CHAPTER 97-236

House Bill No. 1323

An act relating to water protection; amending s. 403.8532, F.S.; authorizing the Department of Environmental Protection to make loans to certain public water systems; authorizing use of certain federal Safe Drinking Water Act funds for specified purposes; providing loan criteria, requirements, and limitations; providing for department rules; requiring an annual report; providing for audits; providing for loan service fees; providing for disposition of funds; providing for default; providing penalties for delinquent payments or noncompliance with loan terms and conditions; amending s. 403.860, F.S.; authorizing administrative penalties for failure of a public water system to comply with the Florida Safe Drinking Water Act; providing for rules and procedures; creating s. 403.8615, F.S.; requiring certain new water systems to demonstrate specified technical, managerial, and financial capabilities; creating s. 403.865, F.S.; providing legislative findings and intent relating to operation of water and wastewater treatment facilities by qualified personnel; creating s. 403.866, F.S.; providing definitions; creating s. 403.867, F.S.; requiring such operators to be licensed by the department; creating s. 403.868, F.S.; authorizing a utility to have more stringent requirements; creating s. 403.869, F.S.; authorizing department rules; creating s. 403.87, F.S.; authorizing appointment of a technical advisory council for water and domestic wastewater operator certification; creating s. 403.871, F.S.; providing for application and examination, reexamination, licensure, renewal, and recordmaking and recordkeeping fees; providing for disposition thereof; creating s. 403.872, F.S.; specifying requirements for licensure; creating s. 403.873, F.S.; providing for biennial license renewal; creating s. 403.874, F.S.; providing for inactive status and reactivation of inactive licenses; creating s. 403.875, F.S.; specifying prohibited acts; providing a penalty; creating s. 403.876, F.S.; requiring the department to establish grounds for disciplinary actions; providing for an administrative fine; providing for transfer of powers and duties relating to regulation of operators of water treatment plants and domestic wastewater treatment plants from the Department of Business and Professional Regulation to the Department of Environmental Protection; providing for continuation of certain rules; providing a grandfather provision for operators certified prior to the transfer; amending s. 403.087, F.S.; increasing the maximum term for issuance of permits for stationary water pollution sources; specifying conditions for renewing operation permits for domestic wastewater treatment facilities for an extended term at the same fee; requiring the department to keep certain records; amending s. 403.0871, F.S.; correcting cross references; amending s. 403.0872; clarifying air pollution fee deadline; repealing ss. 468.540, 468.541, 468.542, 468.543, 468.544, 468.545, 468.546, 468.547, 468.548, 468.549, 468.550, 468.551, and 468.552, F.S., relating to water and wastewater treatment plant operator certification by the Department of Business and

CODING: Words ~~striken~~ are deletions; words underlined are additions.

Professional Regulation; providing an appropriation; amending s. 367.022, F.S.; providing regulatory exemptions for nonpotable irrigation water, under certain circumstances; deregulating bulk supplies of water for sale or resale; amending s. 193.625, F.S.; allowing high-water recharge assessments when lands will be used primarily for bona fide high-water recharge purposes for a period of at least 5 years; amending s. 403.1835, F.S.; expanding the sewage treatment facilities revolving loan program to provide loans to local governmental agencies for construction of stormwater management systems; defining "stormwater management system"; providing additional responsibilities of local governments under the program; providing priority for certain stormwater management system projects; providing for funding; providing an effective date.

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

Section 1. Section 403.8532, Florida Statutes, is amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(1) The purpose of this section is to assist in implementing the legislative declarations of public policy contained in ss. 403.021 and 403.851 by establishing infrastructure financing, technical assistance, and source water protection programs to assist public drinking water systems in achieving and maintaining compliance with the Florida Safe Drinking Water Act and the federal Safe Drinking Water Act, as amended, and to conserve and protect the quality of waters of the state.

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

(a) "Financially disadvantaged community" means the service area of a project to be served by a public water system that meets criteria established by department rule and in accordance with federal guidance.

(b) "Local governmental agency" means any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing acting jointly in connection with a project, having jurisdiction over a public water system.

