

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1646

SPONSOR: Natural Resources Committee and Senator Laurent

SUBJECT: Water pollution control

DATE: March 22, 2000                      REVISED: 4/4/00                      \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION                 |
|----|-----------------|----------------|-----------|------------------------|
| 1. | <u>Branning</u> | <u>Voigt</u>   | <u>NR</u> | <u>Favorable/CS</u>    |
| 2. | <u>Bowman</u>   | <u>Yeatman</u> | <u>CA</u> | <u>Fav/l Amendment</u> |
| 3. | _____           | _____          | <u>FR</u> | _____                  |
| 4. | _____           | _____          | _____     | _____                  |
| 5. | _____           | _____          | _____     | _____                  |

**I. Summary:**

The committee substitute (CS) provides a program for financing various water pollution control projects through bonding and other debt instruments issued by the Florida Water Pollution Control Financing Corporation created by this act and the use of the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund; specifies duties of the corporation; provides tax exemptions for the corporation; and authorizes rulemaking for the Department of Environmental Protection (DEP).

The CS amends s. 403.1835, F.S.; creates s. 403.1837, F.S.; and repeals s. 403.1836, F.S.

**II. Present Situation:**

Currently, s. 403.1835, F.S., provides for a sewage treatment facilities revolving loan program and creates the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund. The main purpose of the program is to establish a self-perpetuating loan program to accelerate construction of sewage treatment facilities by local governmental agencies. The DEP is authorized to make loans and grants to local governmental agencies to assist them in planning, designing, and constructing sewage treatment facilities and stormwater management systems. The DEP may administer the resulting portfolio of loans, including the authority to sell or pledge the loans, or any portion of the loans, with the approval of the Governor, the Treasurer, and the Comptroller, acting as the State Board of Administration. In addition, the DEP may:

- Make grants, loans, provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the DEP. Local governmental agencies are authorized to borrow funds made available pursuant to this section and may pledge any revenue available to them to repay any funds borrowed. The DEP must reserve 15 percent of each annual allocation for loans to small communities. For the purposes of this program, a small community is one with a population of 20,000 or less as of the 1990 census.

- Make grants to financially disadvantaged small communities, as defined in s. 403.1838, F.S., using funds made available from grant allocations on loans.
- Make grants to local government agencies as authorized under the Federal Water Pollution Control Act, (Clean Water Act) or as a result of other federal action.

The interest rate for the loans is determined during the fiscal quarter in which the loan agreement is executed and cannot be greater than that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution (bonds for pollution control and abatement and other water facilities.) The interest rates for loans during 1996 ranged from 2.56 to 2.99 percent.

The need for funds to address wastewater and stormwater needs in Florida far exceeds the amount available in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund. The U.S. Environmental Protection Agency in its 1996 Clean Water Needs Survey, provided estimates of funding need. Florida's sewer needs were reported to be \$5.4 billion. The Department of Environmental Protection reports a need for \$2.3 billion in its "planning portion" list of sewer-related projects requested by local governments in Florida.

Florida has received approximately \$45 million in federal funds in each of the last 3 fiscal years. These federal funds require a 20 percent state match. The rate of federal and state funding is not adequate to meet the needs for sewer facilities in this rapid growing state.

Even with inadequate federal funding for sewer projects, Congress has amended the federal Clean Water Act to allow these traditional sewer funds to be used for a broader array of projects including stormwater management systems, nonpoint source pollution control, and estuary conservation and management projects. These new categories of eligible projects could have needs approaching \$5-7 billion on top of the sewer needs of \$5.4 billion. If federal funding continues at an annual rate of \$45 million, it appears that progress in meeting needs will be very slow.

From 1989 to 2000, the DEP has issued approximately \$566 million in low-interest loans. The loan repayment revenue stream in 1999 was \$47 million. The DEP seeks to obtain legislative authorization to use this revenue stream to issue bonds or other similar debt instruments to produce additional funds in a short-term financing plan to produce funding for the broader array of projects eligible under the federal Clean Water Act. By leveraging the revenue stream to issue bonds, there could be a larger amount of funds available for projects in the short term than otherwise would be available from the current low-interest loan program. However, the DEP recognizes that over the long term more funds would be available for projects without leveraging and merely continuing the low-interest loan program in the manner it is currently administered.

