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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2022	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 52 - 317  
and insert:  
by governmental entities to address impacts regulated under this  
part is needed.

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



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11 (d) Water quality enhancement areas are a valuable tool to  
12 assist governmental entities in satisfying the net improvement  
13 performance standard pursuant to s. 373.414(1)(b)3. to ensure  
14 significant reductions of pollutant loadings.

15 (e) Water quality enhancement areas that provide water  
16 quality enhancement credits to governmental entities seeking  
17 permits under this part and to governmental entities seeking to  
18 meet an assigned basin management action plan allocation or  
19 reasonable assurance plan pursuant to s. 403.067 are considered  
20 an appropriate and permissible option.

21 (2) DEFINITIONS.—As used in this section, the term:

22 (a) "Enhancement credit" means a standard unit of measure  
23 which represents a quantity of pollutant removed.

24 (b) "Governmental entity" means any political subdivision  
25 of the state, including any state agency, department, agency of  
26 the state, county, municipality, special district, school  
27 district, utility authority, or other authority or  
28 instrumentality, agency, unit, or department thereof.

29 (c) "Water quality enhancement area" means a natural system  
30 constructed, operated, managed, and maintained pursuant to a  
31 permit issued under this section for the purpose of providing  
32 offsite, compensatory regional treatment for which enhancement  
33 credits may be provided.

34 (d) "Water quality enhancement area permit" means a permit  
35 issued for a water quality enhancement area which authorizes the  
36 construction, operation, management, and maintenance of an  
37 enhancement area and the purchase and sale of enhancement  
38 credits.

39 (3) WATER QUALITY ENHANCEMENT AREAS.—



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40 (a) An environmental resource permit issued by the  
41 department under this section must authorize the construction,  
42 operation, management, and maintenance of a water quality  
43 enhancement area.

44 (b) Water quality enhancement credits may be sold only to  
45 governmental entities.

46 (c) A water quality enhancement area must address  
47 contributions of pollutants for those parameters in the  
48 watershed in which the water quality enhancement area is located  
49 which do not meet state water quality standards.

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

52 (e) A governmental entity may use a water quality  
53 enhancement area for its own water quality needs. However, a  
54 governmental entity may not act as a sponsor to construct,  
55 operate, manage, or maintain a water quality enhancement area or  
56 market enhancement credits to third parties.

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

60 (g) This section does not eliminate the obligation of an  
61 applicant for a water quality enhancement area permit or an  
62 applicant proposing to use enhancement credits to comply with  
63 all requirements of this part pertaining to adverse impacts to  
64 water quality in receiving waters and adjacent lands.

65 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

66 (a) To obtain a water quality enhancement area permit, the  
67 applicant must provide reasonable assurances that the proposed  
68 water quality enhancement area will:



69 1. Meet the requirements for issuance of an environmental  
70 resource permit;

71 2. Benefit water quality in the watershed in which the  
72 water quality enhancement area is located;

73 3. Meet defined performance or success criteria for the  
74 reduction of pollutants or other constituents that prevent  
75 receiving waters from meeting state water quality standards;

76 4. Ensure long-term pollutant reduction through effective  
77 operation and maintenance in perpetuity by designation of a  
78 responsible long-term maintenance entity supported by an  
79 endowment or other long-term financial assurance sufficient to  
80 assure perpetual operation and maintenance;

81 5. Demonstrate sufficient legal or equitable interest in  
82 the property to ensure access and perpetual protection and  
83 management of the land within the water quality enhancement  
84 area; and

85 6. Provide for permanent preservation of the water quality  
86 enhancement area which meets the requirements of s. 704.06.

87 (b) The water quality enhancement area permit must provide  
88 for the assessment, valuation, and award of credits based on  
89 units of pollutant removed.

90 (c) The department shall base its determination of the  
91 award of enhancement credits on standard numerical models that  
92 establish the water quality enhancement area's ability to remove  
93 pollutants.

