

By the Committee on Environment and Natural Resources; and
Senator Burgess

592-02535-22

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1 A bill to be entitled
2 An act relating to environmental management; creating
3 s. 373.4134, F.S.; providing legislative findings and
4 intent; defining terms; providing for water quality
5 enhancement areas, enhancement service areas, and
6 enhancement credits; providing requirements for water
7 quality enhancement area permits, enhancement service
8 areas, and enhancement credits; directing the
9 Department of Environmental Protection and water
10 management districts to authorize the sale and use of
11 enhancement credits to offset certain adverse water
12 quality impacts and to meet certain water quality
13 requirements; providing construction; requiring the
14 department to maintain enhancement credit ledgers;
15 authorizing the department to adopt rules; amending s.
16 403.061, F.S.; authorizing the department to enter
17 into agreements and contracts with public and private
18 entities for donations, funds, and payments to
19 expedite the evaluation of environmental resource and
20 dredge and fill permits; providing requirements for
21 such agreements and contracts and permit evaluations;
22 requiring the department to make such agreements and
23 contracts publicly available on its website; amending
24 s. 403.892, F.S.; correcting a cross-reference;
25 revising the conditions that a developer or
26 homebuilder must certify it meets as part of its
27 application for development approval or amendment of a
28 development order; providing applicability; requiring
29 the department to adopt or modify specified rules, as

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30 applicable; providing requirements for such
31 rulemaking; providing an appropriation and authorizing
32 full-time equivalent positions; authorizing the
33 department to increase the maximum rate of basic pay
34 for certain positions by up to a specified percentage;
35 providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

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

41 373.4134 Water quality enhancement areas.-

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

44 (a) Water quality will be improved and adverse water
45 quality impacts of activities regulated under this part may be
46 offset by the construction, operation, maintenance, and long-
47 term management of water quality enhancement areas that provide
48 offsite compensatory treatment.

49 (b) An expansion of existing authority for regional
50 treatment to include offsite compensatory treatment in water
51 quality enhancement areas to make credits available for purchase
52 by governmental entities to offset impacts regulated under this
53 part is needed.

54 (c) The construction, operation, maintenance, and long-term
55 management of water quality enhancement areas pursuant to this
56 section will improve the certainty and long-term viability of
57 water quality treatment systems.

58 (d) Water quality enhancement areas are a valuable tool to

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59 assist governmental entities in satisfying the net improvement
60 performance standard pursuant to s. 373.414(1)(b)3. to ensure
61 significant reductions of pollutant loadings.

62 (e) Water quality enhancement areas that provide water
63 quality enhancement credits to governmental entities seeking
64 permits under this part and to governmental entities seeking to
65 meet an assigned basin management action plan allocation or
66 reasonable assurance plan pursuant to s. 403.067 are considered
67 an appropriate and permissible option.

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

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

71 (b) "Enhancement service area" means the geographic area
72 where the water quality enhancement area can reasonably be
73 expected to offset adverse water quality impacts.

74 (c) "Governmental entity" means any political subdivision
75 of this state, including any state agency, department, county,
76 municipality, special district, school district, utility
77 authority, or other authority or instrumentality, agency, unit,
78 or department thereof.

79 (d) "Planning unit" means the total maximum daily load
80 planning unit that is an individual tributary basin or a group
81 of smaller adjacent tributary basins with similar
82 characteristics.

83 (e) "Water quality enhancement area" means a natural system
84 constructed, operated, managed, and maintained pursuant to a
85 permit issued under this section for the purpose of providing
86 offsite, compensatory, regional treatment within an identified
87 enhancement service area, for which enhancement credits may be

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88 provided.

89 (f) "Water quality enhancement area permit" means a permit
90 issued for a water quality enhancement area which authorizes the
91 construction, operation, management, and maintenance of the area
92 and the purchase and sale of enhancement credits.

93 (3) WATER QUALITY ENHANCEMENT AREAS.—

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

97 Department rules pertaining to environmental resource permits
98 apply to water quality enhancement areas and enhancement
99 credits.

100 (b) Water quality enhancement credits may be sold only to
101 governmental entities.

102 (c) A water quality enhancement area must address
103 contributions of pollutants for those parameters in an
104 enhancement service area which do not meet state water quality
105 standards.

