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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
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The Committee on Environment and Natural Resources (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

373.4134 Water quality enhancement areas.-

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

(a) Water quality will be improved and adverse water



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11 quality impacts of activities regulated under this part may be
12 offset by the construction, operation, maintenance, and long-
13 term management of water quality enhancement areas that provide
14 offsite compensatory treatment.

15 (b) An expansion of existing authority for regional
16 treatment to include offsite compensatory treatment in water
17 quality enhancement areas to make credits available for purchase
18 by governmental entities to offset impacts regulated under this
19 part is needed.

20 (c) The construction, operation, maintenance, and long-term
21 management of water quality enhancement areas pursuant to this
22 section will improve the certainty and long-term viability of
23 water quality treatment systems.

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

28 (e) Water quality enhancement areas that provide water
29 quality enhancement credits to governmental entities seeking
30 permits under this part and to governmental entities seeking to
31 meet an assigned basin management action plan allocation or
32 reasonable assurance plan pursuant to s. 403.067 are considered
33 an appropriate and permissible option.

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

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

37 (b) "Enhancement service area" means the geographic area
38 where the water quality enhancement area can reasonably be
39 expected to offset adverse water quality impacts.



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40 (c) "Governmental entity" means any political subdivision
41 of this state, including any state agency, department, county,
42 municipality, special district, school district, utility
43 authority, or other authority or instrumentality, agency, unit,
44 or department thereof.

45 (d) "Planning unit" means the total maximum daily load
46 planning unit that is an individual tributary basin or a group
47 of smaller adjacent tributary basins with similar
48 characteristics.

49 (e) "Water quality enhancement area" means a natural system
50 constructed, operated, managed, and maintained pursuant to a
51 permit issued under this section for the purpose of providing
52 offsite, compensatory, regional treatment within an identified
53 enhancement service area, for which enhancement credits may be
54 provided.

55 (f) "Water quality enhancement area permit" means a permit
56 issued for a water quality enhancement area which authorizes the
57 construction, operation, management, and maintenance of the area
58 and the purchase and sale of enhancement credits.

59 (3) WATER QUALITY ENHANCEMENT AREAS.—

60 (a) The construction, operation, management, and
61 maintenance of a water quality enhancement area must be approved
62 through the environmental resource permitting process.
63 Department rules pertaining to environmental resource permits
64 apply to water quality enhancement areas and enhancement
65 credits.

66 (b) Water quality enhancement credits may be sold only to
67 governmental entities.

68 (c) A water quality enhancement area must address



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69 contributions of pollutants for those parameters in an
70 enhancement service area which do not meet state water quality
71 standards.

72 (d) A water quality enhancement area must use, create, or
73 improve natural systems in order to improve water quality.

74 (e) A governmental entity may use a water quality
75 enhancement area for its own water quality needs. However, a
76 governmental entity may not act as a sponsor to construct,
77 operate, manage, maintain, or market enhancement credits to
78 third parties.

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

82 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

83 (a) To obtain a water quality enhancement area permit, the
84 applicant must provide reasonable assurances that the proposed
85 water quality enhancement area will:

86 1. Meet the requirements for issuance of an environmental
87 resource permit.

88 2. Benefit water quality in the enhancement service area.

89 3. Achieve defined performance or success criteria for the
90 reduction of pollutants or other constituents that prevent
91 receiving waters from meeting state water quality standards.

92 4. Assure long-term pollutant reduction through effective
93 operation and maintenance in perpetuity by designation of a
94 responsible long-term maintenance entity supported by an
95 endowment or other long-term financial assurance sufficient to
96 assure perpetual maintenance.

97 5. Demonstrate sufficient legal or equitable interest in



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98 the property to ensure access and perpetual protection and
99 management of the land within the water quality enhancement
100 area.

101 6. Provide for permanent preservation of the site pursuant
102 to s. 704.06.

103 (b) The water quality enhancement area permit must provide
104 for the assessment, valuation, and award of credits based on
105 units of pollutant removed. To assist the department in
106 determining enhancement credits, a water quality enhancement
107 area application must include the following information:

108 1. Rainfall data over the longest period of record
109 available, collected from the closest site to the proposed water
110 quality enhancement area, preferably within the same drainage
111 basin.

112 2. Anticipated average annual water quality and quantity
113 inflows to the proposed water quality enhancement area, based on
114 published local data collected over a period of record that most
115 closely matches the rainfall data under this paragraph.

116 3. Site-specific conditions affecting the anticipated
117 performance of the proposed water quality enhancement area,
118 including the proposed treatment type and anticipated associated
119 reduction rates, as demonstrated by the performance of other
120 areas where the treatment type has been established and
121 operating over a minimum of two consecutive wet and dry seasons.

