

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: CS/SB 848

INTRODUCER: Environment and Natural Resources Committee and Senator Truenow

SUBJECT: Stormwater Treatment

DATE: January 13, 2025 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Barriero</u> | <u>Rogers</u> | <u>EN</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | <u>CA</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 848 provides that the use of a water quality enhancement area (WQEA) credit transfers the legal responsibility for complying with applicable regulatory water quality treatment requirements from the purchaser and user of such credit to the generator of such credit.

The bill authorizes environmental resource permit (ERP) applicants to use compensating stormwater treatment as a mitigation measure when existing ambient water quality prevents compliance with water quality standards. Such treatment must meet statutory requirements for WQEAs unless the treatment and discharging parcels are commonly owned, operated, and maintained, or the treatment area directly receives and treats stormwater from parcels within the total land area before the discharge leaves the treatment parcel.

The bill provides that mitigation measures or enhancement credits may be generated by third parties and sold to ERP applicants only as authorized under the section of law related WQEAs. The bill allows entities to apply for provisional WQEA permits pending the Department of Environmental Protection's (DEP's) adoption of WQEA rules. DEP and water management districts must allow the use of WQEA enhancement credits generated under such provisional permits, provided applicable statutory requirements are met.

The bill also provides that, beginning July 1, 2026, if a public landowner authorizes a private entity to construct, modify, or operate stormwater management systems on public lands for offsite compensatory treatment, the landowner must require the entity to cease such activities if

DEP or a water management district determines by final agency action that the use of the land is contrary to the public interest. Operations may resume upon a subsequent determination that compensatory treatment is no longer contrary to the public interest.

II. Present Situation:

Stormwater Management

Florida averages 40-60 inches of rainfall a year, depending on the location, with about two-thirds falling between June and October.¹ Stormwater runoff generated during these rain events flows over land and impervious surfaces, such as paved streets, parking lots, driveways, sidewalks, and rooftops, and picks up pollutants like trash, chemicals, oils, and sediment.² This unfiltered water flows into lakes, rivers, and wetlands and gradually seeps into groundwater aquifers that supply the state's drinking water.³ Polluted stormwater runoff is one of the greatest threats to clean water in the United States.⁴

Florida was the first state in the country to adopt a rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development.⁵ These rules were updated in 2024 following legislative ratification. The revised rules:

- Create new minimum performance standards for stormwater systems;
- Require applicants to demonstrate through modeling and calculations based on local conditions and annual runoff volumes that their proposed stormwater treatment system is designed to discharge to the required treatment level; and
- Establish new requirements for periodic inspections and the operation and maintenance of stormwater treatment systems.⁶

Environmental Resource Permitting (ERP)

Florida's ERP program regulates activities involving the alteration of surface water flows, including activities that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters.⁷ Specifically, the program governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and other works such as docks, piers, structures, dredging, and filling located in, on, or over wetlands or

¹ University of Florida Institute of Food and Agricultural Sciences, *Florida Rainfall Data Sources and Types*, 1 (2023), available at <https://edis.ifas.ufl.edu/publication/AE517>.

² U.S. Environmental Protection Agency (EPA), *Urbanization and Stormwater Runoff*, <https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff> (last visited Dec. 29, 2025).

³ South Florida Water Management District (SFWMD), *Your Impact on the Environment*, <https://www.sfwmd.gov/community-residents/what-can-you-do> (last visited Jan. 5, 2026).

⁴ *Id.*; EPA, *Soak Up the Rain: What's the Problem?*, <https://www.epa.gov/soakuptherain/soak-rain-whats-problem> (last visited Jan. 5, 2025).

⁵ DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Jan. 5, 2026).

⁶ See chapter 2024-275, Laws of Fla.; Fla. Admin. Code R. 62-330.

⁷ DEP, *Environmental Resource Permitting Coordination, Assistance, Portals*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-permitting> (last visited Dec. 29, 2025). See ch. 373, F.S.; Fla. Admin. Code R. 62-330.

other surface waters.⁸ ERP permits are issued by the Department of Environmental Protection (DEP) and the state's five water management districts.

