

1                   A bill to be entitled  
2           An act relating to environmental management; creating  
3           s. 373.4134, F.S.; providing legislative findings;  
4           providing definitions; providing for water quality  
5           enhancement areas, enhancement service areas, and  
6           enhancement credits; providing requirements for such  
7           water quality enhancement area permits, enhancement  
8           service 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 for specified purposes; providing  
12          that the authority of the act is supplemental;  
13          directing the department to maintain enhancement  
14          credit ledgers and adopt rules; amending s. 403.061,  
15          F.S.; authorizing the department to enter into  
16          agreements and contracts with public and private  
17          entities for donations, funds, and payments to  
18          expedite the evaluation of environmental resource and  
19          dredge and fill permits; providing requirements for  
20          such agreements and contracts and permit evaluations;  
21          requiring the department to make such agreements and  
22          contracts publicly available on its website; providing  
23          an appropriation and authorizing full-time equivalent  
24          positions; providing an effective date.  
25

26 Be It Enacted by the Legislature of the State of Florida:

27

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

30 373.4134 Water quality enhancement areas.-

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

33 (a) Water quality will be improved and adverse water  
34 quality impacts of activities regulated under this part may be  
35 offset by the construction, operation, maintenance, and long-  
36 term management of water quality enhancement areas that provide  
37 offsite compensatory treatment.

38 (b) An expansion of existing authority for regional  
39 treatment to include offsite compensatory treatment in water  
40 quality enhancement areas to make enhancement credits available  
41 for purchase to offset impacts regulated under this part, is  
42 needed.

43 (c) The construction, operation, maintenance, and long-  
44 term management of water quality enhancement areas under this  
45 section will improve the certainty and long-term viability of  
46 water quality treatment systems.

47 (d) Water quality enhancement areas are a valuable tool to  
48 assist applicants in satisfying the net improvement performance  
49 standards under s. 373.414(1)(b)3. to ensure significant  
50 reduction of pollutant loadings.

51 (e) Water quality enhancement areas that provide water  
52 quality enhancement credits to applicants seeking permits under  
53 this part and entities seeking to meet an assigned basin  
54 management action plan allocation or reasonable assurance plan  
55 pursuant to s. 403.067 are considered an appropriate and  
56 permissible option.

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

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

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

63 (c) "Planning unit" means the total maximum daily load  
64 planning unit that is an individual tributary basin or a group  
65 of smaller adjacent tributary basins with similar  
66 characteristics.

67 (d) "Water quality enhancement area" means a natural  
68 system constructed, operated, managed, and maintained under a  
69 permit issued under this part for the purpose of providing  
70 offsite, compensatory regional treatment within an identified  
71 enhancement service area for which enhancement credits may be  
72 provided.

73 (e) "Water quality enhancement area permit" means a permit  
74 issued for a water quality enhancement area which authorizes the  
75 construction, operation, management, and maintenance of a water

76 quality enhancement area and the purchase and sale of  
77 enhancement credits.

78 (3) WATER QUALITY ENHANCEMENT AREAS.-

79 (a) An environmental resource permit issued by the  
80 department under this part shall authorize the construction,  
81 operation, management, and maintenance of a water quality  
82 enhancement area. Department rules pertaining to environmental  
83 resource permits apply to water quality enhancement areas and  
84 enhancement credits.

85 (b) A water quality enhancement area must address the  
86 contributions of pollutants for those parameters in an  
87 enhancement service area that does not meet state water quality  
88 standards.

89 (c) A water quality enhancement area must use, create, or  
90 improve natural systems in order to improve water quality.

91 (d) A water quality enhancement area may not provide  
92 credits to compensate for wetland or other surface water  
93 impacts.

94 (e) A governmental entity may use a water quality  
95 enhancement area for its own water quality needs. However, a  
96 governmental entity may not act as a sponsor to construct,  
97 operate, manage, or maintain a water quality enhancement area or  
98 market enhancement credits to third parties.

99 (f) A local government may not require a permit or  
100 otherwise impose regulations governing the operation of a water

101 quality enhancement area.

102 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

103 (a) To obtain a water quality enhancement area permit, the  
 104 applicant must provide reasonable assurances that the proposed  
 105 water quality enhancement area will:

106 1. Meet the requirements for issuance of an environmental  
 107 resource permit.

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

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

112 4. Ensure long-term pollutant reduction through effective  
 113 operation and maintenance in perpetuity by designation of a  
 114 responsible long-term maintenance entity supported by an  
 115 endowment or other long-term financial assurance sufficient to  
 116 ensure perpetual operation and maintenance.

117 5. Demonstrate sufficient legal or equitable interest in  
 118 the property to ensure access and perpetual protection and  
 119 management of the land within the water quality enhancement  
 120 area.

121 6. Provide for permanent preservation of the water quality  
 122 enhancement area under s. 704.06.

123 (b) The water quality enhancement area permit must provide  
 124 for the assessment, valuation, and award of credits based on  
 125 units of pollutants removed. To assist the department in

126 determining enhancement credits, a water quality enhancement  
127 area application must include the following information:

128 1. Rainfall data over the longest period of record  
129 available collected from the closest site to the proposed water  
130 quality enhancement area, preferably within the same drainage  
131 basin.

