

**STORAGE NAME:** h1323a.wrm

**DATE:** April 16, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
WATER & RESOURCE MANAGEMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1323

**RELATING TO:** Water protection

**SPONSOR(S):** Representative Laurent

**STATUTE(S) AFFECTED:** Chapter 403, Florida Statutes (F.S.)

**COMPANION BILL(S):** SB 1074 (s), HB 771 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) WATER & RESOURCE MANAGEMENT YEAS 10 NAYS 1
- (2) GENERAL GOVERNMENT (FISCAL)
- (3)
- (4)
- (5)

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**I. SUMMARY:**

HB 1323 addresses the requirements in the 1996 amendments to the federal Safe Drinking Water Act that Florida must meet in order to qualify for federal grants to capitalize improvements to outdated or inadequate public drinking water systems, and provide technical and other forms of assistance to eligible systems.

The bill also amends current law to authorize DEP to assess administrative penalties against public drinking water systems for failure to comply with the Florida Safe Drinking Water Act, and transfers the licensure program for water and domestic wastewater treatment plant operators from the Department of Business and Professional Regulation to DEP.

In addition, the bill would authorize DEP to issue wastewater facility permits, except those issued pursuant to a federal delegation, for a period of up to 10 years for the same fee and under the same conditions as DEP's current five-year permit, provided the facility's owner/operator met a series of conditions related to a clean compliance record.

Finally, HB 1323 transfers \$9 million from the state's General Revenue Fund to the as-yet-to-be-created state Drinking Water Revolving Loan Trust Fund for the purposes of matching federal funds at the rate of 80 percent federal to 20 percent Florida. (The House's proposed fiscal year 1997-1998 budget includes just \$7 million as Florida's share of the match.) The bill also seeks the creation of seven positions to administer the new program.

HB 1323 would take effect July 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's drinking water program is administered jointly by DEP and the Department of Health; DEP is the lead agency. DEP is responsible for regulating all drinking water systems in Florida that have at least 15 service connections or regularly serve at least 25 people at least 60 days a day. Florida has approximately 7,160 public drinking water systems that meet the above criteria. Only 430 of them are publicly owned, but they serve the majority of Floridians. Of the 6,730 privately owned systems, most serve fewer than 3,300 customers. (The Department of Health regulates all other systems that don't meet the size or usage requirements; most of them are individual wells.)

DEP also is responsible for protecting the quality of Florida's groundwater and surface waters. Ninety-two percent of all Floridians rely on groundwater as their source of potable water.

The Florida Safe Drinking Water Act, Part IV of Chapter 403, F.S., was enacted in 1977, to complement many of the provisions of the Florida law complement the 1974 federal Safe Drinking Water and to enable Florida to handle certain delegated responsibilities. However, Florida does not have any dedicated source of revenue to fund improvements to or construction of public drinking water facilities, nor authority to access any federal funds for source water protection and technical assistance programs.

In 1996, Congress adopted, and the President signed into law, a number of significant changes to the federal Safe Drinking Water Act. The 1996 amendments to the federal act are the first since 1986. They are intended to provide greater prevention against contamination of potable water, and to provide a new funding source for the states to upgrade or correct aging or inadequate public water systems. The federal funding is available through a revolving fund that finances infrastructure costs needed to maintain, or come into compliance with, federal drinking water standards. The U.S. Environmental Protection Agency (EPA) will award capitalization grants to the states, which in turn will provide low-interest loans, grants or other types of assistance to eligible systems.

On October 4, 1996, the EPA issued its Interim Guidance in order to provide direction to the states, and in February of this year issue its Drinking Water State Revolving Fund Program Guidelines, which provides a comprehensive description of the programs and requirements of the federal program. The guidelines explain what states must do to receive a federal Drinking Water State Revolving Fund capitalization grant; how the states can spend the grant, on construction as well as other set-asides; and the role of the EPA in administering the program. EPA will incorporate the guidelines by reference in each capitalization grant award as a condition of receiving the grant. Eventually, EPA will adopt regulations for the program.