ERP applications are reviewed to ensure the permit will only authorize activities that are not harmful to the water resources.⁹ Applicants must provide reasonable assurance that state water quality standards will not be violated and that the activity is not contrary to the public interest.¹⁰ However, if the proposed activity significantly degrades or is within an Outstanding Florida Water,¹¹ the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.¹² In determining whether an activity is not contrary to the public interest or is clearly in the public interest, the permitting agency must consider the following criteria:

- Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
- Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
- Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
- Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
- Whether the activity will be of a temporary or permanent nature;
- Whether the activity will adversely affect or will enhance significant historical and archaeological resources; and
- The current condition and relative value of functions being performed by areas affected by the proposed activity.¹³

If an ERP applicant cannot meet applicable criteria, the permitting agency must consider measures to mitigate adverse effects of the regulated activity.¹⁴ Where existing ambient water quality prevents compliance with water quality standards, such mitigation must result in a net improvement in the receiving waterbody for the parameters that do not meet standards.¹⁵ Mitigation options may include, but are not limited to, onsite or offsite mitigation, regional offsite mitigation, and the purchase of mitigation credits from mitigation banks.¹⁶ It is the applicant's responsibility to choose the form of mitigation.¹⁷

⁸ Fla. Admin. Code R. 62-330.010(2).

⁹ Southwest Florida Water Management District, *Environmental Resource Permit*, <https://www.swfwmd.state.fl.us/business/epermitting/environmental-resource-permit> (last visited Dec. 29, 2025). See section 373.413(1), F.S.

¹⁰ Section 373.414(1), F.S.

¹¹ An Outstanding Florida Water is a water designated worthy of special protection because of its natural attributes. DEP, *Outstanding Florida Waters*, <https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters> (last visited Nov. 20, 2025); see Fla. Admin. Code R. 62-302.700(2) and (9).

¹² Section 373.414(1), F.S.

¹³ Section 373.414(1)(a), F.S.

¹⁴ Section 373.414(1)(b), F.S.

¹⁵ Section 373.414(1)(b)3., F.S.

¹⁶ Section 373.414(1)(b), F.S.

¹⁷ *Id.*

Water Quality Enhancement Areas (WQEAs)

WQEAs are natural systems¹⁸ constructed, operated, managed, and maintained to provide offsite regional treatment within an identified enhancement service area for which enhancement credits may be provided pursuant to a WQEA permit.¹⁹ WQEA credits can be used by governmental entities to comply with basin management action plans or reasonable assurance plans²⁰ or by ERP applicants for the purpose of achieving net improvement of water quality or meeting certain ERP performance standards.²¹ WQEAs must be approved through the state's ERP process.²²

DEP must establish a service area for each WQEA, the boundaries of which will depend on the geographic areas where it can reasonably be expected to address adverse impacts.²³ Service areas may overlap, and service areas for two or more WQEAs may be approved for a regional watershed. Enhancement credits can only be used to address adverse impacts within the service area.²⁴

To obtain a WQEA permit, an applicant must provide reasonable assurances that the proposed area will, among other things, meet ERP requirements, benefit water quality in the enhancement service area, achieve defined performance criteria for pollutant reduction, ensure long-term pollutant reduction through perpetual operation and maintenance, and provide for permanent preservation of the site through a conservation easement.²⁵

WQEA permits must provide for the assessment, valuation, and award of credits based on units of pollutants removed, as determined by DEP using standard numerical models or analytical tools.²⁶ To assist DEP in valuing and determining credits, WQEA permit applications must provide supporting information, including historical rainfall data, anticipated water quality and quantity inflows, and site-specific conditions affecting the anticipated performance of the proposed WQEA.²⁷

Pollutant load reductions required under state regulatory programs are not eligible for consideration as credits, and credits may not be used by point source dischargers to meet regulatory requirements except those necessary to obtain an ERP for construction and operation of the site's surface water management system.²⁸

¹⁸ "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats. Section 373.4134(2)(c), F.S.

¹⁹ Section 373.4134(2)(e), F.S.

²⁰ Basin management action plans (BMAPs) and reasonable assurance plans are water quality improvement plans designed to reduce or eliminate pollutant loadings and restore specific water bodies to meet state water quality standards. *See generally* DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 29, 2025); DEP, *Alternative Restoration Plans*, <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Dec. 29, 2025).

²¹ Section 373.4134(1)(d) and (3)(b), F.S.

²² Section 373.4134(3)(a), F.S.

²³ Section 373.4134(5), F.S.

²⁴ *Id.*

²⁵ Section 373.4134(4)(a), F.S.

²⁶ Section 373.4134(4)(b) and (c), F.S.

²⁷ Section 373.4134(4)(c)4., F.S.

²⁸ Section 373.4134(7)(e) and (f), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 373.019, F.S., which provides definitions for ch. 373, F.S., regarding management and storage of surface waters. The bill defines “compensating stormwater treatment” as a method of stormwater treatment for discharges from more than two parcels, implemented in accordance with the conditions established in s. 373.4134, F.S., related to water quality enhancement areas.

