

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 Rules

BILL: CS/CS/SB 848

INTRODUCER: Rules Committee; Environment and Natural Resources Committee; and Senator Truenow

SUBJECT: Stormwater Treatment

DATE: February 19, 2026 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.

The bill requires ERP applicants for regional stormwater management systems to provide documentation of adequate financial responsibility. These permits must include a graphic depicting the drainage area served by the system. The bill allows ERP applicants located within a regional stormwater management system's drainage area to purchase and use pollution reduction allocations from such system to meet stormwater treatment performance criteria. The bill prohibits referring to pollutant reductions as "credits," except for enhancement credits generated from a WQEA.

The bill requires DEP to adopt WQEA rules no later than October 1, 2026. Pending the adoption of such rules, DEP must accept applications for WQEA provisional permits and issue such permits if the applicant provides reasonable assurance of meeting applicable statutory criteria.

Enhancement credits may be used from a WQEA established under a provisional permit. The bill authorizes DEP to modify a provisional permit to conform to the adopted rules but requires continued recognition, without change, of any enhancement credits issued under the provisional permit.

The bill further provides that regional stormwater systems and WQEAs operated by non-local governmental entities may not provide stormwater treatment, achieve net improvement of water quality, or convey enhancement credits for proposed port activities that cause or contribute to stormwater pollution at certain seaports.

The bill takes effect July 1, 2026.

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

Stormwater may be managed through onsite systems or through regional stormwater management systems that collect, convey, store, and treat stormwater from multiple parcels within a defined drainage area to reduce flooding, environmental degradation, and water pollution, and to manage the quantity and quality of discharges on a broader scale.⁵

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.⁶ 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

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> (last visited Feb. 9, 2026).

² U.S. Environmental Protection Agency (EPA), *Urbanization and Stormwater Runoff*, available at <https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff> (last visited Feb. 9, 2026).

³ South Florida Water Management District (SFWMD), *Your Impact on the Environment*, available at <https://www.sfwmd.gov/community-residents/what-can-you-do> (last visited Feb. 9, 2026).

⁴ *Id.*; EPA, *Soak Up the Rain: What's the Problem?*, available at <https://www.epa.gov/soakuptherain/soak-rain-whats-problem> (last visited Feb. 9, 2026).

⁵ See DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)97., (2024), available at <https://flrules.org/Gateway/reference.asp?No=Ref-15342>.

⁶ DEP, *ERP Stormwater*, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Feb. 9, 2026).

- Establish new requirements for periodic inspections and the operation and maintenance of stormwater treatment systems.⁷

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.⁸ 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 other surface waters.⁹ 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.¹⁰ 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.¹¹ However, if the proposed activity significantly degrades or is within an Outstanding Florida Water,¹² the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.¹³ 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

⁷ See chapter 2024-275, Laws of Fla.; Fla. Admin. Code R. 62-330.

⁸ DEP, *Environmental Resource Permitting Coordination, Assistance, Portals*, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-permitting> (last visited Feb. 9, 2026). See ch. 373, F.S.; Fla. Admin. Code R. 62-330.

⁹ Fla. Admin. Code R. 62-330.010(2).

¹⁰ Southwest Florida Water Management District, *Environmental Resource Permit*, available at <https://www.swfwmd.state.fl.us/business/epermitting/environmental-resource-permit> (last visited Feb. 9, 2026). See section 373.413(1), F.S.

¹¹ Section 373.414(1), F.S.

¹² An Outstanding Florida Water is a water designated worthy of special protection because of its natural attributes. DEP, *Outstanding Florida Waters*, available at <https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters> (last visited Feb. 9, 2026); see Fla. Admin. Code R. 62-302.700(2) and (9).

¹³ Section 373.414(1), F.S.

