

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; authorizing the department to adopt
15 rules; amending s. 403.892, F.S.; correcting a cross-
16 reference; revising requirements for developers and
17 homebuilders to qualify for graywater technology
18 incentives; providing that certain occupancy is not
19 eligibility criterion for such incentives; requiring
20 the department to adopt and modify specified rules;
21 providing rulemaking requirements; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Section 373.4134, Florida Statutes, is created
 27 to read:

28 373.4134 Water quality enhancement areas.-

29 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
 30 that:

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

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

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

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

49 (e) Water quality enhancement areas that provide water
 50 quality enhancement credits to governmental entities seeking

51 permits under this part and governmental entities seeking to
52 meet an assigned basin management action plan allocation or
53 reasonable assurance plan under s. 403.067 are considered an
54 appropriate and permittable option.

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

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

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

61 (c) "Governmental entity" means any political subdivision,
62 including any state agency, department, agency of the state,
63 county, municipality, special district, school district, utility
64 authority, or other authority or any instrumentality, agency,
65 unit, or department thereof.

66 (d) "Planning unit" means the total maximum daily load
67 planning unit that is an individual tributary basin or a group
68 of smaller adjacent tributary basins with similar
69 characteristics.

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

76 (f) "Water quality enhancement area permit" means a permit
77 issued for a water quality enhancement area which authorizes the
78 construction, operation, management, and maintenance of a water
79 quality enhancement area and the purchase and sale of
80 enhancement credits.

81 (3) WATER QUALITY ENHANCEMENT AREAS.-

82 (a) The construction, operation, management, and
83 maintenance of a water quality enhancement area must be approved
84 through the environmental resource permitting process.
85 Department rules pertaining to environmental resource permits
86 apply to water quality enhancement areas and enhancement
87 credits.

88 (b) Water quality enhancement credits may only be sold to
89 governmental entities.

90 (c) A water quality enhancement area must address the
91 contributions of pollutants for those parameters in an
92 enhancement service area that does not meet state water quality
93 standards.

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

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

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

104 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

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

108 1. Meet the requirements for issuance of an environmental
 109 resource permit.

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

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

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

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

123 6. Provide for permanent preservation of the water quality
 124 enhancement area under s. 704.06.

125 (b) The water quality enhancement area permit must provide

126 for the assessment, valuation, and award of credits based on
127 units of pollutants removed. To assist the department in
128 determining enhancement credits, a water quality enhancement
129 area application must include the following information:

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

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

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

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

147 (c) The issuance of a water quality enhancement area
148 permit under this subsection does not preclude the
149 responsibility of an applicant to obtain other applicable
150 federal, state, and local permits for construction activities

151 associated with the water quality enhancement area.

152 (5) ENHANCEMENT SERVICE AREA.-

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

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

161 1. Projects with adverse impacts located partially within
 162 the enhancement service area.

163 2. Linear projects, such as roadways, transmission lines,
 164 distribution lines, pipelines, railways, or seaports listed in
 165 s. 311.09(1).

166 (c) Once an enhancement service area has been established
 167 by the department, the enhancement service area shall be
 168 accepted by all water management districts and local
 169 governments.

170 (6) ENHANCEMENT CREDITS.-

171 (a) The department or water management district shall
 172 authorize the sale and use of enhancement credits to
 173 governmental entities to offset adverse water quality impacts of
 174 activities regulated under this part or to assist governmental
 175 entities seeking to meet an assigned basin management action

176 plan allocation or reasonable assurance plan pursuant to s.
177 403.067.

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

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

185 1. The operator of a water quality enhancement area shall
186 notify the department of the amount of enhancement credits sold
187 or used within 30 days after the date the enhancement credit
188 transaction is completed.

189 2. A water management district that authorizes applicants
190 seeking permits under this part to use enhancement credits to
191 offset water quality impacts must report to the department the
192 amount of enhancement credits used by the applicant.

193 (d) Reductions in pollutant loading required under any
194 state regulatory program are not eligible to be considered as
195 enhancement credits.

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

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

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

210 (h) A local government may not deny the use of enhancement
 211 credits due to the location of the water quality enhancement
 212 area outside the jurisdiction of the local government.

213 (7) AUTHORITY.-The authority granted to the department
 214 under this section is supplemental to the authority granted
 215 under s. 403.067(8).

216 (8) RULES.-The department may adopt rules to implement
 217 this section.

218 Section 2. Paragraph (b) of subsection (1) and paragraphs
 219 (a) and (d) of subsection (3) of section 403.892, Florida
 220 Statutes, are amended, and subsection (6) is added to that
 221 section, to read:

222 403.892 Incentives for the use of graywater technologies.—

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

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

225 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

226 (3) To qualify for the incentives under subsection (2),
 227 the developer or homebuilder must certify to the applicable
 228 governmental entity as part of its application for development
 229 approval or amendment of a development order that all of the
 230 following conditions are met:

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

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

237 (6) This section does not apply to multifamily projects
 238 over five stories in height. Whether a dwelling is owner
 239 occupied is not an eligibility criterion for a developer or
 240 homebuilder to receive the incentives authorized under this
 241 section.

242 Section 3. The Department of Environmental Protection
 243 shall adopt and modify rules adopted pursuant to ss. 373.4136
 244 and 373.414, Florida Statutes, to ensure that required financial
 245 assurances are equivalent and sufficient to provide for the
 246 long-term management of mitigation permitted under ss. 373.4136
 247 and 373.414, Florida Statutes. The department, in consultation
 248 with the water management districts, shall include the
 249 rulemaking required by this section in existing active
 250 rulemaking, or shall complete rule development by June 30, 2023.

CS/HB 965

2022

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