

By the Committees on Appropriations; and Environment and Natural Resources; and Senator Burgess

576-03551-22

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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; providing requirements for water
6 quality enhancement areas and permits; providing
7 requirements for such water quality enhancement area
8 permits; requiring the Department of Environmental
9 Protection to establish water quality enhancement
10 service areas; providing requirements for the
11 boundaries of such areas; requiring applicants to
12 propose performance and success criteria monitoring
13 and verification plans that meet certain requirements;
14 requiring the department to revoke a permit under
15 certain conditions; providing requirements for
16 enhancement credits; requiring the department and
17 water management districts to authorize the sale and
18 use of enhancement credits to governmental entities to
19 address certain adverse water quality impacts and to
20 meet certain water quality requirements; requiring the
21 department to maintain enhancement credit ledgers;
22 authorizing the department to deny or authorize the
23 use of enhancement credits under certain
24 circumstances; providing construction; requiring the
25 department to adopt rules; delaying implementation of
26 certain provisions until the adoption of such rules;
27 amending s. 403.892, F.S.; correcting a cross-
28 reference; revising the conditions that a developer or
29 homebuilder must certify it meets as part of its

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30 application for development approval or amendment of a
31 development order; providing applicability; requiring
32 the department to adopt and modify specified rules, as
33 applicable; providing requirements for such
34 rulemaking; providing an effective date.
35

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

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

40 373.4134 Water quality enhancement areas.-

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

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

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

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

57 (d) Water quality enhancement areas are a valuable tool to
58 assist governmental entities in satisfying the net improvement

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59 performance standard pursuant to s. 373.414(1)(b)3. to ensure
60 significant reductions of pollutant loadings.

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

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

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

70 (b) "Governmental entity" means any political subdivision
71 of the state, including any state agency, department, agency of
72 the state, county, municipality, special district, school
73 district, utility authority, or other authority or
74 instrumentality, agency, unit, or department thereof.

75 (c) "Natural system" means an ecological system supporting
76 aquatic and wetland-dependent natural resources, including fish
77 and aquatic and wetland-dependent wildlife habitats.

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

83 (e) "Water quality enhancement area permit" means an
84 environmental resource permit issued for a water quality
85 enhancement area which authorizes the construction, operation,
86 management, and maintenance of an enhancement area and the
87 purchase and sale of enhancement credits.

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88 (3) WATER QUALITY ENHANCEMENT AREAS.—

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

92 (b) Water quality enhancement credits may be sold only to
93 governmental entities seeking to meet an assigned basin
94 management action plan allocation or reasonable assurance plan
95 or for the purpose of achieving net improvement pursuant to s.
96 373.414(1)(b)3. after the governmental entity has provided
97 reasonable assurance of meeting department rules for design and
98 construction of all onsite stormwater management.

99 (c) A water quality enhancement area must be used to
100 address contributions of one or more pollutants or other
101 constituents in the watershed, basin, sub-basin, targeted
102 restoration area, water body, or section of water body, as
103 determined by the department, in which the water quality
104 enhancement area is located which do not meet applicable state
105 water quality criteria.

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

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

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

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117 (g) This section does not eliminate the obligation of an
118 applicant for a water quality enhancement area permit or an
119 applicant proposing to use enhancement credits to comply with
120 all requirements of this part pertaining to adverse impacts to
121 water quality in receiving waters and adjacent lands or
122 wetlands.

123 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

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

127 1. Meet the requirements for issuance of an environmental
128 resource permit;

129 2. Benefit water quality in the watershed in which the
130 water quality enhancement area is located;

131 3. Meet defined performance or success criteria for the
132 reduction of one or more pollutants or other constituents that
133 prevent receiving waters from meeting applicable state water
134 quality criteria;

135 4. Ensure long-term pollutant reduction through effective
136 operation and maintenance in perpetuity by designation of a
137 responsible long-term maintenance entity supported by an
138 endowment or other long-term financial assurance sufficient to
139 assure perpetual operation and maintenance;

140 5. Demonstrate sufficient legal or equitable interest in
141 the property to ensure access to and perpetual protection and
142 management of the land within the water quality enhancement
143 area; and

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

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

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

153 1. Where a basin management action plan exists for the
154 watershed in which the water quality enhancement area is
155 located, the applicant must use the same numerical models or
156 analytical tools used for that basin management action plan in
157 the water quality enhancement area permit application.

