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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
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The Committee on Environment and Natural Resources (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 373.4134, Florida Statutes, is created  
to read:

373.4134 Water quality enhancement areas.-

(1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds  
that:

(a) Water quality will be improved and adverse water



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11 quality impacts of activities regulated under this part may be  
12 offset by the construction, operation, maintenance, and long-  
13 term management of water quality enhancement areas that provide  
14 offsite compensatory treatment.

15 (b) An expansion of existing authority for regional  
16 treatment to include offsite compensatory treatment in water  
17 quality enhancement areas to make credits available for purchase  
18 by governmental entities to offset impacts regulated under this  
19 part is needed.

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

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

28 (e) Water quality enhancement areas that provide water  
29 quality enhancement credits to governmental entities seeking  
30 permits under this part and to governmental entities seeking to  
31 meet an assigned basin management action plan allocation or  
32 reasonable assurance plan pursuant to s. 403.067 are considered  
33 an appropriate and permissible option.

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

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

37 (b) "Enhancement service area" means the geographic area  
38 where the water quality enhancement area can reasonably be  
39 expected to offset adverse water quality impacts.



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40 (c) "Governmental entity" means any political subdivision  
41 of this state, including any state agency, department, county,  
42 municipality, special district, school district, utility  
43 authority, or other authority or instrumentality, agency, unit,  
44 or department thereof.

45 (d) "Planning unit" means the total maximum daily load  
46 planning unit that is an individual tributary basin or a group  
47 of smaller adjacent tributary basins with similar  
48 characteristics.

49 (e) "Water quality enhancement area" means a natural system  
50 constructed, operated, managed, and maintained pursuant to a  
51 permit issued under this section for the purpose of providing  
52 offsite, compensatory, regional treatment within an identified  
53 enhancement service area, for which enhancement credits may be  
54 provided.

55 (f) "Water quality enhancement area permit" means a permit  
56 issued for a water quality enhancement area which authorizes the  
57 construction, operation, management, and maintenance of the area  
58 and the purchase and sale of enhancement credits.

59 (3) WATER QUALITY ENHANCEMENT AREAS.—

60 (a) The construction, operation, management, and  
61 maintenance of a water quality enhancement area must be approved  
62 through the environmental resource permitting process.  
63 Department rules pertaining to environmental resource permits  
64 apply to water quality enhancement areas and enhancement  
65 credits.

66 (b) Water quality enhancement credits may be sold only to  
67 governmental entities.

68 (c) A water quality enhancement area must address



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69 contributions of pollutants for those parameters in an  
70 enhancement service area which do not meet state water quality  
71 standards.

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

74 (e) A governmental entity may use a water quality  
75 enhancement area for its own water quality needs. However, a  
76 governmental entity may not act as a sponsor to construct,  
77 operate, manage, maintain, or market enhancement credits to  
78 third parties.

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

82 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

83 (a) To obtain a water quality enhancement area permit, the  
84 applicant must provide reasonable assurances that the proposed  
85 water quality enhancement area will:

86 1. Meet the requirements for issuance of an environmental  
87 resource permit.

88 2. Benefit water quality in the enhancement service area.

89 3. Achieve defined performance or success criteria for the  
90 reduction of pollutants or other constituents that prevent  
91 receiving waters from meeting state water quality standards.

92 4. Assure long-term pollutant reduction through effective  
93 operation and maintenance in perpetuity by designation of a  
94 responsible long-term maintenance entity supported by an  
95 endowment or other long-term financial assurance sufficient to  
96 assure perpetual maintenance.

97 5. Demonstrate sufficient legal or equitable interest in



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98 the property to ensure access and perpetual protection and  
99 management of the land within the water quality enhancement  
100 area.

101 6. Provide for permanent preservation of the site pursuant  
102 to s. 704.06.

103 (b) The water quality enhancement area permit must provide  
104 for the assessment, valuation, and award of credits based on  
105 units of pollutant removed. To assist the department in  
106 determining enhancement credits, a water quality enhancement  
107 area application must include the following information:

108 1. Rainfall data over the longest period of record  
109 available, collected from the closest site to the proposed water  
110 quality enhancement area, preferably within the same drainage  
111 basin.

112 2. Anticipated average annual water quality and quantity  
113 inflows to the proposed water quality enhancement area, based on  
114 published local data collected over a period of record that most  
115 closely matches the rainfall data under this paragraph.

116 3. Site-specific conditions affecting the anticipated  
117 performance of the proposed water quality enhancement area,  
118 including the proposed treatment type and anticipated associated  
119 reduction rates, as demonstrated by the performance of other  
120 areas where the treatment type has been established and  
121 operating over a minimum of two consecutive wet and dry seasons.

