

STORAGE NAME: h1755s1a.gg

DATE: April 26, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1755

RELATING TO: Water pollution control

SPONSOR(S): Committee on Water & Resource Management and Representative Gay

TIED BILL(S):

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 10 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 8 NAYS 0
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS YEAS 9 NAYS 0
 - (5)
-

I. SUMMARY:

CS/HB 1755 creates a program for financing various water pollution control projects through bonding and other debt instruments, to be issued by the new Florida Water Pollution Control Financing Corporation using monies appropriated to the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund.

Currently, the Trust Fund must be spent primarily on wastewater facility-related infrastructure or improvements; up to 10 percent is set aside for loans for stormwater projects. By leveraging the Trust Fund, the Department of Environmental Protection (DEP) would have more up-front money to loan, or make grants, to local government agencies and private entities for a variety of water pollution control needs: planning, design, construction and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems, and estuary conservation and management. At least 15 percent of the funds generated would be reserved each year for use by small communities.

The new financing corporation initially would be comprised of the DEP Secretary, the Governor's budget director, the Comptroller, and the state Treasurer (or their designees), with the executive director of the existing State Board of Administration as chief executive officer running the day-to-day operations.

The fiscal impact of the bill is indeterminate, because the amount of Trust Fund monies that the financial corporation decides to leverage annually likely will change, based on market conditions. For fiscal year 2000-2001, the proposed House General Appropriations Act provides \$135 million for the wastewater/stormwater revolving loan program, including \$9 million in General Revenue that is expected to be matched by \$45 million in federal funds. The bill allows DEP and the financing corporation to access up to \$100 million of that appropriation this upcoming fiscal year.

CS/HB 1755 gives DEP specific authority to promulgate rules to implement the new leveraging program. There are no apparent constitutional or other legal issues raised by the bill.

The act would take effect upon becoming a law.

There is a "strike everything after the enacting clause" amendment traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

CS/HB 1755 creates the Florida Water Pollution Control Financing Corporation, to leverage monies in the Wastewater Treatment and Stormwater Management State Revolving Loan Trust Fund, as a way to obtain more up-front dollars to address the state's water pollution needs as soon as possible. The financing corporation is similar to boards previously created by the Legislature (most recently the Inland Protection Financing Corporation to handle payment of the backlog of claims in the underground petroleum storage tank program).

The bill does not necessarily create new hurdles or requirements for local governments or other entities that are seeking low-interest loans for wastewater or stormwater improvement, or estuary conservation and management projects.

B. PRESENT SITUATION:

Background on wastewater/stormwater revolving loan program

Since the 1970s, Florida has implemented statutorily created programs that provide funds to counties and cities to construct, or make improvements to, wastewater facilities. These programs pre-date the creation of the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund (Trust Fund), enacted in 1989 as s. 403.1835, F.S., which allowed Florida to take advantage of federal matching funds authorized through the Clean Water Act. The program is largely funded through a \$5-to-\$1 federal match.

In FY 1999-2000, the Legislature appropriated \$113 million to the Trust Fund, including the federal match. The proposed House General Appropriations Act for FY 2000-2001 includes budget authority of \$135 million, including \$9 million in General Revenue to match the federal funds.

Over the last decade, DEP has made 138 loans totaling \$1.008 billion, to 80 eligible local governments. Of the \$820 million that has actually been disbursed, \$142 million of the principle has been repaid. The loan repayment revenue stream in 1999 was \$47 million.

The average interest rate over the last decade has been 2.6 percent; the current interest rate is around 1.8 percent.

The Legislature has directed DEP to set aside, within the revolving loan program, at least 15 percent of its loan funds for small or financially disadvantaged communities, and since 1997, up to 10 percent for stormwater improvement project loans.

In addition, within the wastewater revolving loan program is a wastewater grants program for "financially disadvantaged small communities," defined as municipalities with a population of 7,500 or less and a per capita annual income less than the state per capita annual income, as determined by the U.S. Department of Commerce. (Based on 1998 data, Florida's personal per capita annual income is \$22,939.) This grant program is financed through a "grant allocation" -- basically a surcharge -- on the wastewater loans. DEP currently assesses a 1.8 percent grant allocation, identical to the loan interest rate, and has accumulated about \$3 million. The first grants are expected to be distributed by July, 2000.

The wastewater revolving loan program annually receives applications for more funds than are available. The U.S. Environmental Protection Agency in its 1996 Clean Water Needs Survey estimated that Florida's wastewater infrastructure needs were reported to be \$5.4 billion. DEP has reported a need for \$2.3 billion in its "planning portion" list of sewer-related projects requested by local governments.

