

By Representative Gay

1                                   A bill to be entitled  
 2           An act relating to water pollution control;  
 3           amending s. 403.1835, F.S.; providing for a  
 4           method of financing water pollution control  
 5           projects eligible under specified federal law;  
 6           authorizing loans and grants; providing for the  
 7           use of the Wastewater Treatment and Stormwater  
 8           Management Revolving Loan Trust Fund; granting  
 9           rulemaking authority to the Department of  
 10          Environmental Protection; creating s. 403.1837,  
 11          F.S.; creating the Florida Water Pollution  
 12          Control Financing Corporation; providing for  
 13          its membership and powers; authorizing the  
 14          issuance of bonds and other obligations;  
 15          providing for tax exemptions; authorizing the  
 16          corporation to contract with the State Board of  
 17          Administration for services; granting  
 18          rulemaking authority to the Department of  
 19          Environmental Protection; repealing s.  
 20          403.1836, F.S., relating to the Wastewater  
 21          Treatment and Stormwater Management Revolving  
 22          Loan Trust Fund; providing an effective date.

23  
 24 Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Section 403.1835, Florida Statutes, is  
 27 amended to read:  
 28           403.1835 Water pollution control financial assistance  
 29 ~~Sewage treatment facilities revolving loan program.--~~  
 30           (1) The purpose of this section is to assist in  
 31 implementing the legislative declaration of public policy as

1 contained in s. 403.021 by establishing a self-perpetuating  
2 ~~loan~~ program to accelerate the implementation of water  
3 pollution control projects ~~construction of sewage treatment~~  
4 ~~facilities by local governmental agencies and to assist local~~  
5 ~~governmental agencies.~~ Projects and activities that may be  
6 funded are those eligible under s. 603 of the Federal Water  
7 Pollution Control Act (Clean Water Act), Pub. L. No. 92-500,  
8 as amended, including, but not limited to, planning, design,  
9 construction, and implementation of wastewater management  
10 systems, stormwater management systems, nonpoint source  
11 pollution management systems, and estuary conservation and  
12 management.

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

14 (a) "Local governmental agencies" means local  
15 governmental agencies as defined in s. 403.1822(3).

16 ~~(b) "Sewage treatment facilities" means all facilities~~  
17 ~~necessary, including land, for the collection, treatment, or~~  
18 ~~disposal of domestic wastewater.~~

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

24 (c) "Corporation" means the Florida Water Pollution  
25 Control Financing Corporation.

26 (3) ~~The department is authorized to make loans and~~  
27 ~~grants to local governmental agencies to assist them in~~  
28 ~~planning, designing, and constructing sewage treatment~~  
29 ~~facilities and stormwater management systems. The department~~  
30 ~~may administer the resulting portfolio of loans, including the~~  
31 ~~authority to sell or pledge the loans, or any portion of the~~

1 ~~loans, with the approval of the Governor, the Treasurer, and~~  
2 ~~the Comptroller, acting as the State Board of Administration,~~  
3 ~~to ensure compliance with subsection (1).~~

4       ~~(a) The department~~ may ~~is authorized to~~ make grants  
5 and loans, to provide loan guarantees, to purchase loan  
6 insurance, and to refinance local debt through the issue of  
7 new loans for projects approved by the department. This  
8 financial assistance must be administered in accordance with  
9 this section and applicable federal authorities. The  
10 department may administer the resulting portfolio of loans,  
11 including the authority to sell or pledge the loans or any  
12 portion of the loans, as provided in this section and s.  
13 403.1837, to fulfill the public purpose set forth in  
14 subsection (1).

15       (a) The department may make loans to local government  
16 agencies, which agencies may pledge any revenue available to  
17 them to repay any funds borrowed.

18       (b) The department may make loans, grants, and  
19 deposits to other entities eligible to participate in the  
20 financial assistance programs authorized under the Federal  
21 Water Pollution Control Act, or as a result of other federal  
22 action, which entities may pledge any revenue available to  
23 them to repay any funds borrowed.