In 1999, the Legislature enacted the Watershed Protection Act which requires a comprehensive approach to watershed management. The DEP has noted that water quality problems vary between watersheds and in some instances focusing on nonpoint pollution source management is more effective than focusing on point sources such as sewer plants. The DEP seeks broad discretion to determine how best to use the traditional federal sewer funds for other pollution control projects such as stormwater management systems and estuary conservation projects.

### III. Effect of Proposed Changes:

The CS would expand the kinds of projects that may be funded under the sewage treatment revolving loan fund (SRF), including septic tank replacement or upgrades, projects to address agricultural runoff and other nonpoint sources of pollution, certain restoration activities, and other activities eligible under the federal Clean Water Act. In addition, the CS allows a full range of financing options to take advantage of market conditions and expand the funding capabilities of the SRF.

**Section 1:** Section 403.1835, F.S., is amended to expand the range of projects eligible for funding under the SRF to all projects eligible for such funding under the federal Clean Water Act. The section is renamed to specify that it is “water pollution control financial assistance.” It is to be a self-perpetuating program to accelerate the implementation of water pollution control projects. Projects and activities that may be funded are those eligible under s. 603 of the Federal Water Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as amended. Such projects include, but are not limited to, planning, design, construction, and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems, and estuary conservation and management.

The SRF is linked to a newly created Florida Water Pollution Control Financing Corporation for the purpose of leveraging the program to expand funding ability. Bonds, certificates, or other obligations of indebtedness would be issued by the Florida Water Pollution Control Financing Corporation instead of the Division of Bond Finance of the State Board of Administration.

The department may make grants and loans, provide loan guarantees, to purchase loan insurance, and to refinance local debt through the issue of new loans for projects approved by the department. This financial assistance must be administered in accordance with s. 403.1835, F.S., and applicable federal authorities. The DEP may administer the resulting portfolio of loans, including funds accrued through the activities of the Florida Water Pollution Control Financing Corporation. More specifically, the department:

- May make loans to local government agencies, which agencies may pledge any revenue available to them to repay any funds borrowed.
- May make loans, grants, and deposits to other entities eligible to participate in the financial assistance programs authorized in the Federal Water Pollution Control Act, or as a result of other federal action, which entities may pledge any revenue available to them to repay any funds borrowed.
- Shall administer financial assistance so that at least 15 percent of the funding made available each year is reserved for use by small communities during the year it is reserved.
- May make grants to financially disadvantaged small communities.

The requirement that the term of the loans not exceed 30 years is deleted.

Prior to approval of financial assistance, the applicant must submit certain security and financial information.

Eligible projects are to be given priority according to the extent each project removes, mitigates, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities.

The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies;
- Assist in the implementation of total maximum daily loads (TMDLs) adopted under s. 403.067, F.S.;
- Enable compliance with other pollution control requirements, including but not limited to toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- Assist in the implementation of surface water improvement and management plans and pollutant load reductions goals developed under state water policy;
- Promote reclaimed water reuse;
- Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

The department may impose a penalty on delinquent loan payments in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. If a loan recipient, other than a local government agency, defaults under the terms of a loan, the department may pursue any remedy available to it at law or in equity. The department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on any amount due in addition to charging the cost to handle and process the debt.

The department may obligate moneys available in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund for payment of amounts payable under any service contract entered into by the department with the Florida Water Pollution Control Financing Corporation subject to annual appropriation by the Legislature. Amounts on deposit in the trust fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department under this subparagraph and appropriated each year by the Legislature before making or providing for other disbursement from the trust fund.

The State Board of Administration shall invest and reinvest moneys in the trust fund in accordance with ss. 215.44-215.53, F.S. Costs and fees of the State Board of Administration for providing those investment services shall be deducted from the earnings accruing to the trust fund.

Under the provisions of s. 19(f)(3), Art. III of the State Constitution, the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund is exempt from termination provisions of s. 19(f)(2), Art. III of the State Constitution.

Broad language relating the Legislature's revenue shortfalls and the authority for the department to evaluate innovative fund enhancing proposal is deleted.