- The current condition and relative value of functions being performed by areas affected by the proposed activity.¹⁴

If an ERP applicant cannot meet applicable criteria, the permitting agency must consider measures to mitigate adverse effects of the regulated activity.¹⁵ 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.¹⁶ 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.¹⁷ It is the applicant's responsibility to choose the form of mitigation.¹⁸ Where an applicant proposes mitigation, the applicant must provide proof of financial responsibility sufficient to conduct the mitigation activities, manage and monitor the mitigation site, prepare and submit monitoring reports to the permitting agency, and undertake any corrective actions identified through monitoring.¹⁹ Financial responsibility may be established through mechanisms including performance bonds, irrevocable letters of credit, trust fund agreements, deposits of cash or cash equivalents into an escrow account, and guarantee bonds.²⁰ Operation and maintenance entities must also demonstrate the financial, administrative, and legal capability to access, monitor, operate, and maintain the permitted project.²¹

Water Quality Enhancement Areas (WQEAs)

WQEAs are natural systems²² 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.²³ WQEA credits can be used by governmental entities to comply with basin management action plans or reasonable assurance plans²⁴ or by ERP applicants for the purpose of achieving net improvement of water quality or meeting certain ERP performance standards after reasonable assurances have been provided for the design and construction of all onsite stormwater management.²⁵ WQEAs must be approved through the state's ERP process.²⁶

¹⁴ Section 373.414(1)(a), F.S.

¹⁵ Section 373.414(1)(b), F.S.

¹⁶ Section 373.414(1)(b)3., F.S.

¹⁷ Section 373.414(1)(b), F.S.

¹⁸ *Id.*

¹⁹ DEP, *ERP Applicant's Handbook: Vol. I*, s. 10.3.7 (2024), available at <https://flrules.org/Gateway/reference.asp?No=Ref-15342>.

²⁰ *Id.* at s. 10.3.7.6.

²¹ *Id.* at ss. 12.1(c) and 12.3.1.

²² "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)(d), F.S.

²³ Section 373.4134(2)(e), F.S.

²⁴ 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)*, available at <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 9, 2026); DEP, *Alternative Restoration Plans*, available at <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Feb. 9, 2026).

²⁵ Section 373.4134(1)(d) and (3)(b), F.S.

²⁶ Section 373.4134(3)(a), F.S.

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.²⁷ 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.²⁸

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.²⁹

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.³⁰ 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.³¹

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.³²

Seaport Stormwater Permitting

Florida has 16 public deepwater seaports that support nearly 1.2 million jobs and contribute \$195 billion in economic value statewide.³³ Certain seaports are authorized to provide onsite or offsite stormwater treatment to address water quality impacts caused by a proposed port activity that requires a permit and that causes or contributes to pollution from stormwater runoff.³⁴ This applies to the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.³⁵ Offsite stormwater treatment may occur outside the port's boundaries, but it must be within the same drainage basin in which the port activity occurs.³⁶ To limit stormwater treatment from individual parcels within a port, a seaport may provide for a regional stormwater treatment facility.³⁷ Any offsite stormwater treatment projects, including regional systems, must be

²⁷ Section 373.4134(5), F.S.

²⁸ *Id.*

²⁹ Section 373.4134(4)(a), F.S.

³⁰ Section 373.4134(4)(b) and (c), F.S.

³¹ Section 373.4134(4)(c)4., F.S.

³² Section 373.4134(7)(e) and (f), F.S.

³³ Florida Seaport Transportation and Economic Development Council, *2025-2029 Seaport Mission Plan*, 7 (2025), available at https://flaports.org/wp-content/uploads/2025_SeaportMissionPlan.pdf.

³⁴ Section 311.106, F.S.

³⁵ *Id. See* 403.021(9)(b), F.S.

³⁶ Section 311.106, F.S.

³⁷ *Id.*

constructed and maintained by the seaport or by the seaport in conjunction with an adjacent local government.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 311.106, F.S., regarding seaport stormwater permitting and mitigation. The bill provides that, for proposed port activities with water quality impacts that cause or contribute to pollution from stormwater runoff from seaports not listed in s. 403.021(9)(b), F.S.,³⁹ the following restrictions apply:

- A regional stormwater management system operated by a non-local governmental entity independently or under contract with a seaport or local government may not provide stormwater treatment or achieve net improvement of water quality;
- A water quality enhancement area (WQEA) operated by a non-local governmental entity independently or under contract with a seaport or local government may not convey enhancement credits to provide stormwater treatment or achieve net improvement of water quality.