24       (c) The department shall administer financial  
25 assistance so that at least 15 percent of the funding made  
26 available each year under this section is reserved for use by  
27 small communities during the year it is reserved. ~~Local~~  
28 ~~governmental agencies are authorized to borrow funds made~~  
29 ~~available pursuant to this section and may pledge any revenue~~  
30 ~~available to them to repay any funds borrowed. The department~~  
31 ~~shall administer loans to local governmental agencies so that~~

1 ~~at least 15 percent of each annual allocation for loans is~~  
2 ~~reserved for small communities.~~

3 ~~(d)(b)~~ The department may make grants to financially  
4 disadvantaged small communities, as defined in s. 403.1838,  
5 using funds made available from grant allocations on loans  
6 authorized under subsection (4). The grants must be  
7 administered in accordance with s. 403.1838.

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

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

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

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

31

- 1           (6) Prior to approval of financial assistance, the  
2 applicant ~~a construction loan, the local government~~ shall:  
3           (a) Submit evidence of credit worthiness, loan  
4 security, and a loan ~~Provide a~~ repayment schedule in support  
5 of a request for a loan.  
6           (b) Submit plans and specifications and evidence of  
7 permissibility in support of a request for funding of  
8 construction or other activities requiring a permit from the  
9 department ~~for sewage treatment facilities and stormwater~~  
10 ~~management systems.~~  
11           (c) Provide assurance that records will be kept using  
12 generally ~~accepted~~ government ~~accounting principles standards~~  
13 and that the department, the Auditor General, or their agents  
14 will have access to all records pertaining to the financial  
15 assistance provided loan.  
16           (d) Provide assurance that the subject facilities,  
17 systems, or activities ~~facility~~ will be properly operated and  
18 maintained.  
19           (e) Identify the revenues to be pledged and document  
20 their sufficiency for loan repayment and pledged revenue  
21 coverage in support of a request for a loan ~~Document that the~~  
22 ~~revenues generated will be sufficient to ensure that the~~  
23 ~~facilities will be self-supporting.~~  
24           (f) Provide assurance that ~~annual~~ financial  
25 information ~~audit reports, and a separate project audit~~  
26 ~~prepared by an independent certified public accountant upon~~  
27 ~~project completion,~~ will be provided as required by ~~submitted~~  
28 ~~to the department.~~  
29           (g) Provide assurance that a project audit prepared by  
30 an independent certified public accountant upon project  
31

1 completion will be submitted to the department in support of a  
2 request for a grant.

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

9 (7) Eligible projects must be given priority according  
10 to the extent each project is intended to remove, mitigate, or  
11 prevent adverse effects on surface or ground water quality and  
12 public health. The relative costs of achieving environmental  
13 and public health benefits must be taken into consideration  
14 during the department's assignment of project priorities.  
15 ~~However, preference must be given to eligible projects that~~  
16 ~~protect the public health or are required by law to eliminate~~  
17 ~~sewage treatment facility discharges into specific bodies of~~  
18 ~~water.~~

19 (8)(a) If a local governmental agency becomes  
20 delinquent on its loan, the department shall so certify to the  
21 Comptroller who shall forward the amount delinquent to the  
22 department from any unobligated funds due to the local  
23 governmental agency under any revenue-sharing or tax-sharing  
24 fund established by the state, except as otherwise provided by  
25 the State Constitution. Certification of delinquency shall not  
26 limit the department from pursuing other remedies available  
27 for default on a loan. The department may impose a penalty for  
28 delinquent loan payments in an the amount not to exceed an  
29 interest rate of 18 6 percent per annum on ~~of~~ the amount due  
30 in addition to charging the cost to handle and process the  
31 debt. Penalty interest shall accrue on any amount due and

1 payable beginning on the 30th day following the date upon  
2 which payment is due.

3 (b) If a loan recipient, other than a local government  
4 agency, defaults under the terms of a loan, the department may  
5 pursue any remedy available to it at law or in equity. The  
6 department may impose a penalty in an amount not to exceed an  
7 interest rate of 18 percent per annum on any amount due in  
8 addition to charging the cost to handle and process the debt.  
9 Penalty interest accrues on any amount due and payable  
10 beginning on the 30th day following the date upon which the  
11 amount is due.

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

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

1 principal and interest payments of all loans held by the trust  
2 fund shall be deposited into this trust fund.

