

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Environment, Agriculture & Flooding Subcommittee

Representative Truenow offered the following:

**Amendment (with title amendment)**

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

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

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

26 (d) Water quality enhancement areas are a valuable tool to  
27 assist governmental entities in satisfying the net improvement  
28 performance standards under s. 373.414(1)(b)3. to ensure  
29 significant reduction of pollutant loadings.

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

36 (2) DEFINITIONS.-As used in this section, the term:

37 (a) "Enhancement credit" means a standard unit of measure  
38 that represents a quantity of pollutant removed.

39 (b) "Enhancement service area" means the geographic area  
40 in which the water quality enhancement area can reasonably be  
41 expected to offset adverse water quality impacts.

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

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

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

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

62 (3) WATER QUALITY ENHANCEMENT AREAS.-

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

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67 apply to water quality enhancement areas and enhancement  
68 credits.

69 (b) Water quality enhancement credits may only be sold to  
70 governmental entities.

71 (c) A water quality enhancement area must address the  
72 contributions of pollutants for those parameters in an  
73 enhancement service area that does not meet state water quality  
74 standards.

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

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

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

85 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

86 (a) To obtain a water quality enhancement area permit, the  
87 applicant must provide reasonable assurances that the proposed  
88 water quality enhancement area will:

89 1. Meet the requirements for issuance of an environmental  
90 resource permit.

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

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

95 4. Ensure long-term pollutant reduction through effective  
96 operation and maintenance in perpetuity by designation of a  
97 responsible long-term maintenance entity supported by an  
98 endowment or other long-term financial assurance sufficient to  
99 ensure perpetual operation and maintenance.

100 5. Demonstrate sufficient legal or equitable interest in  
101 the property to ensure access and perpetual protection and  
102 management of the land within the water quality enhancement  
103 area.

104 6. Provide for permanent preservation of the water quality  
105 enhancement area under s. 704.06.

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

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

115 2. Anticipated average annual water quality and quantity  
116 inflows to the proposed water quality enhancement area, based on

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117 published local data collected over a period of record that most  
118 closely matches the rainfall data under this paragraph.

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

125 4. Data from collection stations, approved in advance by  
126 the department, in sites that the department deems sufficient to  
127 determine flows and local water quality conditions.

128 (c) The issuance of a water quality enhancement area  
129 permit under this subsection does not preclude the  
130 responsibility of an applicant to obtain other applicable  
131 federal, state, and local permits for construction activities  
132 associated with the water quality enhancement area.

133 (5) ENHANCEMENT SERVICE AREA.-

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

140 (b) A water quality enhancement area may only provide  
141 enhancement credits in an enhancement service area, except for:

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142 1. Projects with adverse impacts located partially within  
143 the enhancement service area.

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

147 (c) Once an enhancement service area has been established  
148 by the department, the enhancement service area shall be  
149 accepted by all water management districts and local  
150 governments.

151 (6) ENHANCEMENT CREDITS.-

152 (a) The department or water management district shall  
153 authorize the sale and use of enhancement credits to  
154 governmental entities to offset adverse water quality impacts of  
155 activities regulated under this part or to assist governmental  
156 entities seeking to meet an assigned basin management action  
157 plan allocation or reasonable assurance plan pursuant to s.  
158 403.067.

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

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

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

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

174 (d) Reductions in pollutant loading required under any  
175 state regulatory program are not eligible to be considered as  
176 enhancement credits.

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

182 (f) Use of enhancement credits made available by a water  
183 quality enhancement area shall be voluntary.

184 (g) Any landowner, discharger, or other responsible person  
185 regulated under this part or s. 403.067 that is implementing  
186 applicable management strategies specified in an adopted basin  
187 management action plan or reasonable assurance plan may not be  
188 required by any permit or other enforcement action to use  
189 enhancement credits to reduce pollutant loads to achieve the  
190 pollutant reductions established pursuant to s. 403.067.

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191 (h) A local government may not deny the use of enhancement  
192 credits due to the location of the water quality enhancement  
193 area outside the jurisdiction of the local government.