To be eligible, states must provide assurances in their capitalization grant applications on how they will comply with the 15 specifications described in the program Guidelines. For some of the specifications, a state needs only to agree or certify in its grant application that it will comply; for others, the state must document the procedures it will use to ensure compliance. The 15 specifications are:

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- o Assurance that the state has the authority to establish a fund and to operate a loan program in accordance with the Safe Drinking Water Act.
- o Assurance that the state will comply with its own regulations and law.
- o Assurance that the state has the technical capability to operate the program.
- o Assurance that the state will accept capitalization grant funds in accordance with a payment schedule.
- o Assurance that the state will deposit all capitalization grant funds in a Drinking Water State Revolving Fund or a set-aside account.
- o Assurance that the state will deposit an amount at least equal to 20 percent of the capitalization grant, as a state match, in the revolving fund.
- o Assurance that the state will deposit net bond proceeds, interest earnings and repayments into the revolving fund.
- o Assurances that the state will match capitalization grant funds it uses for the set-aside programs.
- o Assurance that the state will use generally accepted accounting principles.
- o Assurance that the state will have the revolving fund and set-aside account audited annually in accordance with generally accepted government auditing standards.
- o Assurance that the state will adopt policies and procedures to assure that borrowers have a dedicated source of revenue for repayments. (in the case of a privately owned system, the state must demonstrate there is adequate security.)
- o Assurance that the state will commit and expend funds as efficiently as possible, and in as expeditious and timely manner.
- o Assurance that funds will be used in accordance with its Intended Use Plan.
- o Assurance that the state will provide EPA with a biennial report.
- o Assurance that the state will comply with all other federal laws and requirements.

In anticipation of Congress amending the federal Safe Drinking Water Act and making funds available for a state revolving loan trust fund, the Legislature enacted s. 403.8532, F.S., in 1994, to provide that if federal funds ever were available, DEP could use them to make grants and loans to the owners of public water systems.

About \$9.6 billion in federal money is available through fiscal year 2002-2003 to implement the new federal Safe Drinking Water Act provisions. For the federal fiscal year that began October 1, 1996, about \$1.3 billion was authorized in EPA's budget. Preliminary indications are that Florida would qualify for \$45 million of that, if it put up

the 20-percent match, which is \$9 million. HB 1821, the General Government Appropriations bill for fiscal year 1997-1998, has included a \$7 million appropriation as the state match. That \$7 million will draw down at least \$35 million in federal funds.

**B. EFFECT OF PROPOSED CHANGES:**

HB 1323 would:

- o Authorize DEP to use funds from an EPA capitalization grant to administer a state revolving fund for financing improvements to eligible public drinking water systems, and to provide technical assistance, develop and implement source protection programs, develop financial and scientific assessment programs, and develop and implement a certification program for operators of water and domestic wastewater treatment plants.
- o Establish eligibility criteria for public drinking water systems, which generally would be all municipal systems and private systems serving fewer than 1,000 customers.
- o Allows DEP to assess administrative penalties for failure to comply with the requirements of the Florida Safe Drinking Water Act. The fines would be capped at \$10,000 per violation. Failure to adopt this provision would require EPA to revoke Florida's delegated authority to operate a drinking water program.
- o Allows DEP to require all new systems to demonstrate show they can meet federal guidelines by October 1, 1999. Failure to adopt this provision would cost Florida up to 20 percent of the federal capitalization funds.
- o Transfers to DEP from the Department of Business and Professional Regulation the drinking water and domestic wastewater certification program. Until DEP adopts rules, currently certified operators will be grandfathered-in, but must obtain their renewed certifications from DEP.
- o Gives DEP broad rulemaking authority to implement the new Safe Drinking Water Act requirements.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. DEP would be granted extensive rulemaking authority by HB 1323 to implement the new provisions of the Safe Drinking Water Act program and to license operators of water or domestic wastewater treatment plants.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