94 1. Where a basin management action plan exists for the  
95 watershed in which the water quality enhancement area is  
96 located, the applicant must use the same numerical models used  
97 for that basin management action plan in the water quality



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98 enhancement area permit application.

99 2. If a basin management action plan does not exist for the  
100 watershed in which the water quality enhancement area is  
101 located, the applicant, with the approval of the department, may  
102 submit as part of the water quality enhancement area permit  
103 application model parameters and results used in a numerical  
104 model used by the department to develop a basin management  
105 action plan for a watershed with similar physical  
106 characteristics and pollutants as that where the proposed water  
107 quality enhancement area is to be located.

108 3. If the department determines that its numerical model  
109 used for a basin management action plan is not appropriate for  
110 the proposed water quality enhancement area, the department must  
111 use a standard numerical model for the proposed water quality  
112 enhancement area.

113 4. To assist the department in evaluating and determining  
114 enhancement credits, a water quality enhancement area permit  
115 application must include the numerical model results, including  
116 the parameters used to establish the water quality enhancement  
117 area's efficacy. These parameters must include, but need not be  
118 limited to:

119 a. Rainfall data over the longest period of record  
120 available, collected from the closest site to the proposed water  
121 quality enhancement area, preferably within the same drainage  
122 basin.

123 b. Anticipated average annual water quality and quantity  
124 inflows to the proposed water quality enhancement area, based on  
125 published local data collected over a period of record which  
126 most closely matches the rainfall data under this paragraph.



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127 c. Site-specific conditions affecting the anticipated  
128 performance of the proposed water quality enhancement area,  
129 including the proposed treatment type and the anticipated  
130 associated reduction rates, as demonstrated by the performance  
131 of other areas where the treatment type has been established and  
132 operating over a minimum of two consecutive wet and dry seasons.

133 d. Data collection stations approved in advance by the  
134 department at sites that the department deems sufficient to  
135 determine flows and local water quality conditions.

136 e. An attenuation factor applied to the water quality  
137 enhancement area to account for the water quality enhancement  
138 area's location within the watershed.

139 (d) The issuance of a water quality enhancement area permit  
140 under this section does not preclude the responsibility of an  
141 applicant to obtain other applicable federal, state, and local  
142 permits for the construction activities associated with the  
143 water quality enhancement area.

144 (5) MONITORING AND VERIFICATION.-

145 (a) An applicant for a water quality enhancement area  
146 permit must propose a performance and success criteria  
147 monitoring and verification plan, with protocols to be  
148 implemented once the water quality enhancement area is  
149 operational. The protocols must be appropriate for the water  
150 quality enhancement area and sufficient to demonstrate that the  
151 area is meeting defined performance or success criteria for the  
152 reduction of pollutants or contaminants for which credits are  
153 awarded by the department.

154 (b) If a permittee fails to comply with the conditions of a  
155 water quality enhancement area permit, the department must



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156 revoke the permittee's ability to sell enhancement credits until  
157 the water quality enhancement area is compliant with the permit  
158 conditions.

159 (6) ENHANCEMENT CREDITS.—

160 (a) The department or water management district shall  
161 authorize the sale and use of enhancement credits to  
162 governmental entities to address adverse water quality impacts  
163 of activities regulated under this part or to assist  
164 governmental entities seeking to meet an assigned basin  
165 management action plan allocation or reasonable assurance plan  
166 pursuant to s. 403.067.

167 (b) Water quality improvement projects using natural  
168 systems or land use modifications, including, but not limited  
169 to, constructed wetlands or minor impoundments that reduce  
170 pollutants to a receiving water body, may be used by an  
171 applicant to generate enhancement credits if approved by the  
172 department. Water quality enhancement areas may not be located  
173 on lands purchased for conservation pursuant to the Florida  
174 Forever Act or the Florida Preservation 2000 Act.

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

177 1. The operator of a water quality enhancement area shall  
178 notify the department of the amount of enhancement credits sold  
179 or used within 30 days after the date the enhancement credit  
180 transaction is completed.