(c) "Public water system" means all facilities, including land, necessary for the treatment and distribution of water for human consumption and includes public water systems as defined in s. 403.852 and as otherwise defined in the federal Safe Drinking Water Act, as amended. Such systems may be publicly owned, privately owned, investor-owned, or cooperatively held.

(d) "Small public water system" means a public water system which regularly serves fewer than 10,000 people.

(3) The department is authorized to make loans to community water systems, nonprofit noncommunity water systems, and nonprofit nontransient noncommunity water systems to assist them in planning, designing, and

constructing public water systems, unless such public water systems are for-profit privately owned or investor-owned systems that regularly serve 1,500 service connections or more within a single certified or franchised area. However, a for-profit privately owned or investor-owned public water system that regularly serves 1,500 service connections or more within a single certified or franchised area may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems. The department is authorized 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. Public water systems are authorized to borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed. The department shall administer loans so that amounts credited to the Drinking Water Revolving Loan Trust Fund in any fiscal year are reserved for the following purposes:

(a) At least 15 percent to qualifying small public water systems.

(b) Up to 15 percent to qualifying financially disadvantaged communities.

(c) However, if an insufficient number of the projects for which funds are reserved under this paragraph have been submitted to the department at the time the funding priority list authorized under this section is adopted, the reservation of these funds shall no longer apply. The department may award the unreserved funds as otherwise provided in this section.

(4) The department is authorized, subject to legislative appropriation authority and authorization of positions, to use funds from the annual capitalization grant for activities authorized under the federal Safe Drinking Water Act, as amended, such as:

(a) Program administration.

(b) Technical assistance.

(c) Source water protection program development and implementation, including wellhead and aquifer protection programs, programs to alleviate water quality and water supply problems associated with saltwater intrusion, programs to identify, monitor and assess source waters, and contaminant source inventories.

(d) Capacity development and financial assessment program development and administration.

(e) The costs of establishing and administering an operator certification program for drinking water treatment plant operators, to the extent such costs cannot be paid for from fees.

This subsection does not limit the department's ability to apply for and receive other funds made available for specific purposes under the federal Safe Drinking Water Act, as amended.

CODING: Words ~~striken~~ are deletions; words underlined are additions.

(5) The term of loans made pursuant to this section shall not exceed 30 years. The interest rate on such loans shall be no greater than that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

(6)(a) The department may provide financial assistance to financially disadvantaged communities for the purpose of planning, designing, and constructing public water systems. Such assistance may include the forgiveness of loan principal.

(b) The department shall establish by rule the criteria for determining whether a public water system serves a financially disadvantaged community. Such criteria shall be based on the median household income of the service population or other reliably documented measures of disadvantaged status.

(7) To the extent not allowed by federal law, the department shall not provide financial assistance for projects primarily intended to serve future growth.

(8) In order to ensure that public moneys are managed in an equitable, prudent, and cost-effective manner, the total amount of money loaned to any public water system during a fiscal year shall be no more than 25 percent of the total funds available for making loans during that year. The minimum amount of a loan shall be $75,000.

(9) The department is authorized to make rules necessary to carry out the purposes of this section and the federal Safe Drinking Water Act, as amended. Such rules shall:

(a) Set forth a priority system for loans based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and affordability. The priority system shall give special consideration to the following:

1. Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;

2. Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and

3. Projects that contribute to the sustainability of regional water sources.

(b) Establish the requirements for the award and repayment of financial assistance.

(c) Require adequate security to ensure that each loan recipient can meet its loan repayment requirements.

(d) Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

(e) Implement other provisions of the federal Safe Drinking Water Act, as amended.

(10) The department shall prepare a report at the end of each fiscal year, detailing the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding.

(11) Prior to approval of a loan, the local government or public water system shall, at a minimum:

(a) Provide a repayment schedule.

(b) Submit evidence of the permittability or implementability of the project proposed for financial assistance.

(c) Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.

(d) Provide assurance that records will be kept using accepted government accounting standards and that the department and the Auditor General, or their agents will have access to all records pertaining to the loan.

(e) Provide assurance that the public water system will be properly operated and maintained in order to achieve or maintain compliance with the requirements of the Florida Safe Drinking Water Act and the federal Safe Drinking Water Act, as amended.

