

Committee Substitute for
Committee Substitute for Senate Bill No. 1646

An act relating to water pollution control; amending s. 403.1835, F.S.; providing for a method of financing water pollution control projects eligible under specified federal law; authorizing loans and grants; providing for the use of the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund; requiring the Department of Environmental Protection to adopt a priority system by rule; providing criteria for the rule; authorizing the imposition of penalty interest; granting rulemaking authority to the Department of Environmental Protection; creating s. 403.1837, F.S.; creating the Florida Water Pollution Control Financing Corporation; providing for its membership and powers; authorizing the corporation to enter into service contracts with the Department of Environmental Protection; authorizing the issuance of bonds and other obligations; authorizing the sale of loans issued under s. 403.1835, F.S.; providing for tax exemptions; requiring the corporation to evaluate all financial and market conditions necessary and prudent for the purpose of making sound, financially responsible, and cost-effective decisions to secure additional funding for water pollution control projects; authorizing the corporation to contract with the State Board of Administration for services; repealing s. 403.1836, F.S., relating to the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund; providing an appropriation; providing an effective date.

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

Section 1. Section 403.1835, Florida Statutes, is amended to read:

~~403.1835~~ Water pollution control financial assistance ~~Sewage treatment facilities revolving loan program.~~—

(1) The purpose of this section is to assist in implementing the legislative declaration of public policy as contained in s. 403.021 by establishing a self-perpetuating ~~loan program~~ to accelerate the implementation of water pollution control projects construction of sewage treatment facilities by local governmental agencies and to assist local governmental agencies. 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; including, but 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.

(2) For the purposes of this section, the term:

(a) “Local governmental agencies” means local governmental agencies as defined in s. 403.1822(3).

(b) ~~“Sewage treatment facilities” means all facilities necessary, including land, for the collection, treatment, or disposal of domestic wastewater.~~

(b)(c) “Bonds” means state bonds, certificates, or other obligations of indebtedness issued by the Florida Water Pollution Control Financing Corporation under Division of Bond Finance of the State Board of Administration pursuant to this section and s.403.1837 the State Bond Act.

(c) “Corporation” means the Florida Water Pollution Control Financing Corporation.

~~(3) The department 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 department 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, to ensure compliance with subsection (1).~~

(a) The department may provide financial assistance through any program authorized under s. 603 of the Federal Water Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as amended, including, but not limited to, making grants and loans, providing loan guarantees, purchasing loan insurance or other credit enhancements, and buying or refinancing is authorized to make loans, to 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 this section and applicable federal authorities. The department shall administer all programs operated from funds secured through the activities of the Florida Water Pollution Control Financing Corporation under s. 403.1837, to fulfill the purposes of this section.

(a) The department may make or request the corporation to make loans to local government agencies, which agencies may pledge any revenue available to them to repay any funds borrowed.

(b) The department may make or request the corporation to make loans, grants, and deposits to other entities eligible to participate in the financial assistance programs authorized under 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.

(c) The department shall administer financial assistance so that at least 15 percent of the funding made available each year under this section is reserved for use by small communities during the year it is reserved. 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 department shall administer loans to local governmental agencies so that at least 15 percent of each annual allocation for loans is reserved for small communities.

(d)(b) The department may make grants to financially disadvantaged small communities, as defined in s. 403.1838, using funds made available

from grant allocations on loans authorized under subsection (4). The grants must be administered in accordance with s. 403.1838.

~~(c) The department may make grants to local government agencies as authorized under the Federal Water Pollution Control Act, or as a result of other federal action. The grants must be administered in accordance with this section and applicable federal requirements.~~

~~(4) The term of loans made pursuant to this section shall not exceed 30 years. The department may assess grant allocations on the loans made under this section for the purpose of making grants to financially disadvantaged small communities. The combined rate of interest and grant allocations on loans shall be no greater than the interest rate paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution. The grant allocations on a loan shall be equal to or less than the interest rate on the loan.~~

~~(5)(a) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section, including rules to administer the state revolving fund authorized pursuant to the Federal Water Pollution Control Act, as amended.~~

~~(b) The department shall prepare an annual report detailing the amount of grants, amount loaned, interest earned, grant allocations, and loans outstanding at the end of each fiscal year.~~

~~(6) Prior to approval of financial assistance, the applicant a construction loan, the local government shall:~~

~~(a) Submit evidence of credit worthiness, loan security, and a loan Provide a repayment schedule in support of a request for a loan.~~

~~(b) Submit plans and specifications and evidence of permissibility in support of a request for funding of construction or other activities requiring a permit from the department for sewage treatment facilities and storm-water management systems.~~

~~(c) Provide assurance that records will be kept using generally accepted government accounting principles standards and that the department, the Auditor General, or their agents will have access to all records pertaining to the financial assistance provided loan.~~

~~(d) Provide assurance that the subject facilities, systems, or activities facility will be properly operated and maintained.~~

~~(e) Identify the revenues to be pledged and document their sufficiency for loan repayment and pledged revenue coverage in support of a request for a loan Document that the revenues generated will be sufficient to ensure that the facilities will be self-supporting.~~

~~(f) Provide assurance that annual financial information audit reports, and a separate project audit prepared by an independent certified public accountant upon project completion, will be provided as required by submitted to the department.~~

(g) Provide assurance that a project audit prepared by an independent certified public accountant upon project completion will be submitted to the department in support of a request for a grant.