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

108 (e) A governmental entity may use a water quality
109 enhancement area for its own water quality needs. However, a
110 governmental entity may not act as a sponsor to construct,
111 operate, manage, maintain, or market enhancement credits to
112 third parties.

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

116 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

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117 (a) To obtain a water quality enhancement area permit, the
118 applicant must provide reasonable assurances that the proposed
119 water quality enhancement area will:

120 1. Meet the requirements for issuance of an environmental
121 resource permit.

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

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

126 4. Assure long-term pollutant reduction through effective
127 operation and maintenance in perpetuity by designation of a
128 responsible long-term maintenance entity supported by an
129 endowment or other long-term financial assurance sufficient to
130 assure perpetual maintenance.

131 5. Demonstrate sufficient legal or equitable interest in
132 the property to ensure access and perpetual protection and
133 management of the land within the water quality enhancement
134 area.

135 6. Provide for permanent preservation of the site pursuant
136 to s. 704.06.

137 (b) The water quality enhancement area permit must provide
138 for the assessment, valuation, and award of credits based on
139 units of pollutant removed. To assist the department in
140 determining enhancement credits, a water quality enhancement
141 area application must include the following information:

142 1. Rainfall data over the longest period of record
143 available, collected from the closest site to the proposed water
144 quality enhancement area, preferably within the same drainage
145 basin.

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

150 3. Site-specific conditions affecting the anticipated
151 performance of the proposed water quality enhancement area,
152 including the proposed treatment type and anticipated associated
153 reduction rates, as demonstrated by the performance of other
154 areas where the treatment type has been established and
155 operating over a minimum of two consecutive wet and dry seasons.

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

159 (c) The issuance of a water quality enhancement area permit
160 under this section does not preclude the responsibility of an
161 applicant to obtain other applicable federal, state, and local
162 permits for the construction activities associated with the
163 water quality enhancement area.

164 (5) ENHANCEMENT SERVICE AREA.—

165 (a) An enhancement service area must be based on a basin
166 management action plan or reasonable assurance plan boundary
167 adopted by the department. If the department does not adopt a
168 basin management action plan or reasonable assurance plan
169 boundary, the enhancement service area must be the planning
170 unit.

171 (b) A water quality enhancement area may provide
172 enhancement credits only in an enhancement service area, except
173 for:

174 1. Projects with adverse impacts located partially within

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175 the enhancement service area.

176 2. Linear projects, such as roadways, transmission lines,
177 distribution lines, pipelines, railways, or seaports listed in
178 s. 311.09(1).

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

182 (6) ENHANCEMENT CREDITS.—

183 (a) The department or water management district shall
184 authorize the sale and use of enhancement credits to
185 governmental entities to offset adverse water quality impacts of
186 activities regulated under this part or to assist governmental
187 entities seeking to meet an assigned basin management action
188 plan allocation or reasonable assurance plan pursuant to s.
189 403.067.

190 (b) Water quality improvement projects using natural
191 systems or land use modifications, including, but not limited
192 to, constructed wetlands or minor impoundments that reduce
193 pollutants to a receiving water body, may be used by an
194 applicant to generate enhancement credits if approved by the
195 department.

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

198 1. The operator of a water quality enhancement area shall
199 notify the department of the amount of enhancement credits sold
200 or used within 30 days of the date the enhancement credit
201 transaction is completed.

202 2. A water management district that authorizes applicants
203 seeking permits under this part to use enhancement credits to

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204 offset water quality impacts must report to the department the
205 amount of enhancement credits used by the applicant.

206 (d) Reductions in pollutant loading required under any
207 state regulatory program are not eligible to be considered as
208 enhancement credits.

209 (e) Enhancement credits may not be used by point source
210 dischargers to satisfy regulatory requirements other than those
211 necessary to obtain an environmental resource permit for
212 construction and operation of the surface water management
213 system of the site.

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

216 (g) Any landowner, discharger, or other responsible person
217 regulated under this part or s. 403.067 implementing applicable
218 management strategies specified in an adopted basin management
219 action plan or reasonable assurance plan may not be required by
220 any permit or other enforcement action to use enhancement
221 credits to reduce pollutant loads to achieve the pollutant
222 reductions established pursuant to s. 403.067.