181 2. A water management district that authorizes applicants  
182 seeking permits under this part to use enhancement credits to  
183 address water quality impacts must report to the department the  
184 amount of enhancement credits used by the applicants.



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185 (d) Reductions in pollutant loading required under any  
186 state regulatory program are not eligible to be considered as  
187 enhancement credits.

188 (e) Enhancement credits may not be used by point source  
189 dischargers to satisfy regulatory requirements other than those  
190 necessary to obtain an environmental resource permit for  
191 construction and operation of the surface water management  
192 system of the site.

193 (f) Use of enhancement credits made available by water  
194 quality enhancement areas is voluntary.

195 (g) Any landowner, discharger, or other responsible person  
196 regulated under this part or s. 403.067 implementing applicable  
197 management strategies specified in an adopted basin management  
198 action plan or reasonable assurance plan may not be required by  
199 any permit or other enforcement action to use enhancement  
200 credits to reduce pollutant loads to achieve the pollutant  
201 reductions established pursuant to s. 403.067.

202 (h) A local government may not deny the use of enhancement  
203 credits due to the location of the water quality enhancement  
204 area outside the jurisdiction of the local government.

205 (7) AUTHORITY.—The authority granted to the department  
206 under this section is supplemental to the authority granted  
207 under s. 403.067(8).

208 (8) RULES.—The department may adopt rules to implement this  
209 section.

210 Section 2. Paragraph (b) of subsection (1) and paragraphs  
211 (a), (b), and (d) of subsection (3) of section 403.892, Florida  
212 Statutes, are amended, and subsection (6) is added to that  
213 section, to read:





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214 403.892 Incentives for the use of graywater technologies.-

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

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

217 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

218 (3) To qualify for the incentives under subsection (2), the  
219 developer or homebuilder must certify to the applicable  
220 governmental entity as part of its application for development  
221 approval or amendment of a development order that all of the  
222 following conditions are met:

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

227 (b) Each single-family residential home or residence will  
228 have its own residential graywater system ~~that is~~ dedicated for  
229 its use. Each residence forming part of a multifamily project  
230 will be serviced by either its own residential graywater system  
231 dedicated for its use or a master graywater collection and reuse  
232 system for the entire project.

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

235 (6) This section does not apply to multifamily projects  
236 more than five stories in height. Whether a dwelling is occupied  
237 by an owner is not an eligibility criterion for a developer or  
238 homebuilder to receive the incentives authorized pursuant to  
239 this section.

240 Section 3. The Department of Environmental Protection shall  
241 adopt and modify rules adopted pursuant to ss. 373.4136 and  
242 373.414, Florida Statutes, to ensure that required financial



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243 assurances are equivalent and sufficient to provide for the  
244 long-term management of mitigation permitted under ss. 373.4136  
245 and 373.414, Florida Statutes. The department, in consultation  
246 with the water management districts, shall include the  
247 rulemaking required by this section in existing active  
248 rulemaking or shall complete rule development by June 30, 2023.

249  
250 ===== T I T L E A M E N D M E N T =====

251 And the title is amended as follows:

252 Delete lines 5 - 34

253 and insert:

254 enhancement areas; providing requirements for water  
255 quality enhancement areas and permits; requiring  
256 applicants to propose performance and success criteria  
257 monitoring and verification plans that meet certain  
258 requirements; providing requirements for enhancement  
259 credits; requiring the Department of Environmental  
260 Protection to revoke a permit under certain  
261 conditions; requiring the department and water  
262 management districts to authorize the sale and use of  
263 enhancement credits to governmental entities to  
264 address certain adverse water quality impacts and to  
265 meet certain water quality requirements; requiring the  
266 department to maintain enhancement credit ledgers;  
267 providing construction; authorizing the department to  
268 adopt rules; amending s. 403.892, F.S.; correcting a  
269 cross-reference; revising the conditions that a  
270 developer or homebuilder must certify it meets as part  
271 of its application for development approval or



272 amendment of a development order; providing  
273 applicability; requiring the department to adopt and  
274 modify specified rules, as applicable; providing  
275 requirements for such rulemaking;