(f) Document that the public water system will be self-supporting.

(12) The department may conduct an audit of the loan project upon completion, or may require that a separate project audit, prepared by an independent certified public accountant, be submitted.

(13) The department may require reasonable service fees on loans made to public water systems to ensure that the Drinking Water Revolving Loan Trust Fund will be operated in perpetuity and to implement the purposes authorized under this section. Service fees shall not be less than 2 percent nor greater than 4 percent of the loan amount exclusive of the service fee. Service fee revenues shall be deposited into the department's Grants and Donations Trust Fund. The fee revenues, and interest earnings thereon, shall be used exclusively to carry out the purposes of this section.

(14) All moneys available for financial assistance under this section shall be deposited in the Drinking Water Revolving Loan Trust Fund exclusively to carry out the purposes of this section. Any funds therein which are not needed on an immediate basis for financial assistance shall be invested pursuant to s. 215.49. State revolving fund capitalization grants awarded by the Federal Government, state matching funds, and investment earnings thereon shall be deposited into the fund. The principal and interest of all loans repaid and investment earnings thereon shall be deposited into the fund.

(15)(a) If a local governmental agency defaults under the terms of its loan agreement, 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, including accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and court appointment of a receiver to manage the public water system.

(b) If a public water system owned by a person other than a local governmental agency defaults under the terms of its loan agreement, the department may take all actions available under law to remedy the default.

(c) The department may impose a penalty for delinquent loan payments in the amount of 6 percent 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.

(16) The department is authorized to terminate or rescind a financial assistance agreement when the recipient fails to comply with the terms and conditions of the agreement.

~~(1) If federal funds become available for a drinking water state revolving loan fund, the Department of Environmental Protection may use the funds to make grants and loans to the owners of public water systems, as defined in s. 403.852(2), and as otherwise authorized by the law making the funds available. The department may adopt rules necessary to satisfy requirements to receive these federal funds and to carry out the provisions of this subsection. The rules shall include, but not be limited to, a priority system based on public health considerations, system type, and population served; requirements for proper system operation and maintenance; and, where applicable, consideration of ability to repay loans.~~

~~(2) The department shall, by January 1, 1995, report to the Legislature the status of any drinking water state revolving fund program authorized by federal law and shall include in the report recommendations as to appropriate and necessary statutory changes to govern its implementation.~~

Section 2. Intended Use Plan.—

(1) The Florida Legislature recognizes that over 80 percent of the state's population lives in coastal areas and is dependent on groundwater sources for drinking water supplies. Further, the Legislature recognizes that saltwater intrusion is an increased threat to healthful and safe drinking water supplies.

(2) The Intended Use Plan required of the department under the federal Safe Drinking Water Act, as amended, shall provide, in general, to the maximum extent practicable, that priority for the use of funds be given to projects that:

(a) Address the most serious risk to human health, especially projects that would develop alternative water supply in areas with saltwater intrusion problems;

(b) Are necessary to ensure compliance with the requirements of the federal Safe Drinking Water Act, as amended, including requirements for filtration; and

(c) Assist systems most in need on a per-household basis according to affordability criteria established by the Department of Environmental Protection by rule.

Section 3. Subsection (6) of section 403.860, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to said section to read:

403.860 Penalties and remedies.—

(6) The department is authorized to assess administrative penalties for failure to comply with the requirements of the Florida Safe Drinking Water Act.

(a)1. Prior to the assessment of an administrative penalty, the department shall provide the public water system a reasonable amount of time to complete the corrective action necessary to bring the system back into compliance.

(b)1. At the time of assessment of the administrative penalty, the department shall give the public water system notice setting forth the amount assessed, the specific provision of law, rule, or order alleged to be violated, the facts alleged to constitute the violation, the corrective action needed to bring the party into compliance, and the rights available under chapter 120 to challenge the assessment. The assessment shall be final and effective, unless an administrative hearing is requested within 20 days after receipt of the written notice, and shall be enforceable pursuant to s. 120.69.