Section 2 amends s. 373.413, F.S., regarding permits for construction or alteration. The bill defines “regional stormwater management system” as a method of compensating stormwater treatment that creates pollution reduction allocations and is designed, constructed, operated and maintained to collect, convey, store, absorb, inhibit, treat, or harvest stormwater to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges within the drainage area served by the regional system which is the land or development that is served by or contributes stormwater to the regional system.

The bill provides that, as part of meeting the requirement to demonstrate that an applicant for an environmental resource permit (ERP) for a regional stormwater management system has the financial, legal, and administrative capability of ensuring such regional stormwater management system will be undertaken according to the terms and conditions of an issued permit, the Department of Environmental Protection (DEP) or a water management district must require such applicant to provide documentation of adequate financial responsibility. This financial responsibility may consist of:

- Performance bonds, letters of credit, insurance policies, trust agreements, or similar, ensuring completion of construction, the amount of which must be based on cost estimates of completing the construction; and
- An endowment or other long-term financial assurance mechanism sufficient to ensure operation and maintenance for the entire period the regional stormwater management system is anticipated to be relied upon to provide stormwater treatment, attenuation, or regulatory pollutant load reduction allocations, the amount of which shall be based on cost estimates of such long-term operation and maintenance.

³⁸ *Id.*

³⁹ The ports listed in s. 403.021(9)(b), F.S., include the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

The bill requires the cost estimates and associated financial responsibility mechanisms to be updated every five years to reflect current costs. This section may not be construed to impose additional financial responsibility requirements on stormwater management systems that are not regional stormwater management systems.

The bill also requires an ERP authorizing a regional stormwater management system to establish and include a graphic depicting the drainage area to be served by such system. The bill authorizes ERP applicants located within the drainage area to purchase and use pollution reduction allocations from a regional stormwater management system to meet stormwater treatment performance criteria. DEP or a water management district must use Hydrologic Unit Code 12 (HUC 12)⁴⁰ subbasin as set forth by the United States Geological Survey to establish the drainage area, unless the regional stormwater management system applicant provides justification demonstrating the proposed off-site area outside of the HUC 12 would provide the same degree of compensating treatment for a common downstream receiving waterbody without causing or contributing to any localized adverse impact to any downstream waters, through water quality monitoring, modeling, or a combination thereof.

Section 3 amends s. 373.403, F.S., which provides definitions for part IV of 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 multiple parcels.

The bill defines “pollutant reduction allocation” as a standard unit of measure that represents a quantity of pollutant removed by a regional stormwater management system for purposes of providing compensating stormwater treatment under the environmental resource permitting program.

“Enhancement credit” is currently defined in s. 373.4134(2)(b), F.S., as a standard unit of measure that represents a quantity of pollutant removed by a water quality enhancement area. The bill moves this definition to s. 373.403, F.S.

Section 4 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 bill clarifies that enhancement credits may be sold to *and used by* governmental entities to meet an assigned basin management action plan allocation or reasonable assurance plan or to permit applicants to meet ERP stormwater treatment performance standards or to achieve net

⁴⁰ “Hydrologic Unit Code” or “HUC” means the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. Each unit is assigned a two- to 12-digit number that uniquely identifies each of the six levels of classification within six two-digit fields. United States Geological Survey (USGS), *Hydrologic Unit Codes (HUCs) Explained*, <https://nas.er.usgs.gov/hucs.aspx> (last visited Feb. 16, 2026). Eight-digit HUCs are used for large watersheds known as subbasins; 10-digit HUCs divide the large subbasins into watersheds; and 12-digit HUCs divide watersheds into subwatersheds that capture local tributary systems. EPA, *Hydrologic Unit Codes: HUC 4, HUC 8, and HUC 12*, available at <https://enviroatlas.epa.gov/enviroatlas/datafactsheets/pdf/Supplemental/HUC.pdf>; DEP, *About the Florida National Hydrography Dataset*, <https://floridadep.gov/dear/watershed-services-program/content/about-florida-national-hydrography-dataset> (last visited Feb. 16, 2026).

improvement under s. 373.414(1)(b)3. The bill removes the requirement in existing law that reasonable assurances for onsite stormwater design and construction be provided before credits may be used.