158 2. If a basin management action plan does not exist for the
159 watershed in which the water quality enhancement area is
160 located, the applicant, with the approval of the department, may
161 submit as part of the water quality enhancement area permit
162 application model parameters and results used in a numerical
163 model or analytical tool used by the department to develop a
164 basin management action plan for a watershed with similar
165 physical characteristics and pollutants as that where the
166 proposed water quality enhancement area is to be located.

167 3. If the department determines that its numerical model or
168 analytical tool used for a basin management action plan is not
169 appropriate for the proposed water quality enhancement area, the
170 applicant must use a standard numerical model or analytical tool
171 for the proposed water quality enhancement area.

172 4. To assist the department in evaluating and determining
173 enhancement credits, a water quality enhancement area permit
174 application must include the numerical model or analytical tool

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175 results used to establish the water quality enhancement area's
176 efficacy. Supporting information must include, but need not be
177 limited to:

178 a. Rainfall data over the longest period of record
179 available, collected from the closest site to the proposed water
180 quality enhancement area, preferably within the same drainage
181 basin.

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

186 c. Site-specific conditions affecting the anticipated
187 performance of the proposed water quality enhancement area,
188 including the proposed treatment type and the anticipated
189 associated reduction rates, as demonstrated by the performance
190 of other areas where the treatment type has been established and
191 operating over a minimum of two consecutive wet and dry seasons.

192 5. Data provided pursuant to sub-subparagraphs 4.a. and
193 4.b. must be from monitoring stations the department deems
194 sufficient to determine flows and local water quality
195 conditions.

196 (d) The issuance of a water quality enhancement area permit
197 under this section does not preclude the responsibility of an
198 applicant to obtain other applicable federal, state, and local
199 permits for the construction activities associated with the
200 water quality enhancement area.

201 (5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department
202 shall establish a water quality enhancement service area for
203 each water quality enhancement area. Enhancement credits may be

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204 withdrawn and used only to address adverse impacts in the
205 enhancement service area. The boundaries of the enhancement
206 service area shall depend upon the geographic area where the
207 enhancement area could reasonably be expected to address adverse
208 impacts. Enhancement service areas may overlap, and enhancement
209 service areas for two or more enhancement areas may be approved
210 for a regional watershed.

211 (6) MONITORING AND VERIFICATION.—

212 (a) An applicant for a water quality enhancement area
213 permit must propose a performance and success criteria
214 monitoring and verification plan, with protocols to be
215 implemented once the water quality enhancement area is
216 operational. The protocols must be appropriate for the water
217 quality enhancement area and sufficient to demonstrate that the
218 area is meeting defined performance or success criteria for the
219 reduction of pollutants or contaminants for which credits are
220 awarded by the department.

221 (b) If a permittee fails to comply with the conditions of a
222 water quality enhancement area permit, the department must
223 revoke the permittee's ability to sell enhancement credits until
224 the water quality enhancement area is compliant with the permit
225 conditions.

226 (7) ENHANCEMENT CREDITS.—

227 (a) The department or water management district shall
228 authorize the sale and use of enhancement credits to
229 governmental entities to address adverse water quality impacts
230 of activities regulated under this part or to assist
231 governmental entities seeking to meet required nonpoint source
232 contribution reductions assigned in a basin management action

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233 plan or reasonable assurance plan pursuant to s. 403.067.

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

238 (c) Water quality improvement projects using natural
239 systems or land use modifications, including, but not limited
240 to, constructed wetlands or minor impoundments that reduce
241 pollutants to a receiving water body, may be used by an
242 applicant to generate enhancement credits if approved by the
243 department. Water quality enhancement areas may not be located
244 on lands purchased for conservation pursuant to the Florida
245 Forever Act or the Florida Preservation 2000 Act.

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

248 1. A water management district that authorizes applicants
249 seeking permits under this part to use enhancement credits to
250 address water quality impacts must report to the department the
251 amount of enhancement credits used by the applicants.

