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CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

1  
 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:  
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ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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.

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

(3) WATER QUALITY ENHANCEMENT AREAS.-

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

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

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

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

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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.

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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.-

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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.

ENROLLED

CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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

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CS/CS/CS/HB 965, Engrossed 1

2022 Legislature

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.