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

136 3. Site-specific conditions affecting the anticipated  
137 performance of the proposed water quality enhancement area,  
138 including the proposed treatment type and the anticipated  
139 associated reduction rates, as demonstrated by the performance  
140 of other areas where the treatment type has been established and  
141 operating over a minimum of two consecutive wet and dry seasons.

142 4. Proposed data collection sites. An applicant may use  
143 data collection stations, approved in advance by the department,  
144 in sites that the department deems insufficient to determine  
145 flows and local water quality conditions.

146 (c) The department may not require an applicant to  
147 complete a project under this chapter as a condition for  
148 approval or issuance of a water quality enhancement area permit  
149 under this subsection.

150 (d) The issuance of a water quality enhancement area

151 permit under this subsection does not preclude the  
 152 responsibility of an applicant to obtain other applicable  
 153 federal, state, and local permits for construction activities  
 154 associated with the water quality enhancement area.

155 (5) ENHANCEMENT SERVICE AREA.-

156 (a) An enhancement service area shall be based on a basin  
 157 management action plan or reasonable assurance plan boundary  
 158 adopted by the department. If the department does not adopt a  
 159 basin management action plan or reasonable assurance plan  
 160 boundary, the enhancement service area shall be the planning  
 161 unit.

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

164 1. Projects with adverse impacts located partially within  
 165 the enhancement service area.

166 2. Linear projects, such as roadways, transmission lines,  
 167 distribution lines, pipelines, railways, or seaports listed in  
 168 s. 311.09(1).

169 3. Projects with total adverse impacts of less than one  
 170 acre in size.

171 (c) Once an enhancement service area has been established  
 172 by the department, the enhancement service area shall be  
 173 accepted by all water management districts and local  
 174 governments.

175 (6) ENHANCEMENT CREDITS.-

176        (a) The department or water management district shall  
177 authorize the sale and use of enhancement credits to offset  
178 adverse water quality impacts of activities regulated under this  
179 part or to assist entities seeking to meet an assigned basin  
180 management action plan allocation or reasonable assurance plan  
181 pursuant to s. 403.067.

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

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

189            1. The operator of a water quality enhancement area shall  
190 notify the department of the amount of enhancement credits sold  
191 or used within 30 days after the date the enhancement credit  
192 transaction is completed.

193            2. A water management district that authorizes applicants  
194 seeking permits under this part to use enhancement credits to  
195 offset water quality impacts must report to the department the  
196 amount of enhancement credits used by the applicant.

197        (d) Reductions in pollutant loading required under any  
198 state regulatory program are not eligible to be considered as  
199 enhancement credits.



200        (e) Enhancement credits may not be used by point source  
201 dischargers to satisfy regulatory requirements other than those  
202 necessary to obtain an environmental resource permit for  
203 construction and operation of the surface water management  
204 system of the site.

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

207        (g) Any landowner, discharger, or other responsible person  
208 regulated under this part or s. 403.067 that is implementing  
209 applicable management strategies specified in an adopted basin  
210 management action plan or reasonable assurance plan may not be  
211 required by any permit or other enforcement action to use  
212 enhancement credits to reduce pollutant loads to achieve the  
213 pollutant reductions established pursuant to s. 403.067.

214        (h) A local government may not deny the use of enhancement  
215 credits due to the location of the water quality enhancement  
216 area outside the jurisdiction of the local government.

217        (7) AUTHORITY.-The authority granted to the department  
218 under this section is supplemental to the authority granted  
219 under s. 403.067(8).

220        (8) RULES.-The department shall adopt rules to implement  
221 this section.

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

224        403.061 Department; powers and duties.-The department

225 shall have the power and the duty to control and prohibit  
226 pollution of air and water in accordance with the law and rules  
227 adopted and promulgated by it and, for this purpose, to:

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

242       (b) The department may enter into agreements and contracts  
243 with public or private entities to accept and expend donations,  
244 grants of funds, and payments to expedite the evaluation of the  
245 entity's application for a permit under s. 373.4131 or s.  
246 373.4146. Agreements and contracts under this paragraph must be  
247 effective for at least 3 years. Permit evaluations under this  
248 paragraph must follow the same permit application evaluation  
249 procedures as those for an entity that does not have an

250 agreement or contract with the department. The department shall  
251 ensure that agreements and contracts under this subsection do  
252 not substantively or procedurally affect the impartial  
253 evaluation of the entity's permit application. Active agreements  
254 and contracts under this paragraph must be posted on the  
255 department's website.

256  
257 The department shall implement such programs in conjunction with  
258 its other powers and duties and shall place special emphasis on  
259 reducing and eliminating contamination that presents a threat to  
260 humans, animals or plants, or to the environment.

261 Section 3. Effective July 1, 2022, the sum of \$2,040,000  
262 in recurring funds from the Grants and Donations Trust Fund is  
263 appropriated to the Department of Environmental Protection, and  
264 24 full-time equivalent positions are authorized, to evaluate  
265 applications for permits under ss. 373.4131 and 373.4146,  
266 Florida Statutes, for entities that the department has entered  
267 into agreements or contracts with under s. 403.061(22), Florida  
268 Statutes. To obtain and retain such positions, the department  
269 may increase the maximum rate of basic pay up to 30 percent for  
270 each position.

271 Section 4. This act shall take effect July 1, 2022.