122 4. Data from collection stations approved in advance by the  
123 department in sites that the department deems sufficient to  
124 determine flows and local water quality conditions.

125 (c) The issuance of a water quality enhancement area permit  
126 under this section does not preclude the responsibility of an



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127 applicant to obtain other applicable federal, state, and local  
128 permits for the construction activities associated with the  
129 water quality enhancement area.

130 (5) ENHANCEMENT SERVICE AREA.—

131 (a) An enhancement service area must be based on a basin  
132 management action plan or reasonable assurance plan boundary  
133 adopted by the department. If the department does not adopt a  
134 basin management action plan or reasonable assurance plan  
135 boundary, the enhancement service area must be the planning  
136 unit.

137 (b) A water quality enhancement area may provide  
138 enhancement credits only in an enhancement service area, except  
139 for:

140 1. Projects with adverse impacts located partially within  
141 the enhancement service area.

142 2. Linear projects, such as roadways, transmission lines,  
143 distribution lines, pipelines, railways, or seaports listed in  
144 s. 311.09(1).

145 (c) Once an enhancement service area has been established  
146 by the department, the enhancement service area must be accepted  
147 by all water management districts and local governments.

148 (6) ENHANCEMENT CREDITS.—

149 (a) The department or water management district shall  
150 authorize the sale and use of enhancement credits governmental  
151 entities to offset adverse water quality impacts of activities  
152 regulated under this part or to assist governmental entities  
153 seeking to meet an assigned basin management action plan  
154 allocation or reasonable assurance plan pursuant to s. 403.067.

155 (b) Water quality improvement projects using natural



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156 systems or land use modifications, including, but not limited  
157 to, constructed wetlands or minor impoundments that reduce  
158 pollutants to a receiving water body, may be used by an  
159 applicant to generate enhancement credits if approved by the  
160 department.

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

163 1. The operator of a water quality enhancement area shall  
164 notify the department of the amount of enhancement credits sold  
165 or used within 30 days of the date the enhancement credit  
166 transaction is completed.

167 2. A water management district that authorizes applicants  
168 seeking permits under this part to use enhancement credits to  
169 offset water quality impacts must report to the department the  
170 amount of enhancement credits used by the applicant.

171 (d) Reductions in pollutant loading required under any  
172 state regulatory program are not eligible to be considered as  
173 enhancement credits.

174 (e) Enhancement credits may not be used by point source  
175 dischargers to satisfy regulatory requirements other than those  
176 necessary to obtain an environmental resource permit for  
177 construction and operation of the surface water management  
178 system of the site.

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

181 (g) Any landowner, discharger, or other responsible person  
182 regulated under this part or s. 403.067 implementing applicable  
183 management strategies specified in an adopted basin management  
184 action plan or reasonable assurance plan may not be required by



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185 any permit or other enforcement action to use enhancement  
186 credits to reduce pollutant loads to achieve the pollutant  
187 reductions established pursuant to s. 403.067.

188 (h) A local government may not deny the use of enhancement  
189 credits due to the location of the water quality enhancement  
190 area outside the jurisdiction of the local government.

191 (7) AUTHORITY.—The authority granted to the department  
192 under this section is supplemental to the authority granted  
193 under s. 403.067(8).

194 (8) RULES.—The department may adopt rules to implement this  
195 section.

196 Section 2. Subsection (22) of section 403.061, Florida  
197 Statutes, is amended to read:

198 403.061 Department; powers and duties.—The department shall  
199 have the power and the duty to control and prohibit pollution of  
200 air and water in accordance with the law and rules adopted and  
201 promulgated by it and, for this purpose, to:

202 (22) (a) Advise, consult, cooperate, and enter into  
203 agreements and contracts with other agencies of the state, the  
204 Federal Government, other states, interstate agencies, groups,  
205 political subdivisions, and industries affected by the  
206 provisions of this act, rules, or policies of the department.  
207 However, the secretary of the department shall not enter into  
208 any interstate agreement relating to the transport of ozone  
209 precursor pollutants, nor modify its rules based upon a  
210 recommendation from the Ozone Transport Assessment Group or any  
211 other such organization that is not an official subdivision of  
212 the United States Environmental Protection Agency but which  
213 studies issues related to the transport of ozone precursor



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214 pollutants, without prior review and specific legislative  
215 approval.