194 (7) AUTHORITY.-The authority granted to the department  
195 under this section is supplemental to the authority granted  
196 under s. 403.067(8).

197 (8) RULES.-The department may adopt rules to implement  
198 this section.

199 Section 2. The Department of Environmental Protection  
200 shall adopt and modify rules adopted pursuant to ss. 373.4136  
201 and 373.414 to ensure that required financial assurances are  
202 equivalent and sufficient to provide for the long-term  
203 management of mitigation permitted under ss. 373.4136 and  
204 373.414. The department, in consultation with the water  
205 management districts, shall include the rulemaking required by  
206 this section in existing active rulemaking, or shall complete  
207 rule development by June 30, 2023.

208 Section 3. Subsection (22) of section 403.061, Florida  
209 Statutes, is amended to read:

210 403.061 Department; powers and duties.-The department  
211 shall have the power and the duty to control and prohibit  
212 pollution of air and water in accordance with the law and rules  
213 adopted and promulgated by it and, for this purpose, to:

214 (22) (a) Advise, consult, cooperate, and enter into  
215 agreements and contracts with other agencies of the state, the

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216 Federal Government, other states, interstate agencies, groups,  
217 political subdivisions, and industries affected by the  
218 provisions of this act, rules, or policies of the department.  
219 However, the secretary of the department shall not enter into  
220 any interstate agreement relating to the transport of ozone  
221 precursor pollutants, nor modify its rules based upon a  
222 recommendation from the Ozone Transport Assessment Group or any  
223 other such organization that is not an official subdivision of  
224 the United States Environmental Protection Agency but which  
225 studies issues related to the transport of ozone precursor  
226 pollutants, without prior review and specific legislative  
227 approval.

228 (b) The department may enter into agreements and contracts  
229 with public or private entities to accept and expend donations,  
230 grants of funds, and payments to expedite the evaluation of the  
231 entity's application for a permit under s. 373.4131 or s.  
232 373.4146. Agreements and contracts under this paragraph must be  
233 effective for at least 3 years. Permit evaluations under this  
234 paragraph must follow the same permit application evaluation  
235 procedures as those for an entity that does not have an  
236 agreement or contract with the department. The department shall  
237 ensure that agreements and contracts under this subsection do  
238 not substantively or procedurally affect the impartial  
239 evaluation of the entity's permit application. Active agreements

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240 and contracts under this paragraph must be posted on the  
241 department's website.

242  
243 The department shall implement such programs in conjunction with  
244 its other powers and duties and shall place special emphasis on  
245 reducing and eliminating contamination that presents a threat to  
246 humans, animals or plants, or to the environment.

247 Section 4. Section 403.892, Florida Statutes, is  
248 amended to read:

249 403.892 Incentives for the use of graywater technologies.—

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

251 (a) "Developer" has the same meaning as in s. 380.031(2).

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

253 381.0065(2)(f) ~~381.0065(2)(e)~~.

254 (2) To promote the beneficial reuse of water in the state,  
255 a county, municipality, or special district shall:

256 (a) Authorize the use of residential graywater  
257 technologies in their respective jurisdictions which meet the  
258 requirements of this section, the Florida Building Code, and  
259 applicable requirements of the Department of Health and for  
260 which a developer or homebuilder has received all applicable  
261 regulatory permits or authorizations.

262 (b) Provide a 25-percent density or intensity bonus to a  
263 developer or homebuilder if at least 75 percent of a proposed or  
264 existing development will have a graywater system installed or a

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265 35-percent bonus if 100 percent of a proposed or an existing  
266 development will have a graywater system installed. The bonus  
267 under this paragraph is in addition to any bonus provided by a  
268 county, municipality, or special district ordinance in effect on  
269 July 1, 2021.

270 (3) To qualify for the incentives under subsection (2),  
271 the developer or homebuilder must certify to the applicable  
272 governmental entity as part of its application for development  
273 approval or amendment of a development order that all of the  
274 following conditions are met:

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

279 (b) Each single-family residential home or residence will  
280 have its own residential graywater system that is dedicated for  
281 its use.