252 2. The operator of a water quality enhancement area shall
253 notify the department of the amount of enhancement credits sold
254 or used within 30 days after the date the enhancement credit
255 transaction is completed.

256 (e) Reductions in pollutant loading required under any
257 state regulatory program are not eligible to be considered as
258 enhancement credits.

259 (f) Enhancement credits may not be used by point source
260 dischargers to satisfy regulatory requirements other than those
261 necessary to obtain an environmental resource permit for

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262 construction and operation of the surface water management
263 system of the site.

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

266 (h) Any landowner, discharger, or other responsible person
267 regulated under this part or s. 403.067 implementing applicable
268 management strategies specified in an adopted basin management
269 action plan or reasonable assurance plan may not be required by
270 any permit or other enforcement action to use enhancement
271 credits to reduce pollutant loads to achieve the pollutant
272 reductions established pursuant to s. 403.067.

273 (i) A local government may not deny the use of enhancement
274 credits due to the location of the water quality enhancement
275 area outside the jurisdiction of the local government.

276 (j) Notwithstanding any other provision of law, nothing in
277 this section may be construed to limit or restrict the authority
278 of the department to deny the use of enhancement credits when
279 the department is not reasonably assured that the use of the
280 credits will not cause or contribute to a violation of water
281 quality standards, even if the project being implemented by the
282 governmental entity is within the enhancement service area. If
283 the department receives a request for the use of enhancement
284 credits and it determines that their use will not cause or
285 contribute to a violation of water quality standards, the
286 department may allow their use.

287 (8) AUTHORITY.—The authority granted to the department
288 under this section is supplemental to the authority granted
289 under s. 403.067(8).

290 (9) RULES.—The department shall adopt rules to implement

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291 this section. This section may not be implemented until the
292 department adopts such rules.

293 Section 2. Paragraph (b) of subsection (1) and paragraphs
294 (a), (b), (d), and (e) of subsection (3) of section 403.892,
295 Florida Statutes, are amended, and subsection (6) is added to
296 that section, to read:

297 403.892 Incentives for the use of graywater technologies.—

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

299 (b) "Graywater" has the same meaning as in s.
300 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

301 (3) To qualify for the incentives under subsection (2), the
302 developer or homebuilder must certify to the applicable
303 governmental entity as part of its application for development
304 approval or amendment of a development order that all of the
305 following conditions are met:

306 (a) The proposed or existing development has at least 25
307 detached single-family residential homes ~~that are either~~
308 ~~detached~~ or 25 multifamily dwelling units, which may include
309 apartments dwellings. ~~This paragraph does not apply to~~
310 ~~multifamily projects over five stories in height.~~

311 (b) Each single-family residential home or residence will
312 have its own residential graywater system ~~that is~~ dedicated for
313 its use. Each residence forming part of a multifamily project
314 will be serviced by either its own residential graywater system
315 dedicated for its use or a master graywater collection and reuse
316 system for the entire project.

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

319 (e) An operation and maintenance manual for the graywater

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320 system will be supplied to either the initial owner of the
321 residence or the initial owner of a multifamily project that
322 will be serviced by a master graywater collection and reuse
323 system ~~the initial homeowner of each home~~. The manual must ~~shall~~
324 provide a method of contacting the installer or manufacturer and
325 must ~~shall~~ include directions to the initial owner ~~residential~~
326 ~~homeowner~~ that the manual shall remain with the residence or the
327 project throughout the life cycle of the system.

328 (6) This section does not apply to multifamily projects
329 more than five stories in height. Whether a dwelling is occupied
330 by an owner is not an eligibility criterion for a developer or
331 homebuilder to receive the incentives authorized pursuant to
332 this section.

333 Section 3. The Department of Environmental Protection shall
334 adopt and modify rules adopted pursuant to ss. 373.4136 and
335 373.414, Florida Statutes, to ensure that required financial
336 assurances are equivalent and sufficient to provide for the
337 long-term management of mitigation permitted under ss. 373.4136
338 and 373.414, Florida Statutes. The department, in consultation
339 with the water management districts, shall include the
340 rulemaking required by this section in existing active
341 rulemaking or shall complete rule development by June 30, 2023.

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