To the extent that public water supply systems repay their Safe Drinking Water Act loans with interest, those costs likely will be passed on to the systems' customers.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 403.8532, F.S., throughout. Establishes programs to assist public drinking water systems in achieving and maintaining compliance with the state and federal Safe Drinking Water Acts, and to conserve and protect water quality. Defines "financially disadvantaged community;" "local government agency;" "public water system;" and "small public water system." Authorizes DEP to make loans to certain water supply systems to assist them in planning, designing and constructing public water systems. Specifies that such systems shall not include public water systems that are privately owned or investor-owned and regularly serve 1,000 or more people. Authorizes DEP to provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for projects approved under this program. Reserves at least 15 percent of the loans to qualifying small public water systems; up to 15 percent for qualifying financially disadvantaged communities; and at least 33.3 percent to qualifying public water systems that address the development of alternative drinking water supplies in areas with saltwater intrusion problems. Directs DEP to use funds, subject to legislative appropriation, for: program administration; technical assistance; source water protection program development and implementation, including wellhead protection programs and contaminant source inventories; capacity development and financial assessment program development and administration; and the costs of establishing and administering an operator certification program for drinking water treatment plant operators, to the extent that such costs can not be paid for with fees. Specifies loan term of no more than 30 years, and ties interest rate to that on the most recent series of pollution control and abatement bonds. Gives DEP rulemaking authority to establish criteria for determining whether a public water system serves a financially disadvantaged community, based on median household income. Specifies that to the extent not allowed by federal law, DEP shall not use loan funds to assist projects designed to accommodate future growth. Limits the amount of money to be loaned in any one year to 25 percent of the total money available. Specifies the minimum amount of a loan shall be \$75,000. Gives DEP rulemaking authority to implement the provisions of this section and the Florida Safe Drinking Water Act. Specifies what the rules should address. Directs DEP to prepare a report at the end of each fiscal year that details the financial assistance provided under this program, the amount of loans, interest earned and service fees collected. Specifies what information local governments or a public water system must provide to DEP before receiving a loan. Gives DEP the authority to perform an audit of each loan project. Allows DEP to collect "reasonable service fees" made to public water supply systems, of between 2 percent and 4 percent. Requires that service fee revenue must be deposited in the Drinking Water Revolving Loan Trust Fund, as well as all federal monies, state monies and any other funds available for financial assistance under this section. Allows DEP to invest those monies not immediately needed, pursuant to s. 215.49, F.S. Provides process for dealing with delinquent local governments and with non-governmental owners of public water supply systems.

Section 2: Amends s. 403.860, F.S., to authorize DEP to assess administrative penalties for failure to comply with the Florida Safe Drinking Water Act. Specifies notice and procedures, including Chapter 120, F.S., appeals. Gives DEP authority to adopt rules to implement the provisions of this section, and specifies content of the rules. Establishes administrative penalties as follows: \$1,000 per day per violation for public water supply systems serving 10,000 or more people; for any other system, the penalty shall be adequate to ensure compliance; the total penalty assessed under either scenario may not exceed \$10,000 per violation.

Section 3: Creates s. 403.8615, F.S., to allow DEP to require all new community water systems and new nontransient, noncommunity water systems seeking to begin operating after October 1, 1999, to demonstrate the technical, managerial and financial capabilities to comply with the national primary drinking water regulations. Gives DEP rulemaking authority to establish the criteria for the above, and specifies what shall be included in the rules. Specifies that if DEP determines the proposed new water system cannot demonstrate the aforementioned capabilities, DEP may not issue a permit until the system is able to do so.

Section 4: Creates s. 403.865, F.S., to express legislative intent that only qualified persons should operate water and wastewater treatment plants, and that any operator who falls below minimum competence or otherwise presents a danger shall be prohibited from operating a plant or facility in Florida.

Section 5: Creates s. 403.866, F.S., to define the following words in ss.403.865-403.876, F.S.: "domestic wastewater collection system;" "domestic wastewater treatment plant;" "operator;" "public water system;" "water distribution system;" and "water treatment plant."

Section 6: Creates s. 403.867, F.S., to specify that 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 DEP.

Section 7: Creates s. 403.868, F.S., to allow a utility to have more stringent requirements that established by law, except that it may not require a licensed contractor, as defined in s. 489.105(3), F.S., to have any additional license for work in water distribution systems or domestic wastewater collection systems.

Section 8: Creates s. 403.869, F.S., to give DEP authority to adopt rules necessary to carry out the provisions of ss. 403.865-403.876, F.S.

Section 9: Creates s. 403.87, F.S., to allow the DEP secretary to appoint a technical advisory council on water and domestic wastewater operator certification, as necessary.

