

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; providing definitions; providing for water
5 quality enhancement areas, water quality enhancement
6 area permits, water quality enhancement service areas,
7 and enhancement credits; providing requirements for
8 such areas, permits, and 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 construction; providing that the authority of the act
13 is supplemental; directing the department to maintain
14 enhancement credit ledgers; authorizing the department
15 to adopt rules; providing amending s. 403.892, F.S.;
16 correcting a cross-reference; revising requirements
17 for developers and homebuilders to qualify for
18 graywater technology incentives; providing that
19 certain occupancy is not eligibility criterion for
20 such incentives; requiring the department to adopt and
21 modify specified rules; providing rulemaking
22 requirements; providing an 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 addressed 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 address 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 standard under s. 373.414(1)(b)3. to ensure
 48 significant reductions 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 permissible 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) "Governmental entity" means any political subdivision
59 of the state, including any state agency, department, county,
60 municipality, special district, school district, utility
61 authority, or other authority or instrumentality, agency, unit,
62 or department thereof.

63 (c) "Natural system" means an ecological system supporting
64 aquatic and wetland-dependent natural resources, including fish
65 and aquatic and wetland-dependent wildlife habitats.

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

71 (e) "Water quality enhancement area permit" means an
72 environmental resource permit issued for a water quality
73 enhancement area which authorizes the construction, operation,
74 management, and maintenance of an enhancement area and the
75 purchase and sale of enhancement credits.

76 (3) WATER QUALITY ENHANCEMENT AREAS.-

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

80 (b) Water quality enhancement credits may be sold only to
81 governmental entities seeking to meet an assigned basin
82 management action plan allocation or reasonable assurance plan
83 or for the purpose of achieving net improvement under s.
84 373.414(1)(b)3. after the governmental entity has provided
85 reasonable assurance of meeting department rules for design and
86 construction of all onsite stormwater management.

87 (c) A water quality enhancement area must be used to
88 address contributions of one or more pollutants or other
89 constituents in the watershed, basin, sub-basin, targeted
90 restoration area, waterbody, or section of waterbody, as
91 determined by the department, in which the water quality
92 enhancement area is located that do not meet applicable state
93 water quality criteria.

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

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

101 market enhancement credits to third parties.

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

105 (g) This section does not eliminate the obligation of an
 106 applicant for a water quality enhancement area permit or an
 107 applicant proposing to use enhancement credits to comply with
 108 all requirements of this part pertaining to adverse impacts to
 109 water quality in receiving waters and adjacent lands or
 110 wetlands.

111 (4) WATER QUALITY ENHANCEMENT AREA PERMIT. -

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

115 1. Meet the requirements for issuance of an environmental
 116 resource permit;

117 2. Benefit water quality in the watershed in which the
 118 water quality enhancement area is located;

119 3. Meet defined performance or success criteria for the
 120 reduction of one or more pollutants or other constituents that
 121 prevent receiving waters from meeting applicable state water
 122 quality criteria;

123 4. Ensure long-term pollutant reduction through effective
 124 operation and maintenance in perpetuity by designation of a
 125 responsible long-term maintenance entity supported by an

126 endowment or other long-term financial assurance sufficient to
127 ensure perpetual operation and maintenance;

128 5. Demonstrate sufficient legal or equitable interest in
129 the property to ensure access and perpetual protection and
130 management of the land within the water quality enhancement
131 area; and

132 6. Provide for permanent preservation of the water quality
133 enhancement area that meets the requirements of s. 704.06.

134 (b) The water quality enhancement area permit must provide
135 for the assessment, valuation, and award of credits based on
136 units of pollutants removed.

137 (c) The department shall base its determination of the
138 award of enhancement credits on standard numerical models or
139 analytical tools that establish the ability of the water quality
140 enhancement area to remove pollutants or constituents.

141 1. If a basin management action plan exists for the
142 watershed in which the water quality enhancement area is
143 located, the applicant must use the same numerical models or
144 analytical tools used for that basin management action plan in
145 the water quality enhancement area permit application.

