

CHAPTER 2022-215

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 965

An act relating to environmental management; creating s. 373.4134, F.S.; providing legislative findings and intent; providing definitions; providing for water quality enhancement areas, water quality enhancement area permits, water quality enhancement service areas, and enhancement credits; providing requirements for such areas, permits, and credits; directing the Department of Environmental Protection and water management districts to authorize the sale and use of enhancement credits for specified purposes; providing construction; providing that the authority of the act is supplemental; directing the department to maintain enhancement credit ledgers; authorizing the department to adopt rules; providing amending s. 403.892, F.S.; correcting a cross-reference; revising requirements for developers and homebuilders to qualify for graywater technology incentives; providing that certain occupancy is not eligibility criterion for such incentives; requiring the department to adopt and modify specified rules; providing rulemaking requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make enhancement credits available for purchase 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 under this section will improve the certainty and long-term viability of water quality treatment systems.

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

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

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

(a) “Enhancement credit” means a standard unit of measure that represents a quantity of pollutant removed.

(b) “Governmental entity” means any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(c) “Natural system” means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats.

(d) “Water quality enhancement area” means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a water quality enhancement area permit issued under this section.

(e) “Water quality enhancement area permit” means an environmental resource permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of an enhancement area and the purchase and sale of enhancement credits.

(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 market enhancement credits to third parties.

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

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

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

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

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

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

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

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

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

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

(c) The department shall base its determination of the award of enhancement credits on standard numerical models or analytical tools

that establish the ability of the water quality enhancement area to remove pollutants or constituents.

1. If a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as the watershed in which the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the efficacy of the water quality enhancement area. Supporting information must include, but need not be limited to:

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

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

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

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other

applicable federal, state, and local permits for construction activities associated with the water quality enhancement area.

(5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department shall establish a water quality enhancement service area for each water quality enhancement area. Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic area in which the water quality enhancement area could reasonably be expected to address adverse impacts. Enhancement service areas may overlap, and enhancement service areas for two or more water quality enhancement areas may be approved for a regional watershed.

(6) MONITORING AND VERIFICATION.—

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

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must revoke the ability of the permittee to sell enhancement credits until the water quality enhancement area complies with the permit conditions.

(7) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan under s. 403.067.

(b) Before approving the use of enhancement credits, the department or water management district must determine that the enhancement credits used by an applicant seeking a permit under this part are appropriate for a specific permit use.

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

(d) The department shall provide for and maintain a ledger to track the award, release, and use of enhancement credits.

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

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

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

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

(g) Use of enhancement credits made available by water quality enhancement areas is voluntary.

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

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

(j) Notwithstanding any other law, this section does not limit or restrict the authority of the department to deny the use of enhancement credits when the department is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the governmental entity is within the enhancement service area. The department may allow the use of enhancement credits if the department receives a request for the use of enhancement credits and determines that such use will not cause or contribute to a violation of water quality standards.

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

(9) RULES.—The department shall adopt rules to implement this section. This section may not be implemented until the department adopts such rules.

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

403.892 Incentives for the use of graywater technologies.—

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

(b) “Graywater” has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

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

(a) The proposed or existing development has at least 25 detached single-family residential homes that are either detached or 25 multifamily dwelling units, which may include apartments dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

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

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

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

Section 3. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414, Florida Statutes, to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking, or shall complete rule development by June 30, 2023.

Section 4. This act shall take effect July 1, 2022.

Approved by the Governor June 24, 2022.

Filed in Office Secretary of State June 24, 2022.