Section 10: Creates s. 403.871, F.S., to allow DEP to charge fees for the application, examination, licensing, renewal, etc. related to certification for water and domestic wastewater operators. Grants DEP rulemaking authority to accomplish this. Specifies that the application fee and renewal fee shall not exceed \$100, and shall be non-refundable. Provides for deposit of all fees collected from water treatment plant operators in the state Drinking Water Revolving Loan Trust Fund; all fees from domestic wastewater plant operators will be deposited in the state Sewage Treatment Revolving Loan Trust Fund.

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Section 11: Creates s. 403.872, F.S., creates requirements for licensure of water or domestic wastewater treatment plant operators.

Section 12: Creates s. 403.873, F.S., to provide process for renewal of such licenses every two years.

Section 13: Creates s. 403.874, F.S., to provide process for DEP to reactivate inactive licenses of water or domestic wastewater treatment plant operators.

Section 14: Creates s. 403.875, F.S., to provide prohibitions and penalties related to operators of water or domestic wastewater treatment plants. Specifies that violators shall be guilty of a first-degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Section 15: Creates s. 403.876, F.S., to provide grounds for disciplinary actions, including a \$1,000 administrative fine, against licensed operators found in violation of law or regulation. Provides that such disciplinary actions shall be conducted pursuant to process in Chapter 120, F.S.

Section 16: Transfers classification and regulation of operators of water and domestic wastewater treatment plants from the Department of Business and Professional Regulation to DEP, via a Type 2 transfer pursuant to s. 20.06(2), F.S. Specifies that the rules of the Department of Business and Professional Regulation that relate to these operators shall remain in effect until DEP has adopted its new rules.

Section 17: Provides that water and domestic wastewater treatment plant operators who currently are licensed pursuant to the Department of Business and Professional Regulation program shall be deemed licensed by DEP, until the expiration of their current licenses.

Section 18: Amends s. 403.087, F.S., to extend from five years to 10 years the maximum duration of a permit for a water pollution source. Allows DEP to amend its existing rules to reflect any changes in this section of law. Provides that 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, pursuant to s. 403.0885, F.S., may be issued upon request for 10 years, at the same fee and under the same conditions as a five-year permit, to provide the facility owner with a financial incentive, if a number of conditions are met. Lists among those conditions a record of having met water quality standards.

Section 19: Amends s. 403.0871, F.S., to correct a cross-reference.

Section 20: Amends s. 403.0872, F.S., to correct a cross-reference.

Section 21: Repeals ss. 468.540, 468.542, 468.543, 468.544, 468.544, 468.545, 468.546, and 468.552, F.S., and ss. 468.549, 468.550 and 468.551, F.S., as amended by Chapter 94-119, Laws of Florida, related to licensing of water and domestic wastewater treatment plant operators by the Department of Business and Professional Regulation.



Section 22: Transfers from the state General Revenue Fund to the state Drinking Water Revolving Loan Trust Fund the sum of \$9 million and seven positions, to administer the provisions of s. 403.8532, F.S.

Section 23: Provides that this act shall take effect July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

If budgeted by the Legislature for fiscal year 1997-1998, DEP would receive \$7 million as a state match to draw down up to \$35 million in federal capitalization funds for the new Drinking Water Revolving Loan program.

The major first-year startup costs will be expenses related to rulemaking, but the total price tag is indeterminate. The source of the funds also is unknown, although startup costs could likely qualify as administrative expenses, which would be covered by the federal funds.

2. Recurring Effects:

++ Over the next six years, the state may be able to access at least \$210 million in federal funds for Safe Drinking Water Act programs, if it budgets the annual 20-percent match. That match, if it remains at the \$7 million level annually, would cost the state \$42 million over the next six years. The source of the first year's match is general revenue.

++ Interest earnings from investing program monies not immediately needed, and from repaid loans, will generate an indeterminate amount of revenue for the program.

++ DEP is seeking at least seven new positions to help administer the expanded Safe Drinking Water Act program, with a cost of \$50,000 per position. The salaries and benefits will be paid for with federal funds.