The department may adopt rules regarding program administration; project eligibilities and priorities, including the development and management of project priority lists; financial assistance application requirements associated with planning, design, construction, and implementation activities, including environmental and engineering requirements; financial assistance agreement conditions, disbursement and repayment provisions; auditing provisions; program exceptions, the procedural relationship between the department and the Florida Water Pollution Control Financing Corporation.

**Section 2:** Section 403.1837, F.S., is created to establish the Florida Water Pollution Control Financing Corporation. The corporation is a nonprofit public-benefit corporation for the purpose of financing the costs of water pollution control projects and activities described in s. 403.1835, F.S.

The corporation is to be governed by a board of directors consisting of the Governor's Budget Director, the Comptroller or the Comptroller's designee, the Treasurer or the Treasurer's designee, and the Secretary of Environmental Protection or the secretary's designee, until January 7, 2003, at which time the board shall include the Chief Financial Officer or the Chief Financial Officer's designee in place of the Treasurer and Comptroller. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise operation of the corporation. The corporation shall have such other officers as may be determined by the board of directors.

Prior to seeking assistance from the corporation for funding water pollution control projects and activities, the department must obtain legislative authorization for spending authority in the General Appropriations Act for the funds anticipated to be raised by the corporation. Such prior legislative authorization in the annual General Appropriations Act must be obtained for each subsequent request for assistance from the corporation where new or additional funds will be generated and expended.

The corporation shall have all the powers of a corporate body under the laws of the state to the extent not inconsistent with or restricted by this section, including but not limited to the power to:

- Adopt, amend, and repeal bylaws not inconsistent with this section.
- Sue and be sued.
- Adopt and use a common seal.

- Acquire, purchase, hold, lease, and convey any real and personal property necessary for the corporation.
- Elect or appoint and employ such officers, agents, and employees as the corporation considers advisable to operate and manage the affairs of the corporation.
- Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness described in s. 403.1835, F.S.
- Sell all or any portion of the loans issued under s. 403.1835, F.S., to accomplish the purposes of s. 403.1837, F.S.
- Make and execute any contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and s. 403.1837, F.S.
- Select, retain, and employ professionals, contractors, or agents, which may include the Division of Bond Finance of the State Board of Administration, as is necessary or convenient to enable or assist the corporation in carrying out its purposes.
- Do any act or thing necessary or convenient to carry out the purposes of the corporation.

The corporation shall evaluate all financial and market conditions necessary and prudent for the purpose of making sound, financially responsible, and cost-effective decisions in order to secure additional funds to fulfill the purposes of ss. 403.1837 and 403.1835, F.S.

The corporation may enter into one or more service contract with the department under which the corporation shall provide services to the department in connection with financing the function, projects, and activities provided for in s. 403.1835, F.S. The corporation may enter into one or more service contracts with the corporation and provide for payments under those contracts pursuant to s. 403.1835(9), F.S., subject to annual appropriation by the Legislature. The proceeds from the service contracts may be used for the costs and expenses of administration of the corporation after certain payments. In compliance with s. 287.0641, F.S., the obligations of the department under the service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state, nor may the obligations be construed in any manner as an obligation of the State Board of Administration or entities for which it invests funds, or the department except as provided in s. 403.1837, F.S., as payable solely from amounts available under any service contract between the corporation and the department. The service contract must expressly include the following statement: “The State of Florida’s performance and obligation to pay under this contract is contingent upon annual appropriation by the Legislature.”

The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract. The corporation may select a financing team and issue obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Any such indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state, but is payable from and secured by payments made by the department under the service contract.

The corporation is exempt from taxation and assessments of any nature whatsoever upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the its purposes. The obligations of the corporation incurred under these provisions are exempt from all taxation; however the exemption does not apply to any tax imposed by ch. 220, F.S., on the interest, income, or profits on debt obligations owned by corporations.

The corporation shall validate any bonds issued, except refunding bonds which may be validated at the option of the corporation, by proceedings under ch. 75, F.S. The validation complaint must be filed only in the Circuit Court for Leon County. The notice required under s. 75.06, F.S., must be published in Leon County and the complaint and order of the circuit court shall be served only on the State Attorney for the Second Judicial Circuit. The validation of the first bonds may be appealed to the Supreme Court and the appeal shall be handled on an expedited basis.

