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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Burgess) recommended the following:

1 **Senate Substitute for Amendment (638546) (with title**
2 **amendment)**

3
4 Delete lines 86 - 255

5 and insert:

6 governmental entities seeking to meet an assigned basin
7 management action plan allocation or reasonable assurance plan
8 or for the purpose of achieving net improvement pursuant to s.
9 373.414(1)(b)3. after the governmental entity has provided
10 reasonable assurance of meeting department rules for design and



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11 construction of all onsite stormwater management.

12 (c) A water quality enhancement area must be used to
13 address contributions of one or more pollutants or other
14 constituents in the watershed, basin, sub-basin, targeted
15 restoration area, water body, or section of water body, as
16 determined by the department, in which the water quality
17 enhancement area is located which do not meet applicable state
18 water quality criteria.

19 (d) A water quality enhancement area must be employed to
20 use, create, or improve natural systems in order to improve
21 water quality.

22 (e) A governmental entity may use a water quality
23 enhancement area for its own water quality needs. However, a
24 governmental entity may not act as a sponsor to construct,
25 operate, manage, or maintain a water quality enhancement area or
26 market enhancement credits to third parties.

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

30 (g) This section does not eliminate the obligation of an
31 applicant for a water quality enhancement area permit or an
32 applicant proposing to use enhancement credits to comply with
33 all requirements of this part pertaining to adverse impacts to
34 water quality in receiving waters and adjacent lands or
35 wetlands.

36 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

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



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40 1. Meet the requirements for issuance of an environmental
41 resource permit;

42 2. Benefit water quality in the watershed in which the
43 water quality enhancement area is located;

44 3. Meet defined performance or success criteria for the
45 reduction of one or more pollutants or other constituents that
46 prevent receiving waters from meeting applicable state water
47 quality criteria;

48 4. Ensure long-term pollutant reduction through effective
49 operation and maintenance in perpetuity by designation of a
50 responsible long-term maintenance entity supported by an
51 endowment or other long-term financial assurance sufficient to
52 assure perpetual operation and maintenance;

53 5. Demonstrate sufficient legal or equitable interest in
54 the property to ensure access to and perpetual protection and
55 management of the land within the water quality enhancement
56 area; and

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

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

62 (c) The department shall base its determination of the
63 award of enhancement credits on standard numerical models or
64 analytical tools that establish the water quality enhancement
65 area's ability to remove pollutants or constituents.

66 1. Where a basin management action plan exists for the
67 watershed in which the water quality enhancement area is
68 located, the applicant must use the same numerical models or



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69 analytical tools used for that basin management action plan in
70 the water quality enhancement area permit application.

71 2. If a basin management action plan does not exist for the
72 watershed in which the water quality enhancement area is
73 located, the applicant, with the approval of the department, may
74 submit as part of the water quality enhancement area permit
75 application model parameters and results used in a numerical
76 model or analytical tool used by the department to develop a
77 basin management action plan for a watershed with similar
78 physical characteristics and pollutants as that where the
79 proposed water quality enhancement area is to be located.

80 3. If the department determines that its numerical model or
81 analytical tool used for a basin management action plan is not
82 appropriate for the proposed water quality enhancement area, the
83 applicant must use a standard numerical model or analytical tool
84 for the proposed water quality enhancement area.

85 4. To assist the department in evaluating and determining
86 enhancement credits, a water quality enhancement area permit
87 application must include the numerical model or analytical tool
88 results used to establish the water quality enhancement area's
89 efficacy. Supporting information must include, but need not be
90 limited to:

91 a. Rainfall data over the longest period of record
92 available, collected from the closest site to the proposed water
93 quality enhancement area, preferably within the same drainage
94 basin.

95 b. Anticipated average annual water quality and quantity
96 inflows to the proposed water quality enhancement area, based on
97 published local data collected over a period of record which



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98 most closely matches the rainfall data under this paragraph.

99 c. Site-specific conditions affecting the anticipated
100 performance of the proposed water quality enhancement area,
101 including the proposed treatment type and the anticipated
102 associated reduction rates, as demonstrated by the performance
103 of other areas where the treatment type has been established and
104 operating over a minimum of two consecutive wet and dry seasons.

105 5. Data provided pursuant to sub-subparagraphs 4.a. and
106 4.b. must be from monitoring stations the department deems
107 sufficient to determine flows and local water quality
108 conditions.

109 (d) The issuance of a water quality enhancement area permit
110 under this section does not preclude the responsibility of an
111 applicant to obtain other applicable federal, state, and local
112 permits for the construction activities associated with the
113 water quality enhancement area.