216 (b) Enter into agreements and contracts with public or  
217 private entities to accept and expend donations, grants of  
218 funds, and payments to expedite the evaluation of the entity's  
219 application for a permit under s. 373.4131 or s. 373.4146. Such  
220 agreements and contracts must be effective for at least 3 years.  
221 Permit evaluations under this paragraph must follow the same  
222 permit application evaluation procedures as those for an entity  
223 that does not have an agreement or a contract with the  
224 department. The department shall ensure that agreements and  
225 contracts entered into under this paragraph do not substantively  
226 or procedurally affect the impartial evaluation of the entity's  
227 permit application. Such active agreements and contracts must be  
228 posted on the department's website.

229  
230 The department shall implement such programs in conjunction with  
231 its other powers and duties and shall place special emphasis on  
232 reducing and eliminating contamination that presents a threat to  
233 humans, animals or plants, or to the environment.

234 Section 3. Paragraph (b) of subsection (1) and paragraphs  
235 (a), (b), and (d) of subsection (3) of section 403.892, Florida  
236 Statutes, are amended, and subsection (6) is added to that  
237 section, to read:

238 403.892 Incentives for the use of graywater technologies.-

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

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

241 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

242 (3) To qualify for the incentives under subsection (2), the



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243 developer or homebuilder must certify to the applicable  
244 governmental entity as part of its application for development  
245 approval or amendment of a development order that all of the  
246 following conditions are met:

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

251 (b) Each single-family residential home or residence will  
252 have its own residential graywater system ~~that is~~ dedicated for  
253 its use. Each residence forming part of a multifamily project  
254 will be serviced by either its own residential graywater system  
255 dedicated for its use or a master graywater collection and reuse  
256 system for the entire project.

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

259 (6) This section does not apply to multifamily projects  
260 more than five stories in height. Whether a dwelling is occupied  
261 by an owner is not an eligibility criterion for a developer or  
262 homebuilder to receive the incentives authorized pursuant to  
263 this section.

264 Section 4. The Department of Environmental Protection shall  
265 adopt and modify rules adopted pursuant to ss. 373.4136 and  
266 373.414, Florida Statutes, to ensure that required financial  
267 assurances are equivalent and sufficient to provide for the  
268 long-term management of mitigation permitted under ss. 373.4136  
269 and 373.414, Florida Statutes. The department, in consultation  
270 with the water management districts, shall include the  
271 rulemaking required by this section in existing active



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272 rulemaking or shall complete rule development by June 30, 2023.

273 Section 5. Effective July 1, 2022, the sum of \$2.04 million  
274 in recurring funds from the Grants and Donations Trust Fund is  
275 appropriated to the Department of Environmental Protection, and  
276 24 full-time equivalent positions are authorized, to evaluate  
277 applications for permits issued under ss. 373.4131 and 373.4146,  
278 Florida Statutes, for entities with which the department has  
279 entered into agreements or contracts under s. 403.061(22),  
280 Florida Statutes. To obtain and retain such positions, the  
281 department may increase the maximum rate of basic pay up to 30  
282 percent for each position.

283 Section 6. This act shall take effect upon becoming a law.

284  
285 ===== T I T L E A M E N D M E N T =====

286 And the title is amended as follows:

287 Delete everything before the enacting clause  
288 and insert:

289 A bill to be entitled  
290 An act relating to environmental management; creating  
291 s. 373.4134, F.S.; providing legislative findings and  
292 intent; defining terms; providing for water quality  
293 enhancement areas, enhancement service areas, and  
294 enhancement credits; providing requirements for water  
295 quality enhancement area permits, enhancement service  
296 areas, and enhancement credits; directing the  
297 Department of Environmental Protection and water  
298 management districts to authorize the sale and use of  
299 enhancement credits to offset certain adverse water  
300 quality impacts and to meet certain water quality



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301 requirements; providing construction; requiring the  
302 department to maintain enhancement credit ledgers;  
303 authorizing the department to adopt rules; amending s.  
304 403.061, F.S.; authorizing the department to enter  
305 into agreements and contracts with public and private  
306 entities for donations, funds, and payments to  
307 expedite the evaluation of environmental resource and  
308 dredge and fill permits; providing requirements for  
309 such agreements and contracts and permit evaluations;  
310 requiring the department to make such agreements and  
311 contracts publicly available on its website; amending  
312 s. 403.892, F.S.; correcting a cross-reference;  
313 revising the conditions that a developer or  
314 homebuilder must certify it meets as part of its  
315 application for development approval or amendment of a  
316 development order; providing applicability; requiring  
317 the department to adopt or modify specified rules, as  
318 applicable; providing requirements for such  
319 rulemaking; providing an appropriation and authorizing  
320 full-time equivalent positions; authorizing the  
321 department to increase the maximum rate of basic pay  
322 for certain positions by up to a specified percentage;  
323 providing an effective date.