(h)(g) Submit project planning documentation demonstrating a cost comparison of alternative methods cost-effectiveness, environmental soundness, public participation, and financial feasibility for any proposed project or activity the implementability of the proposed sewage treatment facilities and stormwater management systems.

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, 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:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including but not limited to toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans approved under s. 373.456 and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters. However, preference must be given to eligible projects that protect the public health or are required by law to eliminate sewage treatment facility discharges into specific bodies of water.

(8)(a) If a local governmental agency becomes delinquent on its loan, the department shall so certify to the Comptroller who shall forward the amount delinquent to the department from any unobligated funds due to the local governmental agency under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan. The department may impose a penalty for delinquent loan payments in an ~~the~~ amount not to exceed an interest rate of 18 6 percent per annum on ~~of~~ the amount due in addition to

charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(b) 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. Penalty interest accrues on any amount due and payable beginning on the 30th day following the date upon which the amount is due.

(9) Funds for the loans and grants authorized under this section must be managed as follows:

(a) A nonlapsing trust fund with revolving loan provisions to be known as the "Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund" is established in the State Treasury to be used as a revolving fund by the department to carry out the purpose of this section. Any funds therein which are not needed on an immediate basis for grants or loans may be invested pursuant to s. 215.49. The cost of administering the program shall be paid from federal funds, from reasonable service fees that may be imposed upon loans, and from proceeds from the sale of loans as permitted by federal law so as to enhance program perpetuity. Grants awarded by the Federal Government, state matching funds, and investment earnings thereon shall be deposited into the trust fund. Proceeds from the sale of loans must be deposited into the trust fund. All moneys available in the trust fund, including investment earnings, are hereby designated to carry out the purpose of this section. The principal and interest payments of all loans held by the trust fund shall be deposited into this trust fund.

1. 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 under s. 403.1837, 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.

2. 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 the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

(b) Revenues from the loan grant allocations authorized under subsection (4), federal appropriations, state matching funds for grants authorized by federal statute or other federal action, and service fees, and all earnings thereon, shall be deposited into the department's Grants and Donations Trust Fund. Service fees and all earnings thereon must be used solely for program administration. The loan grant allocation revenues and earnings thereon must be used solely for the purpose of making grants to financially

disadvantaged small communities. Federal appropriations and state matching funds for grants authorized by federal statute or other federal action, and earnings thereon, must be used solely for the purposes authorized. All deposits into the department's Grants and Donations Trust Fund under this section, and earnings thereon, must be accounted for separately from all other moneys deposited into the fund.

(10) 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 and contractual relationship between the department and the Florida Water Pollution Control Financing Corporation under s. 403.1837; and other provisions consistent with the purposes of this section. ~~Because the Legislature has experienced revenue shortfalls in recent years and has been unable to provide enough funds to fully match available federal funds to help capitalize the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund, it is necessary for innovative approaches to be considered to help capitalize the revolving loan fund. The department shall evaluate potential innovative approaches that can generate funds to match available federal funds. The department may adopt approaches that will help ensure the continuing viability of the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund. The department shall consider, among other possible alternatives, the option of implementing by rule a program to allow local governments to offer funds voluntarily to the state for use as a match to available federal funds to capitalize the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund.~~

(11) Any projects for reclaimed water reuse in Monroe County funded from the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund must take into account water balances and nutrient balances in order to prevent the runoff of pollutants into surface waters.

Section 2. Section 403.1837, Florida Statutes, is created to read:

403.1837 Florida Water Pollution Control Financing Corporation.—

(1) The Florida Water Pollution Control Financing Corporation is created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of water pollution control projects and activities described in s. 403.1835. The projects and activities described in that section are found to constitute a public governmental purpose, be necessary for the health, safety, and welfare of all residents, and include legislatively approved fixed capital outlay projects. The fulfillment of the purposes of the corporation promotes the health, safety, and welfare of the people of the state and serves essential governmental functions and a paramount public purpose. The activities of the corporation are specifically limited to assisting the department in implementing financing activities to provide funding for the programs authorized in s. 403.1835. All other activities relating to the

purposes for which the corporation raises funds are the responsibility of the department, including, but not limited to, development of program criteria, review of applications for financial assistance, decisions relating to the number and amount of loans or other financial assistance to be provided, and enforcement of the terms of any financial assistance agreements provided through funds raised by the corporation. The corporation shall terminate upon fulfillment of the purposes of this section.