122 4. Data from collection stations approved in advance by the
123 department in sites that the department deems sufficient to
124 determine flows and local water quality conditions.

125 (c) The issuance of a water quality enhancement area permit
126 under this section does not preclude the responsibility of an



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127 applicant to obtain other applicable federal, state, and local
128 permits for the construction activities associated with the
129 water quality enhancement area.

130 (5) ENHANCEMENT SERVICE AREA.—

131 (a) An enhancement service area must be based on a basin
132 management action plan or reasonable assurance plan boundary
133 adopted by the department. If the department does not adopt a
134 basin management action plan or reasonable assurance plan
135 boundary, the enhancement service area must be the planning
136 unit.

137 (b) A water quality enhancement area may provide
138 enhancement credits only in an enhancement service area, except
139 for:

140 1. Projects with adverse impacts located partially within
141 the enhancement service area.

142 2. Linear projects, such as roadways, transmission lines,
143 distribution lines, pipelines, railways, or seaports listed in
144 s. 311.09(1).

145 (c) Once an enhancement service area has been established
146 by the department, the enhancement service area must be accepted
147 by all water management districts and local governments.

148 (6) ENHANCEMENT CREDITS.—

149 (a) The department or water management district shall
150 authorize the sale and use of enhancement credits governmental
151 entities to offset adverse water quality impacts of activities
152 regulated under this part or to assist governmental entities
153 seeking to meet an assigned basin management action plan
154 allocation or reasonable assurance plan pursuant to s. 403.067.

155 (b) Water quality improvement projects using natural



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156 systems or land use modifications, including, but not limited
157 to, constructed wetlands or minor impoundments that reduce
158 pollutants to a receiving water body, may be used by an
159 applicant to generate enhancement credits if approved by the
160 department.

161 (c) The department shall provide for and maintain a ledger
162 that tracks the award, release, and use of enhancement credits.

163 1. The operator of a water quality enhancement area shall
164 notify the department of the amount of enhancement credits sold
165 or used within 30 days of the date the enhancement credit
166 transaction is completed.

167 2. A water management district that authorizes applicants
168 seeking permits under this part to use enhancement credits to
169 offset water quality impacts must report to the department the
170 amount of enhancement credits used by the applicant.

171 (d) Reductions in pollutant loading required under any
172 state regulatory program are not eligible to be considered as
173 enhancement credits.

174 (e) Enhancement credits may not be used by point source
175 dischargers to satisfy regulatory requirements other than those
176 necessary to obtain an environmental resource permit for
177 construction and operation of the surface water management
178 system of the site.

179 (f) Use of enhancement credits made available by water
180 quality enhancement areas is voluntary.

181 (g) Any landowner, discharger, or other responsible person
182 regulated under this part or s. 403.067 implementing applicable
183 management strategies specified in an adopted basin management
184 action plan or reasonable assurance plan may not be required by



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185 any permit or other enforcement action to use enhancement
186 credits to reduce pollutant loads to achieve the pollutant
187 reductions established pursuant to s. 403.067.

188 (h) A local government may not deny the use of enhancement
189 credits due to the location of the water quality enhancement
190 area outside the jurisdiction of the local government.

191 (7) AUTHORITY.—The authority granted to the department
192 under this section is supplemental to the authority granted
193 under s. 403.067(8).

194 (8) RULES.—The department may adopt rules to implement this
195 section.

196 Section 2. Subsection (22) of section 403.061, Florida
197 Statutes, is amended to read:

198 403.061 Department; powers and duties.—The department shall
199 have the power and the duty to control and prohibit pollution of
200 air and water in accordance with the law and rules adopted and
201 promulgated by it and, for this purpose, to:

202 (22) (a) Advise, consult, cooperate, and enter into
203 agreements and contracts with other agencies of the state, the
204 Federal Government, other states, interstate agencies, groups,
205 political subdivisions, and industries affected by the
206 provisions of this act, rules, or policies of the department.
207 However, the secretary of the department shall not enter into
208 any interstate agreement relating to the transport of ozone
209 precursor pollutants, nor modify its rules based upon a
210 recommendation from the Ozone Transport Assessment Group or any
211 other such organization that is not an official subdivision of
212 the United States Environmental Protection Agency but which
213 studies issues related to the transport of ozone precursor



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214 pollutants, without prior review and specific legislative
215 approval.