114 (5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department
115 shall establish a water quality enhancement service area for
116 each water quality enhancement area. Enhancement credits may be
117 withdrawn and used only to address adverse impacts in the
118 enhancement service area. The boundaries of the enhancement
119 service area shall depend upon the geographic area where the
120 enhancement area could reasonably be expected to address adverse
121 impacts. Enhancement service areas may overlap, and enhancement
122 service areas for two or more enhancement areas may be approved
123 for a regional watershed.

124 (6) MONITORING AND VERIFICATION.—

125 (a) An applicant for a water quality enhancement area
126 permit must propose a performance and success criteria



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127 monitoring and verification plan, with protocols to be
128 implemented once the water quality enhancement area is
129 operational. The protocols must be appropriate for the water
130 quality enhancement area and sufficient to demonstrate that the
131 area is meeting defined performance or success criteria for the
132 reduction of pollutants or contaminants for which credits are
133 awarded by the department.

134 (b) If a permittee fails to comply with the conditions of a
135 water quality enhancement area permit, the department must
136 revoke the permittee's ability to sell enhancement credits until
137 the water quality enhancement area is compliant with the permit
138 conditions.

139 (7) ENHANCEMENT CREDITS.—

140 (a) The department or water management district shall
141 authorize the sale and use of enhancement credits to
142 governmental entities to address adverse water quality impacts
143 of activities regulated under this part or to assist
144 governmental entities seeking to meet required nonpoint source
145 contribution reductions assigned in a basin management action
146 plan or reasonable assurance plan pursuant to s. 403.067.

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

151 (c) Water quality improvement projects using natural
152 systems or land use modifications, including, but not limited
153 to, constructed wetlands or minor impoundments that reduce
154 pollutants to a receiving water body, may be used by an
155 applicant to generate enhancement credits if approved by the



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156 department. Water quality enhancement areas may not be located
157 on lands purchased for conservation pursuant to the Florida
158 Forever Act or the Florida Preservation 2000 Act.

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

161 1. A water management district that authorizes applicants
162 seeking permits under this part to use enhancement credits to
163 address water quality impacts must report to the department the
164 amount of enhancement credits used by the applicants.

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

169 (e) Reductions in pollutant loading required under any
170 state regulatory program are not eligible to be considered as
171 enhancement credits.

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

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

179 (h) Any landowner, discharger, or other responsible person
180 regulated under this part or s. 403.067 implementing applicable
181 management strategies specified in an adopted basin management
182 action plan or reasonable assurance plan may not be required by
183 any permit or other enforcement action to use enhancement
184 credits to reduce pollutant loads to achieve the pollutant



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185 reductions established pursuant to s. 403.067.

186 (i) A local government may not deny the use of enhancement
187 credits due to the location of the water quality enhancement
188 area outside the jurisdiction of the local government.

189 (j) Notwithstanding any other provision of law, nothing in
190 this section may be construed to limit or restrict the authority
191 of the department to deny the use of enhancement credits when
192 the department is not reasonably assured that the use of the
193 credits will not cause or contribute to a violation of water
194 quality standards, even if the project being implemented by the
195 governmental entity is within the enhancement service area. If
196 the department receives a request for the use of enhancement
197 credits and it determines that their use will not cause or
198 contribute to a violation of water quality standards, the
199 department may allow their use.

200 (8) AUTHORITY.—The authority granted to the department
201 under this section is supplemental to the authority granted
202 under s. 403.067(8).

203 (9) RULES.—The department shall adopt rules to implement
204 this section. This section may not be implemented until the
205 department adopts such rules.

206
207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete lines 6 - 19

210 and insert:

211 quality enhancement areas and permits; providing
212 requirements for such water quality enhancement area
213 permits; requiring the Department of Environmental



214 Protection to establish water quality enhancement
215 service areas; providing requirements for the
216 boundaries of such areas; requiring applicants to
217 propose performance and success criteria monitoring
218 and verification plans that meet certain requirements;
219 requiring the Department of Environmental Protection
220 to revoke a permit under certain conditions; providing
221 requirements for enhancement credits; requiring the
222 department and water management districts to authorize
223 the sale and use of enhancement credits to
224 governmental entities to address certain adverse water
225 quality impacts and to meet certain water quality
226 requirements; requiring the department to maintain
227 enhancement credit ledgers; authorizing the department
228 to deny or authorize the use of enhancement credits
229 under certain circumstances; providing construction;
230 requiring the department to adopt rules; delaying
231 implementation of certain provisions until the
232 adoption of such rules; amending s. 403.892, F.S. ;
233 correcting a