282 (c) The developer or homebuilder has submitted a  
283 manufacturer's warranty or data providing reasonable assurance  
284 that the residential graywater system will function as designed  
285 and includes an estimate of anticipated potable water savings  
286 for each system. A submission of the manufacturer's warranty or  
287 data from a building code official, governmental entity, or  
288 research institute that has monitored or measured the  
289 residential graywater system that is proposed to be installed

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290 for such development shall be accepted as reasonable assurance,  
291 and no further information or assurance is needed.

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

294 (e) An operation and maintenance manual for the graywater  
295 system will be supplied to the initial homeowner of each home.  
296 The manual shall provide a method of contacting the installer or  
297 manufacturer and shall include directions to the residential  
298 homeowner that the manual shall remain with the residence  
299 throughout the life cycle of the system.

300 (4) If the requirements of subsection (3) have been met,  
301 the county or municipality must include the incentives provided  
302 for in subsection (2) when it approves the development or  
303 amendment of a development order. The approval must also provide  
304 for the process that the developer or homebuilder will follow to  
305 verify that such systems have been purchased. Proof of purchase  
306 must be provided within 180 days after the issuance of a  
307 certificate of occupancy for single-family residential homes  
308 that are either detached or multifamily projects under five  
309 stories in height.

310 (5) The installation of residential graywater systems in a  
311 county or municipality in accordance with this section shall  
312 qualify as a water conservation measure in a public water  
313 utility's water conservation plan under s. 373.227. The  
314 efficiency of such measures shall be commensurate with the

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315 amount of potable water savings estimated for each system  
316 provided by the developer or homebuilder under paragraph (3) (c).

317 (6) This section does not apply to multifamily projects  
318 over five stories in height. Whether a dwelling is owner  
319 occupied is not an eligibility criterion for a developer or  
320 homebuilder to receive the incentives authorized pursuant to  
321 this section.

322 Section 5. Effective July 1, 2022, the sum of \$2,040,000  
323 in recurring funds from the Grants and Donations Trust Fund is  
324 appropriated to the Department of Environmental Protection, and  
325 24 full-time equivalent positions are authorized, to evaluate  
326 applications for permits under ss. 373.4131 and 373.4146,  
327 Florida Statutes, for entities that the department has entered  
328 into agreements or contracts with under s. 403.061(22), Florida  
329 Statutes. To obtain and retain such positions, the department  
330 may increase the maximum rate of basic pay up to 30 percent for  
331 each position.

332 Section 6. This act shall take effect July 1, 2022

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334

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**T I T L E A M E N D M E N T**

335 Remove everything before the enacting clause and insert:

336 A bill to be entitled

337 An act relating to environmental management; creating s.

338 373.4134, F.S.; providing legislative findings; providing

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340 definitions; providing for water quality enhancement areas,  
341 enhancement service areas, and enhancement credits;  
342 providing requirements for such water quality enhancement  
343 area permits, enhancement service areas, and enhancement  
344 credits; directing the Department of Environmental  
345 Protection and water management districts to authorize the  
346 sale and use of enhancement credits for specified purposes;  
347 specifying enhancement credits may only be sold to  
348 governmental entities; providing that the authority of the  
349 act is supplemental; directing the department to maintain  
350 enhancement credit ledgers and adopt rules; requiring the  
351 department to adopt or modify specified rules, as  
352 applicable; providing requirements for such rulemaking;  
353 amending s. 403.061, F.S.; authorizing the department to  
354 enter into agreements and contracts with public and private  
355 entities for donations, funds, and payments to expedite the  
356 evaluation of environmental resource and dredge and fill  
357 permits; providing requirements for such agreements and  
358 contracts and permit evaluations; requiring the department  
359 to make such agreements and contracts publicly available on  
360 its website; amending s. 403.892, F.S., correcting a cross-  
361 reference; specifying the criteria for developers and  
362 homebuilders to qualify for graywater technology  
363 incentives; providing an appropriation and authorizing

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 965 (2022)

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364 full-time equivalent positions; providing an effective  
365 date.