++ The Department of Business and Professional Regulation indicates only one full-time equivalency (FTE) position employed in the water and wastewater certification program, although DEP has identified at least five other positions at the other agency which assisted with rulemaking, testing, enforcement and other activities associated with the certification.

DEP is seeking six positions to operate the certification program, for a first-year cost of \$198,439. Application and related fees will defray some of the costs, but some other funding source will be needed, at least initially, to get the program up and running, according to DEP.

++ DEP likely will experience a decline in revenue by extending current five-year permits to a duration of 10 years, for certain facilities regulated under Chapter 403, F.S. The loss is indeterminate at this time.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Local government-owned drinking water treatment facilities, and certain other types, will be eligible for millions of dollars in federal and state funds for infrastructure improvements and numerous forms of technical assistance under the programs created through HB 1323. However, they will have to repay the loans with interest, which is expected to be minimal.

Owners of public drinking water facilities may incur planning and design costs of their proposed drinking water treatment plant improvement projects, but it is possible they may be reimbursed through the program.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Customers of public drinking water systems likely will pay the interest costs associated with the Safe Drinking Water Act loans, but that amount is expected to be minimal.

2. Direct Private Sector Benefits:

Customers of public drinking water systems should benefit in the long run because federal and state funds are being used to upgrade and improve their systems, rather than them having to pay for it through increased monthly rates. It should be recognized, however, that as taxpayers, the customers still are contributing their earnings to help fund the program.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate. Improving drinking water systems in certain communities may lead to economic development.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of HB 1323 because the bill does not require counties or cities to spend funds, nor to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

In a letter to DEP, officials in EPA's Region IV Office in Atlanta indicated that the proposed provision in s. 403.8532(3)(c), F.S., setting aside at least 33.3 percent of the Safe Drinking Water Act funds for qualifying water systems that address the development of alternative drinking water supplies in areas afflicted with saltwater intrusion is not allowable under s. 1452 of the federal Safe Drinking Water Act and the EPA's guidance document.

Additionally, funds which are deposited in the new state Drinking Water Revolving Loan Trust Fund can only be used for loans. Any funds earmarked for administration must be placed in a set-aside account.

All new trust funds must be created in a separate bill, and be approved by three-fifths of the House and Senate. The House bill that would create the new trust fund is HB 1271.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, the Committee on Water and Resource Management adopted 19, mostly technical or clarifying amendments to HB 1323. However, there were several key substantive amendments, which:

- o Deleted the requirement that to qualify as a “disadvantaged community,” a community had to have fewer than 10,000 people. No such population criterion exists in the federal guidelines.
- o Deletes language that would have set aside at least 33.3 percent of the available loan funds for projects that address development of alternative water supplies for communities impacted by saltwater intrusion. Such a set-aside is not allowed under the federal guidelines.
- o Allows DEP to utilize some of the non-loan federal Safe Drinking Water Act funds for programs to alleviate water quality and water supply problems associated with saltwater intrusion.
- o Clarifies that DEP will receive no fewer than six positions and a supporting budget from the Department of Business and Professional Regulation to manage the certification program for water and wastewater treatment plant operators.
- o Adds language directing the Florida Public Service Commission (PSC) to allow utilities to build into their rate bases the expenses incurred in complying with environmental regulations. Also, the PSC shall allow utilities to spread out their costs over a longer period of time in order to recoup their costs, called margin reserve.
- o Exempts from PSC rate-making regulation the sale of bulk supplies of water to utilities, which will in turn, resell the water to consumers.
- o Deletes language in the bill that would have prevented private or investor-owned utilities that serve 1,000 or more customers from qualifying for Safe Drinking Water Act loans.
- o Directs DEP to study ozonation and other alternative processes to disinfect water, with an emphasis on incorporating such processes in the reuse of water used in structural cooling systems. The study is to be performed within DEP’s existing resources.
- o Reduces from 10 years to five years the length of time a property has to remain designated as a “high-water recharge” for tax purposes.

After adopting the 19 amendments, the Committee voted 10-1 in favor of the bill.

**VII. SIGNATURES:**

**COMMITTEE ON WATER & RESOURCE MANAGEMENT:**

Prepared by:

Legislative Research Director:

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Joyce Pugh

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Joyce Pugh