2. The department shall adopt rules to implement the provisions of this subsection. The rules shall establish specific procedures for implementing the penalties and shall identify assessment amounts. The rules shall authorize the application of adjustment factors for the purpose of increasing or decreasing the total amount assessed subsequent to initial assessment. Such factors may include the lack or degree of good faith to comply with the requirements, the lack or degree of willfulness or negligence on the part of the owner, the compliance history of the public water system, the economic benefit derived by the failure to comply with the requirements, and the ability to pay.

(c) The amount of the penalties assessed shall be as follows:

1. In the case of a public water system serving a population of more than 10,000, the penalty shall be not less than $1,000 per day per violation.

2. In the case of any other public water system, the penalty shall be adequate to ensure compliance.

However, the total amount of the penalty assessed on any public water system may not exceed $10,000 per violation.

Section 4. Section 403.8615, Florida Statutes, is created to read:

403.8615 Determination of capability and capacity development.—

(1) The department shall require all new community water systems and new nontransient, noncommunity water systems seeking to commence operations after October 1, 1999, to demonstrate the technical, managerial, and financial capabilities to comply with national primary drinking water regulations as required by the federal Safe Drinking Water Act, as amended. The department shall establish by rule, consistent with any federal guidance on capacity development, the criteria for determining technical, managerial, and financial capabilities. At a minimum, such water systems must:

(a) Employ or contract for the services of a certified operator, unless the department has waived this requirement pursuant to s. 403.854(5).

(b) Demonstrate the capabilities to conduct required monitoring and reporting programs and maintain appropriate records of such monitoring.

(c) Demonstrate financial soundness through the posting of a bond, creation of a reserve, documentation of an unreserved revenue source, or other appropriate means established by department rule.

(2) If the department determines that such a water system can not demonstrate technical, managerial, or financial capability, a permit may not be issued for that system pursuant to s. 403.861(7) until the water system has been determined to have the required capabilities.

Section 5. Section 403.865, Florida Statutes, is created to read:

403.865 Purpose.—The Legislature finds that the threat to the public health and the environment from the operation of water and wastewater treatment plants mandates that qualified personnel operate these facilities. It is the legislative intent that any person who performs the duties of an operator and who falls below minimum competency or who otherwise presents a danger to the public be prohibited from operating a plant or system in this state.

Section 6. Section 403.866, Florida Statutes, is created to read:

403.866 Definitions.—As used in ss. 403.865-403.876, the term:

(1) "Domestic wastewater collection system" means pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(2) "Domestic wastewater treatment plant" means any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.

(3) "Operator" means any person, including the owner, who is in onsite charge of the actual operation, supervision, and maintenance of a water treatment plant or domestic wastewater treatment plant and includes the person in onsite charge of a shift or period of operation during any part of the day.

(4) "Public water system" has the same meaning as it has in s. 403.852.

(5) "Water distribution system" means those components of a public water system used in conveying water for human consumption from the water plant to the consumer's property, including pipelines, conduits, pumping stations, and all other structures, devices, appurtenances, and facilities used specifically for such purpose.

(6) "Water treatment plant" means those components of a public water system used in collection, treatment, and storage of water for human consumption, whether or not such components are under the control of the operator of such system.

Section 7. Section 403.867, Florida Statutes, is created to read:

403.867 License required.—A person may not perform the duties of an operator of a water treatment plant or a domestic wastewater treatment plant unless he or she holds a current operator's license issued by the department.

Section 8. Section 403.868, Florida Statutes, is created to read:

403.868 Requirements by a utility.—A utility may have more stringent requirements than set by law, including certification requirements for water distribution systems and domestic wastewater collection systems operations, except that a utility may not require a licensed contractor, as defined in s. 489.105(3) to have any additional license for work in water distribution systems or domestic wastewater collection systems.

Section 9. Section 403.869, Florida Statutes, is created to read:

403.869 Authority to adopt rules.—The department may adopt rules necessary to carry out the provisions of ss. 403.865-403.876.

Section 10. Section 403.87, Florida Statutes, is created to read:

403.87 Technical advisory council for water and domestic wastewater operator certification.—Within 90 days of the effective date of this act, the secretary of the department shall appoint a technical advisory council as necessary for the purposes of ss. 403.865-403.876. The technical advisory council shall meet upon the request of the chair, upon request of a majority of its members, or upon request of the secretary. Members shall provide for their own expenses. The council shall consist of not less than five persons who, collectively, are expert in domestic wastewater and drinking water treatment, facilities operation, public health and environmental protection, including at least one licensed wastewater treatment plant operator and one licensed water treatment plant operator.