The corporation and the department shall not take any action that will materially and adversely affect the rights of holders of any obligations issued under this section as long as the obligations are outstanding.

The corporation is not a special district for purposes of ch. 189, F.S., or a unit of local government for purposes of part III of ch. 218, F.S. Generally, the provisions of ch. 120 and ch. 215, F.S., do not apply. The exception is the limitation on interest rates provided by s. 215.84, F.S. Part I of ch. 287, F.S., except ss. 287.0582 and 287.0641, F.S., does not apply to the corporation, the service contracts, or debt obligations issued by the corporation.

The benefits or earnings of the corporation may not inure to the benefit of any private person, except persons receiving the grants and loans.

Upon dissolution of the corporation, title to all property owned by the corporation reverts to the department.

The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation and to hold, administer, and invest proceeds of those debt obligations and other funds of the corporation and perform other services required by the corporation. The State Board of Administration may perform these services and may contract with others to provide all or part of those services and to recover the costs and expenses of providing those services.

The Auditor General may conduct a financial audit of the accounts and records of the corporation.

**Section 3:** Section 403.1836, F.S., is repealed. This section specifies that each fiscal year, the Department of Environmental Protection shall make available up to 10 percent of the annual revenue received in the Wastewater Treatment and Stormwater Management Revolving Trust Fund for loans to local governmental agencies for constructing stormwater management systems.

**Section 4:** This act takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

If DEP allocates less money to sewer construction projects, local governments would not receive these subsidies for construction of such facilities and the result would be higher sewer fees on households for the construction of such facilities in their area.

The ability to leverage the revenue stream associated with the sewage treatment revolving loan program could make available substantial funds in the short term to initiate construction at an accelerated pace. Engineering firms, construction firms, and service workers would benefit from the increased infrastructure construction. Providing good water quality and adequate sewage treatment could increase property values in the affected areas and positively influence residents and tourists coming into the state.

**C. Government Sector Impact:**

While local governments in Florida have enormous unmet needs for sewer construction projects, stormwater management projects, and surface water restoration projects, the funding mechanisms provided in CS do not make significant inroads to providing significant long-term funding for these enormous needs. In fact, the funding mechanisms provided in this CS actually will result in only short-term financing benefits.

The CS amends a section of law that has been historically used to provide significant funding primarily for sewer system projects. The CS gives the Department of Environmental Protection very broad authority to decide whether funds available will be used for sewer projects or stormwater projects or estuary conservation projects without any guidance from the Legislature as to how funds should be allocated among these various projects.

The Department of Environmental Protection is required to obtain for spending authority in the General Appropriations Act for the funds anticipated to be raised by the Florida Water Pollution Control Financing Corporation. It is not clear in the CS how a determination will be made by the Department of Environmental Protection about the amount of funds to be raised by the Florida Water Pollution Control Financing Corporation.

The DEP has indicated that the amount of additional funds available for new loans as a result of a loan sale or state bond issuance would be entirely dependent on the dollar value of the loans “sold” or bonds issued along with the market conditions in effect at the time. Only selected loans in the existing department portfolio would be marketable, or would represent a prudent repayment source for a bond issue. In addition, the department would have to limit the size of any bond issue based on the value of projects ready to incur reimbursable costs (design, construction). It is likely that initial bond issues would be relatively small, reflecting both a conservative approach to a new program and the fact that it will take time for ready-to-proceed projects to emerge and qualify for funding.

Expanding the amount of funds available in the near term through the issuance of bonds would reduce the amount of money available in the SRF for loans in later years.

The department would incur certain costs associated with rulemaking; however, those costs cannot be determined at this time.

#### **VI. Technical Deficiencies:**

On p. 15, line 16, the CS states that “The corporation shall validate any bonds issued.” As only circuit courts validate bonds under chapter 75, the language should state that the corporation “shall seek validation” of any bonds issued under the CS.

#### **VII. Related Issues:**

None.

#### **VIII. Amendments:**

#1 by Comprehensive Planning, Local and Military Affairs:  
Requires the corporation to seek validation of bonds (technical).