DEP has commented that many more counties and cities with wastewater improvement needs do not even participate in its loan program, for a number of reasons. For example, cities and counties with limited tax revenues can not afford to repay the loans, despite the low interest rates. Large-population cities or counties need more money than they realistically can hope to obtain under the programs, so they may borrow from financial institutions or float bond issues.

Another issue related to the existing wastewater revolving loan program is that it, by and large, addresses only one aspect of Florida's water pollution problem -- contamination through inadequate treatment or management of wastewater. Stormwater runoff -- from urban lawns and highways, from agricultural operations, and from mining operations -- is considered Florida's No. 1 environmental problem. A variety of local, state and federal programs address this non-point source pollution problem in a piece-meal fashion.

Specifics of current program

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

In addition, the DEP is authorized to do the following:

- To make loans, provide loan guarantees, purchase loan insurance, and to refinance local debt through the issue of new loans for projects approved by the DEP. Local governmental agencies are authorized to borrow funds made available pursuant to this section and may pledge any revenue available to them to repay any funds borrowed. The DEP must reserve 15 percent of each annual allocation for loans to small

communities. For the purposes of this program, a small community is one with a population of 20,000 or less, based on the 1990 census.

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

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

Although the federal Clean Water Act allows states to use their federal matching funds for non-point source management projects and waterbody restoration, the state law restricts their use to wastewater and stormwater improvement projects.

Leveraging

At least 25 states leverage their state revolving loan program funds. "Leveraging" means selling bonds or other financial instruments secured by existing loan repayments. If properly managed, a state's portfolio of state revolving loans can provide a significant up-front cash infusion to address pressing needs without severely reducing the amount of loan funds available in the future to meet new needs. Typically, a leveraged program continues to provide loans -- either low-interest or no-interest -- rather than grants so that it will maintain enough principal to keep the program going.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 1755 includes the following provisions:

- Expands the kinds of projects that may be funded under the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund, including septic tank replacement or upgrades, projects to address agricultural runoff and other nonpoint sources of pollution, certain restoration activities, and other activities eligible under the federal Clean Water Act.
- Extends eligibility for the loans to private entities, as well as local governments.
- Directs DEP to establish a priority system by rule, and gives the agency guidance in what criteria to consider when prioritizing project applications. For example, the agency shall give priority to projects that:
 - Eliminate public health hazards;
 - Enable compliance with laws requiring discharges to specific waterbodies;
 - Assist in the implementation of total maximum daily loads adopted under s. 403.067, F.S.;
 - Enable compliance with other pollution control requirements, such as toxics control, wastewater residual management, and reduction of nutrients and bacteria;

- Assist in the implementation of surface water improvement and management (SWIM) plans approved under s. 373.456, F.S., and pollutant load reduction goals developed under state water policy;
 - Promote reuse of reclaimed water;
 - Eliminate failing onsite sewage treatment and disposal systems, or those which are causing environmental damage; or
 - Reduce pollutants to, and otherwise promote restoration of, Florida's surface and groundwaters.
- Provides for a full range of financing options to take advantage of market conditions and expand the funding capabilities of the Trust Fund.
 - Creates the Florida Water Pollution Control Financing Corporation for the purpose of leveraging the program to expand funding ability. Bonds, certificates, or other obligations of indebtedness would be issued by the Florida Water Pollution Control Financing Corporation, instead of the Division of Bond Finance of the State Board of Administration.

Members of the financing corporation would be: the Governor's budget director, the Comptroller or designee, the Treasurer or designee, and the Secretary of Environmental Protection or designee, until January 7, 2003, at which time the board shall include the Chief Financial Officer or 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 financing corporation.

- Repeals s. 403.1836, F.S., which sets aside up to 10 percent of the Trust Fund for stormwater projects. Under the bill, DEP would have the flexibility to approve loans or grants for stormwater improvements in excess of that amount.
- Gives DEP specific rulemaking authority to implement the bill's provisions.
- Comments that Monroe County projects which receive money from the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund shall take into account water balances and nutrient balances in order to prevent runoff of pollutants into surface waters. This provision is intended to give the City of Key Largo and its contracted project engineers assurances that a facility providing advanced treatment to wastewater for reuse can discharge into area surface waters. DEP has already approved the project.
- Allows DEP and the financing corporation to access FY 2000-2001 legislative appropriations for the modified revolving loan program.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 403.1835, F.S., to expand the range of projects eligible under the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund to all projects eligible for such funding under the federal Clean Water Act. Links the Trust Fund to a newly created Florida Water Pollution Control Financing Corporation for the purpose of leveraging the program to accelerate funding ability. Revises various application

requirements and loan-related conditions to allow funding of non-governmental entities in addition to local governments. Specifies priority criteria. Changes the interest penalty that may be charged in the event of repayment delinquency and expands it to cover non-governmental entities. Amends trust fund provisions to allow for deposit of bond proceeds and for payment of expenses associated with bond issuance. Provides for specific rule adoption.