(2) The corporation shall be governed by a board of directors consisting of the Governor's Budget Director or the budget director's designee, 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.

(3) 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:

(a) Adopt, amend, and repeal bylaws not inconsistent with this section.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey any real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section, and to sell, lease, or otherwise dispose of that property.

(e) Elect or appoint and employ such officers, agents, and employees as the corporation considers advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the department and the state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness described in s. 403.1835.

(g) Operate, as specifically directed by the department, any program to provide financial assistance authorized under s. 403.1835(3), which may be funded from any funds received under a service contract with the department, from the proceeds of bonds issued by the corporation, or from any other funding sources obtained by the corporation.

(h) Sell all or any portion of the loans issued under s. 403.1835 to accomplish the purposes of this section and s. 403.1835.

(i) Make and execute any contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.

(j) 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 and this section.

(k) Do any act or thing necessary or convenient to carry out the purposes of the corporation and this section.

(4) 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 this section and s. 403.1835.

(5) The corporation may enter into one or more service contracts with the department under which the corporation shall provide services to the department in connection with financing the functions, projects, and activities provided for in s. 403.1835. The department may enter into one or more service contracts with the corporation and provide for payments under those contracts pursuant to s. 403.1835(9), subject to annual appropriation by the Legislature. The service contracts may provide for the transfer of all or a portion of the funds in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund to the corporation for use by the corporation for costs incurred by the corporation in its operations, including, but not limited to, payment of debt service, reserves, or other costs in relation to bonds issued by the corporation, for use by the corporation at the request of the department to directly provide the types of local financial assistance provided for in s. 403.1835(3), or for payment of the administrative costs of the corporation. The department may not transfer funds under any service contract with the corporation without specific appropriation for such purpose in the General Appropriations Act, except for administrative expenses incurred by the State Board of Administration or other expenses necessary under documents authorizing or securing previously issued bonds of the corporation. The service contracts may also provide for the assignment or transfer to the corporation of any loans made by the department. The service contracts may establish the operating relationship between the department and the corporation and shall required the department to request the corporation to issue bonds before any issuance of bonds by the corporation, to take any actions necessary to enforce the agreements entered into between the corporation and other parties, and to take all other actions necessary to assist the corporation in its operations. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under the service contracts does 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 of the department except as provided in this section as payable solely from amounts available under any service contract between the corporation and the department, subject to appropriation. In compliance with this subsection and s. 287.0582,

service contracts must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(6) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts received from payment of loans and other moneys received by the corporation, including, but not limited to, amounts payable to the corporation by the department under a service contract entered into under subsection (5). The corporation may not issue bonds in excess of an amount authorized by general law or an appropriations act except to refund previously issued bonds. The corporation may issue bonds in amounts not exceeding \$50 million in fiscal year 2000-2001, \$75 million in fiscal year 2001-2002, and \$100 million in fiscal year 2002-2003. The proceeds of the bonds may be used for the purpose of providing funds for projects and activities provided for in subsection (1) or for refunding bonds previously issued by the corporation. 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.

(7) 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 purposes provided in ss. 403.1835 and 403.1838. The obligations of the corporation incurred under subsection (6) and the interest and income on the obligations and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection with, or given to secure payment of the obligations are exempt from all taxation; however, the exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(8) The corporation shall validate any bonds issued under this section, except refunding bonds, which may be validated at the option of the corporation, by proceedings under chapter 75. The validation complaint must be filed only in the Circuit Court for Leon County. The notice required under s. 75.06 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. Sections 75.04(2) and 75.06(2) do not apply to a validation complaint filed as authorized in this subsection. The validation of the first bonds issued under this section may be appealed to the Supreme Court and the appeal shall be handled on an expedited basis.

(9) 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.

(10) The corporation is not a special district for purposes of chapter 189 or a unit of local government for purposes of part III of chapter 218. The provisions of chapters 120 and 215, except the limitation on interest rates provided by s. 215.84, which applies to obligations of the corporation issued

under this section, and part I of chapter 287, except ss. 287.0582 and 287.0641, do not apply to this section, the corporation created in this section, the service contracts entered into under this section, or debt obligations issued by the corporation as provided in this section.

(11) The benefits or earnings of the corporation may not inure to the benefit of any private person, except persons receiving grants and loans under s. 403.1835.

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

(13) The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation as provided by this section and to hold, administer, and invest proceeds of those debt obligations and other funds of the corporation and to 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 a part of those services and to recover the costs and expenses of providing those services.

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

Section 3. Section 403.1836, Florida Statutes, is repealed.

Section 4. In fiscal year 2000-2001, the Department of Environmental Protection is appropriated an amount not to exceed \$10 million from the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund for the purpose of transferring funds to the Florida Water Pollution Control Financing Corporation under service contract to carry out the activities authorized in sections 403.1835 and 403.1837, Florida Statutes.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.