216 (b) Enter into agreements and contracts with public or
217 private entities to accept and expend donations, grants of
218 funds, and payments to expedite the evaluation of the entity's
219 application for a permit under s. 373.4131 or s. 373.4146. Such
220 agreements and contracts must be effective for at least 3 years.
221 Permit evaluations under this paragraph must follow the same
222 permit application evaluation procedures as those for an entity
223 that does not have an agreement or a contract with the
224 department. The department shall ensure that agreements and
225 contracts entered into under this paragraph do not substantively
226 or procedurally affect the impartial evaluation of the entity's
227 permit application. Such active agreements and contracts must be
228 posted on the department's website.

229
230 The department shall implement such programs in conjunction with
231 its other powers and duties and shall place special emphasis on
232 reducing and eliminating contamination that presents a threat to
233 humans, animals or plants, or to the environment.

234 Section 3. Paragraph (b) of subsection (1) and paragraphs
235 (a), (b), and (d) of subsection (3) of section 403.892, Florida
236 Statutes, are amended, and subsection (6) is added to that
237 section, to read:

238 403.892 Incentives for the use of graywater technologies.-

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

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

241 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

242 (3) To qualify for the incentives under subsection (2), the



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243 developer or homebuilder must certify to the applicable
244 governmental entity as part of its application for development
245 approval or amendment of a development order that all of the
246 following conditions are met:

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

251 (b) Each single-family residential home or residence will
252 have its own residential graywater system ~~that is~~ dedicated for
253 its use. Each residence forming part of a multifamily project
254 will be serviced by either its own residential graywater system
255 dedicated for its use or a master graywater collection and reuse
256 system for the entire project.

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

259 (6) This section does not apply to multifamily projects
260 more than five stories in height. Whether a dwelling is occupied
261 by an owner is not an eligibility criterion for a developer or
262 homebuilder to receive the incentives authorized pursuant to
263 this section.

264 Section 4. The Department of Environmental Protection shall
265 adopt and modify rules adopted pursuant to ss. 373.4136 and
266 373.414, Florida Statutes, to ensure that required financial
267 assurances are equivalent and sufficient to provide for the
268 long-term management of mitigation permitted under ss. 373.4136
269 and 373.414, Florida Statutes. The department, in consultation
270 with the water management districts, shall include the
271 rulemaking required by this section in existing active



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272 rulemaking or shall complete rule development by June 30, 2023.

273 Section 5. Effective July 1, 2022, the sum of \$2.04 million
274 in recurring funds from the Grants and Donations Trust Fund is
275 appropriated to the Department of Environmental Protection, and
276 24 full-time equivalent positions are authorized, to evaluate
277 applications for permits issued under ss. 373.4131 and 373.4146,
278 Florida Statutes, for entities with which the department has
279 entered into agreements or contracts under s. 403.061(22),
280 Florida Statutes. To obtain and retain such positions, the
281 department may increase the maximum rate of basic pay up to 30
282 percent for each position.

283 Section 6. This act shall take effect upon becoming a law.

284
285 ===== T I T L E A M E N D M E N T =====

286 And the title is amended as follows:

287 Delete everything before the enacting clause
288 and insert:

289 A bill to be entitled
290 An act relating to environmental management; creating
291 s. 373.4134, F.S.; providing legislative findings and
292 intent; defining terms; providing for water quality
293 enhancement areas, enhancement service areas, and
294 enhancement credits; providing requirements for water
295 quality enhancement area permits, enhancement service
296 areas, and enhancement credits; directing the
297 Department of Environmental Protection and water
298 management districts to authorize the sale and use of
299 enhancement credits to offset certain adverse water
300 quality impacts and to meet certain water quality



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301 requirements; providing construction; requiring the
302 department to maintain enhancement credit ledgers;
303 authorizing the department to adopt rules; amending s.
304 403.061, F.S.; authorizing the department to enter
305 into agreements and contracts with public and private
306 entities for donations, funds, and payments to
307 expedite the evaluation of environmental resource and
308 dredge and fill permits; providing requirements for
309 such agreements and contracts and permit evaluations;
310 requiring the department to make such agreements and
311 contracts publicly available on its website; amending
312 s. 403.892, F.S.; correcting a cross-reference;
313 revising the conditions that a developer or
314 homebuilder must certify it meets as part of its
315 application for development approval or amendment of a
316 development order; providing applicability; requiring
317 the department to adopt or modify specified rules, as
318 applicable; providing requirements for such
319 rulemaking; providing an appropriation and authorizing
320 full-time equivalent positions; authorizing the
321 department to increase the maximum rate of basic pay
322 for certain positions by up to a specified percentage;
323 providing an effective date.