Section 2: Creates s. 403.1837, F.S., establishing the Florida Water Pollution Control Financing Corporation, a nonprofit public-benefit corporation, for the purpose of issuing bonds to finance projects eligible under s. 403.1835, F.S. Provides for a board of directors and provides powers and obligations of the corporation. Specifies that the corporation is not a state entity and its issuance of bonds does not represent a pledge of the full faith and credit of the state. Establishes that the corporation is tax-exempt and requires validation of bonds. Provides that the corporation may contract with the State Board of Administration to administer and invest bond proceeds.

Section 3: Reiterates that Monroe County projects that are funded through the revolving loan trust fund have to take into account water and nutrient balances in order to prevent pollutant runoff into area surface waters.

Section 4: Repeals s. 403.1836, F.S., related to earmarking up to 10 percent of the Wastewater Treatment/Stormwater Management Revolving Loan Trust Fund.

Section 5: Appropriates from the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund no more than \$100 million to implement s. 403.1837, F.S., as created by this act.

Section 6: Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If CS/HB 1755 becomes law, as early as the upcoming fiscal year, the financing corporation will likely have leveraged some of the existing loans. At this time it is impossible to know how much that would generate in up-front capital.

2. Expenditures:

Indeterminate, but likely minimal. DEP expects some startup costs with the expanded program, and costs associated with developing and promulgating new rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. CS/HB 1755 is expected, in future years, to make more loans and grants available to local governments for a variety of water pollution control and management projects.

2. Expenditures:

Indeterminate. There will be some costs associated with preparing applications for grants or loans under the expanded program, as well as repayment of the principal and interest (if applicable) of any loans they obtain.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 1755 expands eligibility for the Trust Fund program to private entities, most likely private utilities, who will be able to access low-interest, or even no-interest, loan funds for expansion or system improvements. Engineering firms, construction firms, and service workers could benefit from the accelerated construction of wastewater and stormwater infrastructure.

D. FISCAL COMMENTS:

Expanding the amount of funds available in the short term through the issuance of bonds or other financial instruments will reduce the amount of money available in the Trust Fund for loans in later years. DEP has said the financing corporation will carefully manage the Trust Fund portfolio in order to ensure that the program does not run out of money for future loans or grants.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not triggered by CS/HB 1755 because the bill does not require cities or counties to expend funds, or to take actions regarding the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 1755 does not reduce the revenue-raising authority of counties or municipalities.

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

CS/HB 1755 does not reduce the state sales tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

CS/HB 1755 gives DEP specific rulemaking authority regarding the modified revolving loan program's administration, establishment of a priority ranking system, financial assistance requirements, auditing requirements, program exceptions, and the relationship between DEP and the financing corporation.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 23, 2000, the Committee on Water & Resource Management adopted, without objection, the following five amendments to HB 1755, and reported the bill favorably as a committee substitute:

Amendment 1 - included statutory direction on the types of projects for which DEP should give priority to in the selection process.

Amendment 2 - gave DEP specific rulemaking authority to implement the program.

Amendment 3 - deleted vague rulemaking authority for DEP.

Amendment 4 - allowed DEP and the financing corporation to access the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund in FY 2001-2002 to pay for projects.

Amendment 4a - changed the fiscal year to 2000-2001.

Amendment 5 - added the Monroe County provision restating safeguards for surface water runoff from any projects financed by the revolving loan trust fund.

On April 12, 2000, the Committee on Governmental Rules & Regulations adopted a "strike everything after the enacting clause" amendment and reported the bill favorably, as amended. The amendment mainly differed from the committee substitute bill in the following ways:

Amendment 1 - Made technical changes throughout the bill; set limits on the amounts that can be bonded during the first three years of the program; and modified the appropriation language in the bill.

On April 26, 2000, the Committee on General Government Appropriations adopted two amendments to the traveling amendment, including one technical amendment and an amendment that further clarified that the \$10 million appropriation is tied to the appropriation in the General Appropriations Act.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Joyce Pugh

Staff Director:

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AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
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