CODING: Words ~~striken~~ are deletions; words underlined are additions.

Section 11. Section 403.871, Florida Statutes, is created to read:

403.871 Fees.—The department shall, by rule, establish fees to be paid for application and examination, reexamination, licensing and renewal, renewal of an inactive license, reactivation of an inactive license, recordmaking, and recordkeeping. The department shall establish fees adequate to administer and implement ss. 403.865-403.876.

(1) The application fee may not exceed $100 and is not refundable.

(2) The renewal fee may not exceed $100 and is not refundable.

(3) All fees collected under this section must be deposited into the Water Quality Assurance Trust Fund. The fees shall be used exclusively to implement the provisions of ss. 403.865-403.876.

Section 12. Section 403.872, Florida Statutes, is created to read:

403.872 Requirements for licensure.—

(1) Any person desiring to be licensed as a water treatment plant operator or a domestic wastewater treatment plant operator must apply to the department to take the licensure examination.

(2) The department shall examine the qualifications of any applicant who meets the criteria established by the department for licensure, submits a completed application, and remits the required fee.

(3) The department shall license as an operator any applicant who has passed the examination under this section.

(4) The department shall establish, by rule, the criteria for licensure, including, but not limited to, a requirement of a high school diploma or its equivalent, a training course approved by the department, and onsite operational experience.

(5) The department may also include a requirement that an operator must not be the subject of a disciplinary or enforcement action in another state at the time of application for licensure in this state.

Section 13. Section 403.873, Florida Statutes, is created to read:

403.873 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and in accordance with the other provisions of ss. 403.865-403.876.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

Section 14. Section 403.874, Florida Statutes, is created to read:

403.874 Inactive status.—

(1) The department shall reactivate an inactive license upon receipt of the reactivation application and fee.

(2) The department shall adopt rules relating to licenses that have become inactive and for the reactivation of inactive licenses.

Section 15. Section 403.875, Florida Statutes, is created to read:

403.875 Prohibitions; penalties.—

(1) A person may not:

(a) Perform the duties of an operator of a water treatment plant or domestic wastewater treatment plant unless he or she is licensed under ss. 403.865-403.876.

(b) Use the name or title "water treatment plant operator" or "domestic wastewater treatment plant operator" or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an operator, or otherwise holds himself or herself out as an operator, unless the person is the holder of a valid license issued under ss. 403.865-403.876.

(c) Present as his or her own the license of another.

(d) Knowingly give false or forged evidence to the department.

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) Employ unlicensed persons to perform the duties of an operator of a water treatment or domestic wastewater treatment plant.

(g) Conceal information relative to any violation of ss. 403.865-403.876.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 16. Section 403.876, Florida Statutes, is created to read:

403.876 Grounds for disciplinary action.—

(1) The department shall establish, by rule, the grounds for taking disciplinary action, including suspending or revoking a valid license, placing a licensee on probation, refusing to issue a license, refusing to renew a license, or refusing to reactivate a license, and the imposition of an administrative fine, not to exceed $1,000 per count or offense. The fines collected under this section shall be deposited into the Water Quality Assurance Trust Fund.

(2) The department shall conduct disciplinary proceedings in accordance with chapter 120.

(3) The department shall reissue the license of a disciplined operator when that operator has complied with all terms and conditions of the department's final order.

Section 17. All powers, duties and functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Business and Professional Regulation related to the classification and regulation of operators of water treatment plants and domestic wastewater treatment plants are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Business and Professional Regulation to the Department of Environmental Protection. The Department of Business and Professional Regulation shall transfer to the Department of Environmental Protection six positions, along with sufficient supporting budget, as determined by the Department of Environmental Protection. The rules of the Department of Business and Professional Regulation that regulate plant operators remain in effect until the Department of Environmental Protection has adopted rules to supersede those of the Department of Professional and Business Regulation.

Section 18. Operators certified by the Department of Professional and Business Regulation as of the effective date of this act shall be deemed to be licensed by the Department of Environmental Protection until the expiration of the term of their certification.

