriate for the proposed water quality enhancement area, the
156 applicant must use a standard numerical model or analytical tool
157 for the proposed water quality enhancement area.

158 4. To assist the department in evaluating and determining
159 enhancement credits, a water quality enhancement area permit
160 application must include the numerical model or analytical tool
161 results used to establish the water quality enhancement area's
162 efficacy. Supporting information must include, but need not be
163 limited to:

164 a. Rainfall data over the longest period of record
165 available, collected from the closest site to the proposed water
166 quality enhancement area, preferably within the same drainage
167 basin.

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



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172 c. Site-specific conditions affecting the anticipated
173 performance of the proposed water quality enhancement area,
174 including the proposed treatment type and the anticipated
175 associated reduction rates, as demonstrated by the performance
176 of other areas where the treatment type has been established and
177 operating over a minimum of two consecutive wet and dry seasons.

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

181 (d) The issuance of a water quality enhancement area permit
182 under this section does not preclude the responsibility of an
183 applicant to obtain other applicable federal, state, and local
184 permits for the construction activities associated with the
185 water quality enhancement area.

186 (5) MONITORING AND VERIFICATION.—

187 (a) An applicant for a water quality enhancement area
188 permit must propose a performance and success criteria
189 monitoring and verification plan, with protocols to be
190 implemented once the water quality enhancement area is
191 operational. The protocols must be appropriate for the water
192 quality enhancement area and sufficient to demonstrate that the
193 area is meeting defined performance or success criteria for the
194 reduction of pollutants or contaminants for which credits are
195 awarded by the department.

196 (b) If a permittee fails to comply with the conditions of a
197 water quality enhancement area permit, the department must
198 revoke the permittee's ability to sell enhancement credits until
199 the water quality enhancement area is compliant with the permit
200 conditions.



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201 (6) ENHANCEMENT CREDITS.—

202 (a) The department or water management district shall
203 authorize the sale and use of enhancement credits to
204 governmental entities to address adverse water quality impacts
205 of activities regulated under this part or to assist
206 governmental entities seeking to meet required nonpoint source
207 contribution reductions assigned in a basin management action
208 plan or reasonable assurance plan pursuant to s. 403.067.

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

213 (c) Water quality improvement projects using natural
214 systems or land use modifications, including, but not limited
215 to, constructed wetlands or minor impoundments that reduce
216 pollutants to a receiving water body, may be used by an
217 applicant to generate enhancement credits if approved by the
218 department. Water quality enhancement areas may not be located
219 on lands purchased for conservation pursuant to the Florida
220 Forever Act or the Florida Preservation 2000 Act.

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

223 1. A water management district that authorizes applicants
224 seeking permits under this part to use enhancement credits to
225 address water quality impacts must report to the department the
226 amount of enhancement credits used by the applicants.

227 2. The operator of a water quality enhancement area shall
228 notify the department of the amount of enhancement credits sold
229 or used within 30 days after the date the enhancement credit



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230 transaction is completed.

231 (e) Reductions in pollutant loading required under any
232 state regulatory program are not eligible to be considered as
233 enhancement credits.

234 (f) Enhancement credits may not be used by point source
235 dischargers to satisfy regulatory requirements other than those
236 necessary to obtain an environmental resource permit for
237 construction and operation of the surface water management
238 system of the site.

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

241 (h) Any landowner, discharger, or other responsible person
242 regulated under this part or s. 403.067 implementing applicable
243 management strategies specified in an adopted basin management
244 action plan or reasonable assurance plan may not be required by
245 any permit or other enforcement action to use enhancement
246 credits to reduce pollutant loads to achieve the pollutant
247 reductions established pursuant to s. 403.067.

248 (i) A local government may not deny the use of enhancement
249 credits due to the location of the water quality enhancement
250 area outside the jurisdiction of the local government.

251 (7) AUTHORITY.—The authority granted to the department
252 under this section is supplemental to the authority granted
253 under s. 403.067(8).

254 (8) RULES.—The department may adopt rules to implement this
255 section.

256 Section 2. Paragraph (b) of subsection (1) and paragraphs
257 (a), (b), and (d) of subsection (3) of section 403.892, Florida
258 Statutes, are amended, and subsection (6) is added to that



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259 section, to read:

260 403.892 Incentives for the use of graywater technologies.—

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

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

263 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

264 (3) To qualify for the incentives under subsection (2), the
265 developer or homebuilder must certify to the applicable
266 governmental entity as part of its application for development
267 approval or amendment of a development order that all of the
268 following conditions are met:

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

273 (b) Each single-family residential home or residence will
274 have its own residential graywater system ~~that is~~ dedicated for
275 its use. Each residence forming part of a multifamily project
276 will be serviced by either its own residential graywater system
277 dedicated for its use or a master graywater collection and reuse
278 system for the entire project.

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

281 (6) This section does not apply to multifamily projects
282 more than five stories in height. Whether a dwelling is occupied
283 by an owner is not an eligibility criterion for a developer or
284 homebuilder to receive the incentives authorized pursuant to
285 this section.

286 Section 3. The Department of Environmental Protection shall
287 adopt and modify rules adopted pursuant to ss. 373.4136 and



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288 373.414, Florida Statutes, to ensure that required financial
289 assurances are equivalent and sufficient to provide for the
290 long-term management of mitigation permitted under ss. 373.4136
291 and 373.414, Florida Statutes. The department, in consultation
292 with the water management districts, shall include the
293 rulemaking required by this section in existing active
294 rulemaking or shall complete rule development by June 30, 2023.

295 Section 4. This act shall take effect upon becoming a law.