223 (h) A local government may not deny the use of enhancement
224 credits due to the location of the water quality enhancement
225 area outside the jurisdiction of the local government.

226 (7) AUTHORITY.—The authority granted to the department
227 under this section is supplemental to the authority granted
228 under s. 403.067(8).

229 (8) RULES.—The department may adopt rules to implement this
230 section.

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

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233 403.061 Department; powers and duties.—The department shall
234 have the power and the duty to control and prohibit pollution of
235 air and water in accordance with the law and rules adopted and
236 promulgated by it and, for this purpose, to:

237 (22) (a) Advise, consult, cooperate, and enter into
238 agreements and contracts with other agencies of the state, the
239 Federal Government, other states, interstate agencies, groups,
240 political subdivisions, and industries affected by the
241 provisions of this act, rules, or policies of the department.
242 However, the secretary of the department shall not enter into
243 any interstate agreement relating to the transport of ozone
244 precursor pollutants, nor modify its rules based upon a
245 recommendation from the Ozone Transport Assessment Group or any
246 other such organization that is not an official subdivision of
247 the United States Environmental Protection Agency but which
248 studies issues related to the transport of ozone precursor
249 pollutants, without prior review and specific legislative
250 approval.

251 (b) Enter into agreements and contracts with public or
252 private entities to accept and expend donations, grants of
253 funds, and payments to expedite the evaluation of the entity's
254 application for a permit under s. 373.4131 or s. 373.4146. Such
255 agreements and contracts must be effective for at least 3 years.
256 Permit evaluations under this paragraph must follow the same
257 permit application evaluation procedures as those for an entity
258 that does not have an agreement or a contract with the
259 department. The department shall ensure that agreements and
260 contracts entered into under this paragraph do not substantively
261 or procedurally affect the impartial evaluation of the entity's

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262 permit application. Such active agreements and contracts must be
263 posted on the department's website.

264
265 The department shall implement such programs in conjunction with
266 its other powers and duties and shall place special emphasis on
267 reducing and eliminating contamination that presents a threat to
268 humans, animals or plants, or to the environment.

269 Section 3. Paragraph (b) of subsection (1) and paragraphs
270 (a), (b), and (d) of subsection (3) of section 403.892, Florida
271 Statutes, are amended, and subsection (6) is added to that
272 section, to read:

273 403.892 Incentives for the use of graywater technologies.—

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

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

276 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

277 (3) To qualify for the incentives under subsection (2), the
278 developer or homebuilder must certify to the applicable
279 governmental entity as part of its application for development
280 approval or amendment of a development order that all of the
281 following conditions are met:

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

286 (b) Each single-family residential home or residence will
287 have its own residential graywater system ~~that is~~ dedicated for
288 its use. Each residence forming part of a multifamily project
289 will be serviced by either its own residential graywater system
290 dedicated for its use or a master graywater collection and reuse

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291 system for the entire project.

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

294 (6) This section does not apply to multifamily projects
295 more than five stories in height. Whether a dwelling is occupied
296 by an owner is not an eligibility criterion for a developer or
297 homebuilder to receive the incentives authorized pursuant to
298 this section.

299 Section 4. The Department of Environmental Protection shall
300 adopt and modify rules adopted pursuant to ss. 373.4136 and
301 373.414, Florida Statutes, to ensure that required financial
302 assurances are equivalent and sufficient to provide for the
303 long-term management of mitigation permitted under ss. 373.4136
304 and 373.414, Florida Statutes. The department, in consultation
305 with the water management districts, shall include the
306 rulemaking required by this section in existing active
307 rulemaking or shall complete rule development by June 30, 2023.

308 Section 5. Effective July 1, 2022, the sum of \$2.04 million
309 in recurring funds from the Grants and Donations Trust Fund is
310 appropriated to the Department of Environmental Protection, and
311 24 full-time equivalent positions are authorized, to evaluate
312 applications for permits issued under ss. 373.4131 and 373.4146,
313 Florida Statutes, for entities with which the department has
314 entered into agreements or contracts under s. 403.061(22),
315 Florida Statutes. To obtain and retain such positions, the
316 department may increase the maximum rate of basic pay up to 30
317 percent for each position.

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