Section 19. Paragraph (g) is added to subsection (7) of section 163.01, Florida Statutes, 1996 Supplement, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, may acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to commission jurisdiction and may not provide utility services within the service area of an existing utility system unless it has received the consent of the utility. The entity may finance or refinance the acquisition, construction, expansion, and improvement of the public facility through the issuance of its bonds, notes, or other obligations under this section. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell all or a portion of its facility, and the power to contract with a public or private entity to manage and operate its facilities or to provide or receive services or products. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities

or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities or property which was acquired by the use of eminent domain after the effective date of this act. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

2. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates, mature at the time or times, not exceeding 40 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denomination, be in the form, carry the registration privileges, be executed in the manner, be payable from the sources and in the medium or payment and at the place, and be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer, official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

3. Bonds, notes, or other obligations issued under subparagraph 1. may be validated as provided in chapter 75. The complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in

CODING: Words ~~striken~~ are deletions; words underlined are additions.

which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.

4. The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since the legal entity will perform essential governmental functions in accomplishing its purposes, the legal entity is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it. The bonds, notes, and other obligations of an entity, their transfer and the income therefrom, including any profits made on the sale thereof, are at all times free from taxation of any kind by the state or by any political subdivision or other agency or instrumentality thereof. The exemption granted in this subparagraph is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

Section 20. Subsections (1) and (2) of section 403.087, Florida Statutes, are amended, present subsections (3) through (8) of that section are redesignated as subsections (4) through (9), respectively, and new subsection (3) is added to that section to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(1) A ~~No~~ stationary installation that is ~~which will~~ reasonably ~~be~~ expected to be a source of air or water pollution must not ~~shall~~ be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. In no event shall a permit for a water pollution source be issued for a term of more than 10 ~~5~~ years, nor ~~and in no event~~ may an operation permit issued after July 1, 1992, for a major source of air pollution have a fixed term of more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this chapter ~~act~~ and the rules ~~and regulations~~ of the department.

(2) The department shall adopt, and may amend~~,~~ or repeal, rules~~, regulations, and standards~~ for the issuance, denial, modification, and revocation of permits under this section.

(3) A renewal of an operation permit for a domestic wastewater treatment facility other than a facility regulated under the National Pollutant Discharge Elimination System (NPDES) Program under s. 403.0885 must be issued upon request for a term of up to 10 years, for the same fee and under the same conditions as a 5-year permit, in order to provide the owner or operator with a financial incentive, if:

(a) The waters from the treatment facility are not discharged to Class 1 municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control program under chapter 62-528 of the Florida Administrative Code;

(b) The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency, the department, or a local program approved under s. 403.182;

(c) The treatment facility has operated under an operation permit for 5 years and, for at least the preceding 2 years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;

(d) The department has reviewed the discharge-monitoring reports required under department rule and is satisfied that the reports are accurate;

(e) The treatment facility has generally met water quality standards in the preceding 2 years, except for violations attributable to events beyond the control of the treatment plant or its operator, such as destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur; and

(f) The department, or a local program approved under s. 403.182, has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.

The department shall keep records of the number of 10-year permits applied for and the number and duration of permits issued for longer than 5 years.

Section 21. Section 403.0871, Florida Statutes, 1996 Supplement, is amended to read:

403.0871 Florida Permit Fee Trust Fund.—There is established within the department a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(6)~~(5)~~, and 403.861(8) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 161. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

Section 22. Paragraphs (a)7. and (a)10. of subsection (11) of section 403.0872, Florida Statutes, 1996 Supplement, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section, which is the only department operation permit

for a major source of air pollution required for such source. Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail:

(11) Commencing in 1993, each major source of air pollution permitted to operate in this state must pay between January 15 and March 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, times the annual hours of operation allowed by permit condition; provided, however, that:

7. If the department has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If ~~the department has not received~~ the fee is not postmarked by March 1 of the calendar year, commencing with calendar year 1997, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

10. Notwithstanding the provisions of s. 403.087(6)~~(5)~~(a)4.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)~~(5)~~(a)4.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering

permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 23. Sections 468.540, 468.541, 468.542, 468.543, 468.544, 468.545, 468.546, 468.547, 468.548, and 468.552, Florida Statutes, and sections 468.549, 468.550, and 468.551, Florida Statutes, as amended by chapter 94-119, Laws of Florida, are hereby repealed.