146 2. If a basin management action plan does not exist for
147 the watershed in which the water quality enhancement area is
148 located, the applicant, with the approval of the department, may
149 submit as part of the water quality enhancement area permit
150 application model parameters and results used in a numerical

151 model or analytical tool used by the department to develop a
152 basin management action plan for a watershed with similar
153 physical characteristics and pollutants as the watershed in
154 which the proposed water quality enhancement area is to be
155 located.

156 3. If the department determines that its numerical model
157 or analytical tool used for a basin management action plan is
158 not appropriate for the proposed water quality enhancement area,
159 the applicant must use a standard numerical model or analytical
160 tool for the proposed water quality enhancement area.

161 4. To assist the department in evaluating and determining
162 enhancement credits, a water quality enhancement area permit
163 application must include the numerical model or analytical tool
164 results used to establish the efficacy of the water quality
165 enhancement area. Supporting information must include, but need
166 not be limited to:

167 a. Rainfall data over the longest period of record
168 available collected from the closest site to the proposed water
169 quality enhancement area, preferably within the same drainage
170 basin.

171 b. Anticipated average annual water quality and quantity
172 inflows to the proposed water quality enhancement area, based on
173 published local data collected over a period of record that most
174 closely matches the rainfall data collected under this
175 paragraph.

176 c. Site-specific conditions affecting the anticipated
177 performance of the proposed water quality enhancement area,
178 including the proposed treatment type and the anticipated
179 associated reduction rates, as demonstrated by the performance
180 of other areas where the treatment type has been established and
181 operating over a minimum of two consecutive wet and dry seasons.

182 d. Data provided pursuant to sub-subparagraphs a. and b.
183 must be from monitoring stations the department deems sufficient
184 to determine flows and local water quality conditions.

185 (d) The issuance of a water quality enhancement area
186 permit under this section does not preclude the responsibility
187 of an applicant to obtain other applicable federal, state, and
188 local permits for construction activities associated with the
189 water quality enhancement area.

190 (5) WATER QUALITY ENHANCEMENT SERVICE AREA.-The department
191 shall establish a water quality enhancement service area for
192 each water quality enhancement area. Enhancement credits may be
193 withdrawn and used only to address adverse impacts in the
194 enhancement service area. The boundaries of the enhancement
195 service area shall depend upon the geographic area in which the
196 water quality enhancement area could reasonably be expected to
197 address adverse impacts. Enhancement service areas may overlap,
198 and enhancement service areas for two or more water quality
199 enhancement areas may be approved for a regional watershed.

200 (6) MONITORING AND VERIFICATION.-

201 (a) An applicant for a water quality enhancement area
202 permit must propose a performance and success criteria
203 monitoring and verification plan, with protocols to be
204 implemented once the water quality enhancement area is
205 operational. The protocols must be appropriate for the water
206 quality enhancement area and sufficient to demonstrate that the
207 area is meeting defined performance or success criteria for the
208 reduction of pollutants or contaminants for which credits are
209 awarded by the department.

210 (b) If a permittee fails to comply with the conditions of
211 a water quality enhancement area permit, the department must
212 revoke the ability of the permittee to sell enhancement credits
213 until the water quality enhancement area complies with the
214 permit conditions.

215 (7) ENHANCEMENT CREDITS.-

216 (a) The department or water management district shall
217 authorize the sale and use of enhancement credits to
218 governmental entities to address adverse water quality impacts
219 of activities regulated under this part or to assist
220 governmental entities seeking to meet required nonpoint source
221 contribution reductions assigned in a basin management action
222 plan or reasonable assurance plan under s. 403.067.

223 (b) Before approving the use of enhancement credits, the
224 department or water management district must determine that the

225 enhancement credits used by an applicant seeking a permit under
226 this part are appropriate for a specific permit use.