The bill provides that the use of enhancement credits from a WQEA constitutes compensating stormwater treatment under the ERP program. The bill also provides that the term “credit” may not be used to refer to pollutant reduction achieved through compensating stormwater treatment to meet ERP stormwater performance standards or as a mitigation measure to achieve net improvement outside of enhancement credits generated from a WQEA.

The bill requires DEP to file WQEA rules for adoption no later than October 1, 2026. Pending the adoption of such rules, DEP must accept, review and take final agency action on applications for WQEA provisional permits. DEP must issue a water quality enhancement provisional permit in response to a submitted application if the applicant provides reasonable assurance of meeting applicable statutory criteria. Enhancement credits may be used from a WQEA established under a provisional permit subject to compliance with s. 373.4134, F.S., and the terms of the provisional permit. Notwithstanding any other provision of law or rule, DEP or a water management district reviewing an ERP application that seeks to satisfy stormwater treatment performance standards or achieve net improvement must allow the use of enhancement credits from a WQEA with a provisional permit pursuant to the terms of such provisional permit.

The bill provides that after DEP adopts the WQEA rules, it may modify a WQEA provisional permit to conform the permit to the rules. Any enhancement credits used from a WQEA established under 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 5 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.

Section 6 reenacts s. 373.4136, F.S., for the purpose of incorporating the amendment made by this bill to s. 373.414, F.S.

Section 7 provides an effective date of July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties and municipalities to expend funds or further limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18 of the State Constitution.

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: 311.106, 373.413, 373.403, 373.4134, and 373.414.

The bill reenacts section 373.4136 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on February 17, 2026:**

- Requires environmental resource permit (ERP) applicants for regional stormwater management systems to demonstrate adequate financial responsibility and requires the permit to include a graphic depiction of the drainage area served by the system;
- Authorizes ERP applicants located within the drainage area of a regional stormwater management system to use the system’s pollution reduction allocations to satisfy applicable stormwater treatment requirements;
- Removes the provision limiting the transfer of legal responsibility for meeting regulatory water quality standards to enhancement credits from water quality enhancement areas (WQEAs);
- Removes the provision requiring compensatory stormwater treatment to comply with statutory requirements unless the treatment and discharging parcels are commonly owned, operated, and maintained, or the treatment area directly receives and treats stormwater before the discharge leaves the treatment parcel;
- Provides that the use of WQEA enhancement credits constitutes compensatory stormwater treatment under the ERP program;
- Provides that pollutant reductions may not be called enhancement credits unless they are generated by WQEAs;
- Requires the Department of Environmental Protection (DEP) to adopt WQEA rules by October 1, 2026;
- Requires DEP to accept, review, and take final agency action on WQEA provisional permit applications and issue such permits if the applicant provides reasonable assurance of meeting statutory criteria;
- Removes the provision that mitigation measures or enhancement credits may be generated and sold only as authorized under the section of law related to WQEAs;
- Removes the requirement that a public landowner who authorizes a private entity to operate a stormwater system on their land for offsite compensatory treatment must require the entity to cease operations upon final agency action determining that the use is contrary to the public interest;
- Provides that regional stormwater systems or water quality enhancement areas operated by non-local governmental entities independently or under contract with a seaport or local government may not provide stormwater treatment, achieve net improvement of water quality, or convey enhancement credits for proposed port activities that cause or contribute to stormwater pollution at certain seaports.

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

- Allows entities to apply for a provisional WQEA permit pending the adoption of WQEA rules by 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.