Section 24. Subsections (11) and (12) are added to section 367.022, Florida Statutes, 1996 Supplement, to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(11) Any person providing only nonpotable water for irrigation purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well.

(12) The sale for resale of bulk supplies of water to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

Section 25. Subsection (5) of section 193.625, Florida Statutes, 1996 Supplement, is amended to read:

193.625 High-water recharge lands; classification and assessment.—

(5)(a) In years in which proper application for high-water recharge assessment has been made and granted under this section, for purposes of taxes levied by the county, the assessment of the land must be based on the formula adopted by the county as provided in paragraph (b).

(b) Counties that choose to have a high-water recharge protection tax assessment program must adopt by ordinance a formula for determining the assessment of properties classified as high-water recharge property and a method of contracting with property owners who wish to be involved in the program.

(c) The contract must include a provision that the land assessed as high-water recharge land will be used primarily for bona fide high-water recharge purposes for a period of at least 5 ~~10~~ years, as determined by the county, from January 1 of the year in which the assessment is made. Violation of the contract results in the property owner being subject to the payment of the difference between the total amount of taxes actually paid on the property and the amount of taxes which would have been paid in each previous year the contract was in effect if the high-water recharge assessment had not been used.

(d) A municipality located in any county that adopts an ordinance under paragraph (a) may adopt an ordinance providing for the assessment of land located in the incorporated areas in accordance with the county's ordinance.

CODING: Words ~~striken~~ are deletions; words underlined are additions.

(e) Property owners whose land lies within an area determined to be a high-water recharge area must not be required to have their land assessed according to the high-water recharge classification.

(f) In years in which proper application for high-water recharge assessment has not been made, the land must be assessed under s. 193.011.

Section 26. Subsections (3), (4), (6), and (9) of section 403.1835, Florida Statutes, are amended to read:

403.1835 Sewage treatment facilities revolving loan program.—

(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.

(a) The department is authorized to make loans, ~~use the funds~~ 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. 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.

(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 for the purpose of making grants to financially disadvantaged small communities. The combined rate of interest and grant allocations ~~rate~~ on loans shall be no greater than the interest rate ~~that~~ 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.

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

(a) Provide a repayment schedule.

(b) Submit plans and specifications and evidence of permittability for sewage treatment facilities and stormwater management systems.

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

(d) Provide assurance that the facility will be properly operated and maintained.

(e) Document that the revenues generated will be sufficient to ensure that the facilities will be self-supporting.

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

(g) Submit project planning documentation demonstrating cost-effectiveness, environmental soundness, public participation, and the implementability of the proposed sewage treatment facilities and stormwater management systems.

(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 "Sewage Treatment Revolving Loan Fund" is hereby 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 loans may be invested pursuant to s. 215.49. The cost of administering the program shall~~, to the extent possible,~~ be paid from federal funds and~~, when federal funds become no longer available,~~ from reasonable service fees that may be imposed upon loans so as to enhance program perpetuity. Grants awarded by the Federal Government, state matching funds, and investment earnings thereon ~~to fund revolving loans for local governmental agencies' sewage treatment facilities~~ shall be deposited into the fund. All moneys available in the fund are hereby designated to carry out the purpose of this section. The principal and interest of all loans repaid and investment earnings shall be deposited into this fund.

(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.

Section 27. Beginning in fiscal year 1998-1999, the Department of Environmental Protection shall make available up to 10 percent of the annual revenue received in the Sewage Treatment Revolving Loan Fund for loans to local governmental agencies for constructing stormwater management systems authorized pursuant to s. 403.1835, Florida Statutes. During this period of time, if the department does not receive requests for projects to use

the funds available for stormwater management systems, such funds shall be used for constructing sewage treatment facilities and other activities authorized by s. 403.1835, Florida Statutes.

Section 28. This act shall take effect July 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.

CODING: Words ~~striken~~ are deletions; words underlined are additions.