The bill also defines “total land area” as land holdings under common ownership which are contiguous, or land holdings served by common surface water management facilities.

Section 2 amends s. 373.4134, F.S., regarding water quality enhancement areas (WQEAs). The bill provides that the use of an enhancement credit transfers the legal responsibility for complying with the applicable regulatory water quality treatment requirement from the purchaser and user of such enhancement credit to the generator of such enhancement credit. The transfer of legal responsibility for complying with applicable regulatory water quality treatment requirements does not occur outside of the use of enhancement credits.

The bill provides that compensating stormwater treatment must comply with this section of law unless:

- The treatment and discharging parcels are owned, operated, and maintained by the same entity; or
- The area providing compensating stormwater treatment receives stormwater discharge directly from parcels within the total land area and treats the discharge before such discharge flows off the parcel on which the compensating stormwater treatment occurs.

The bill provides that, pending the adoption of rules to implement this section, entities may apply for a WQEA provisional permit. The Department of Environmental Protection (DEP) must issue a WQEA provisional permit if the applicant meets the applicable statutory criteria. DEP must allow the use of such enhancement credits from a WQEA established under a provisional permit subject to compliance statutory requirements. Notwithstanding any other provision of law or rule, a water management district issuing an environmental resource permit (ERP) to applicants seeking to satisfy ERP performance standards must allow such applicants to use enhancement credits if DEP has issued a provisional permit for the WQEA from which the enhancement credits are generated.

The bill further provides that, after DEP adopts rules for WQEAs, DEP may modify an issued WQEA provisional permit to conform such permit to the adopted rules. Any enhancement credit used from a WQEA established pursuant to a provisional permit must continue to be recognized by DEP and water management districts without change, regardless of whether the provisional permit is subsequently modified to conform to the adopted rules.

Section 3 amends s. 373.414, F.S., regarding criteria for activities in surface waters and wetlands. Currently, if an ERP applicant is unable to meet water quality standards due to existing ambient water quality, the permitting agency must consider mitigation measures that cause net improvement of the water quality in the receiving waterbody for those parameters which do not meet standards. The bill provides that these mitigation measures may include compensating

stormwater treatment. The bill provides that mitigation measures or enhancement credits, intended to address water quality impacts regulated under ss. 373.403–373.443, F.S., may be generated by third parties and sold and transferred to ERP applicants only as authorized under the section of law related to water quality enhancement areas.

The bill also provides that, beginning July 1, 2026, if a public landowner authorizes or enters into a legally binding agreement with a private entity to construct, modify, or operate stormwater management systems or other features on public lands so that the private entity can provide offsite compensatory treatment for third-party water quality impacts or stormwater discharge, and if DEP or a water management district determines by final agency action that the use of such public lands for such compensatory stormwater treatment is contrary to the public interest, the public landowner must direct the private entity to cease operation of the offsite compensatory treatment activities identified in the final order of DEP or water management district. The requirement to cease such activities does not apply to other compensatory treatment activities governed by the agreement between the public landowner and the private entity which are not covered by the final order. The public landowner may allow the private entity to resume compensatory stormwater treatment activities upon a subsequent final agency action determination that the use of such public lands for such compensatory treatment is no longer contrary to the public interest.

Sections 4 through 8 provide conforming changes.

Section 9 reenacts s. 373.4136, F.S., for the purpose of incorporating the amendment made by this bill to s. 373.414, F.S.

Section 10 provides an effective date of July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may have an indeterminate negative impact on private entities that sell allocations from offsite regional stormwater management systems.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.019, 373.4134, 373.414, 373.036, 373.250, 373.421, 403.813, and 556.102.

The bill reenacts section 373.4136 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on January 13, 2026:

- Allows entities to apply for a provisional water quality enhancement area (WQEA) permit pending the adoption of WQEA rules by the Department of Environmental Protection (DEP).
- Requires DEP and water management districts to allow the use of WQEA enhancement credits generated under such provisional permits, provided applicable statutory requirements are met.
- Provides DEP may modify WQEA provisional permits following rule adoption, but enhancement credits already used must be recognized regardless of any subsequent modifications.
- Clarifies that a public landowner may require the cessation of stormwater management system operations only upon a final agency action, and that such operations may resume once compensatory treatment is no longer contrary to the public interest. This provision applies only to contracts entered into after July 1, 2026.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