227 (c) Water quality improvement projects using natural
228 systems or land use modifications, including, but not limited
229 to, constructed wetlands or minor impoundments that reduce
230 pollutants to a receiving water body, may be used by an
231 applicant to generate enhancement credits if approved by the
232 department. Water quality enhancement areas may not be located
233 on lands purchased for conservation pursuant to the Florida
234 Forever Act or the Florida Preservation 2000 Act.

235 (d) The department shall provide for and maintain a ledger
236 to track the award, release, and use of enhancement credits.

237 1. A water management district that authorizes applicants
238 seeking permits under this part to use enhancement credits to
239 address water quality impacts must report to the department the
240 amount of enhancement credits used by the applicants.

241 2. The operator of a water quality enhancement area shall
242 notify the department of the amount of enhancement credits sold
243 or used within 30 days after the date the enhancement credit
244 transaction is completed.

245 (e) Reductions in pollutant loading required under any
246 state regulatory program are not eligible to be considered as
247 enhancement credits.

248 (f) Enhancement credits may not be used by point source
249 dischargers to satisfy regulatory requirements other than those

250 necessary to obtain an environmental resource permit for
 251 construction and operation of the surface water management
 252 system of the site.

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

255 (h) Any landowner, discharger, or other responsible person
 256 regulated under this part or s. 403.067 implementing applicable
 257 management strategies specified in an adopted basin management
 258 action plan or reasonable assurance plan may not be required by
 259 any permit or other enforcement action to use enhancement
 260 credits to reduce pollutant loads to achieve the pollutant
 261 reductions established pursuant to s. 403.067.

262 (i) A local government may not deny the use of enhancement
 263 credits due to the location of the water quality enhancement
 264 area outside the jurisdiction of the local government.

265 (j) Notwithstanding any other law, this section does not
 266 limit or restrict the authority of the department to deny the
 267 use of enhancement credits when the department is not reasonably
 268 assured that the use of the credits will not cause or contribute
 269 to a violation of water quality standards, even if the project
 270 being implemented by the governmental entity is within the
 271 enhancement service area. The department may allow the use of
 272 enhancement credits if the department receives a request for the
 273 use of enhancement credits and determines that such use will not
 274 cause or contribute to a violation of water quality standards.

275 (8) AUTHORITY.—The authority granted to the department
 276 under this section is supplemental to the authority granted
 277 under s. 403.067(8).

278 (9) RULES.—The department shall adopt rules to implement
 279 this section. This section may not be implemented until the
 280 department adopts such rules.

281 Section 2. Paragraph (b) of subsection (1) and paragraphs
 282 (a), (b), and (d) of subsection (3) of section 403.892, Florida
 283 Statutes, are amended, and subsection (6) is added to that
 284 section, to read:

285 403.892 Incentives for the use of graywater technologies.—

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

287 (b) "Graywater" has the same meaning as in s.
 288 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

289 (3) To qualify for the incentives under subsection (2),
 290 the developer or homebuilder must certify to the applicable
 291 governmental entity as part of its application for development
 292 approval or amendment of a development order that all of the
 293 following conditions are met:

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

299 (b) Each single-family residential home or residence will

300 have its own residential graywater system ~~that is~~ dedicated for
 301 its use. Each residence forming part of a multifamily project
 302 will be serviced by its own residential graywater system
 303 dedicated for its use or by a master graywater collection and
 304 reuse system for the entire project.

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

307 (6) This section does not apply to multifamily projects
 308 more than five stories in height. Whether a dwelling is occupied
 309 by an owner is not an eligibility criterion for a developer or
 310 homebuilder to receive the incentives authorized under this
 311 section.

312 Section 3. The Department of Environmental Protection
 313 shall adopt and modify rules adopted pursuant to ss. 373.4136
 314 and 373.414, Florida Statutes, to ensure that required financial
 315 assurances are equivalent and sufficient to provide for the
 316 long-term management of mitigation permitted under ss. 373.4136
 317 and 373.414, Florida Statutes. The department, in consultation
 318 with the water management districts, shall include the
 319 rulemaking required by this section in existing active
 320 rulemaking, or shall complete rule development by June 30, 2023.

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