3 1. The department may obligate moneys available in the  
4 Wastewater Treatment and Stormwater Management Revolving Loan  
5 Trust Fund for payment of amounts payable under any service  
6 contract entered into by the department under s. 403.1837,  
7 subject to annual appropriation by the Legislature. Amounts on  
8 deposit in the trust fund in each fiscal year shall first be  
9 applied or allocated for the payment of amounts payable by the  
10 department under this subparagraph and appropriated each year  
11 by the Legislature before making or providing for other  
12 disbursement from the trust fund.

13 2. The State Board of Administration shall invest and  
14 reinvest moneys in the trust fund in accordance with ss.  
15 215.44-215.53. Costs and fees of the State Board of  
16 Administration for providing those investment services shall  
17 be deducted from the earnings accruing to the trust fund.

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

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



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

8       (10) The department may adopt rules to administer this  
9 ~~section. Because the Legislature has experienced revenue~~  
10 ~~shortfalls in recent years and has been unable to provide~~  
11 ~~enough funds to fully match available federal funds to help~~  
12 ~~capitalize the Wastewater Treatment and Stormwater Management~~  
13 ~~Revolving Loan Trust Fund, it is necessary for innovative~~  
14 ~~approaches to be considered to help capitalize the revolving~~  
15 ~~loan fund. The department shall evaluate potential innovative~~  
16 ~~approaches that can generate funds to match available federal~~  
17 ~~funds. The department may adopt approaches that will help~~  
18 ~~ensure the continuing viability of the Wastewater Treatment~~  
19 ~~and Stormwater Management Revolving Loan Trust Fund. The~~  
20 ~~department shall consider, among other possible alternatives,~~  
21 ~~the option of implementing by rule a program to allow local~~  
22 ~~governments to offer funds voluntarily to the state for use as~~  
23 ~~a match to available federal funds to capitalize the~~  
24 ~~Wastewater Treatment and Stormwater Management Revolving Loan~~  
25 ~~Trust Fund.~~

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

28       403.1837 Florida Water Pollution Control Financing  
29 Corporation.--

30       (1) The Florida Water Pollution Control Financing  
31 Corporation is created as a nonprofit public-benefit

1 corporation for the purpose of financing the costs of water  
2 pollution control projects and activities described in s.  
3 403.1835. The projects and activities described in that  
4 section are found to constitute a public governmental purpose,  
5 to be necessary for the health, safety, and welfare of all  
6 residents, and include legislatively approved fixed capital  
7 outlay projects. The fulfillment of the purposes of the  
8 corporation promotes the health, safety, and welfare of the  
9 people of the state and serves essential governmental  
10 functions and a paramount public purpose. The corporation  
11 shall terminate upon fulfillment of the purposes of this  
12 section.

13 (2) The corporation shall be governed by a board of  
14 directors consisting of the Governor's Budget Director, the  
15 Comptroller or the Comptroller's designee, the Treasurer or  
16 the Treasurer's designee, and the Secretary of Environmental  
17 Protection or the secretary's designee, until January 7, 2003,  
18 at which time the board shall include the Chief Financial  
19 Officer or the Chief Financial Officer's designee in place of  
20 the Treasurer and Comptroller. The executive director of the  
21 State Board of Administration shall be the chief executive  
22 officer of the corporation and shall direct and supervise the  
23 administrative affairs of the corporation and shall control,  
24 direct, and supervise operation of the corporation. The  
25 corporation shall have such other officers as may be  
26 determined by the board of directors.

27 (3) The corporation shall have all the powers of a  
28 corporate body under the laws of the state to the extent not  
29 inconsistent with or restricted by this section, including,  
30 but not limited to, the power to:  
31

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

3       (b) Sue and be sued.

4       (c) Adopt and use a common seal.

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

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

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

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

22       (h) Select, retain, and employ professionals,  
23 contractors, or agents, which may include the Division of Bond  
24 Finance of the State Board of Administration, as is necessary  
25 or convenient to enable or assist the corporation in carrying  
26 out its purposes and this section.

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

29       (4) The corporation may enter into one or more service  
30 contracts with the department under which the corporation  
31 shall provide services to the department in connection with

1 financing the functions, projects, and activities provided for  
2 in s. 403.1835. The department may enter into one or more  
3 service contracts with the corporation and provide for  
4 payments under those contracts pursuant to s. 403.1835(9),  
5 subject to annual appropriation by the Legislature. The  
6 proceeds from the service contracts may be used for the costs  
7 and expenses of administration of the corporation after  
8 payments as set forth in subsection (5). In compliance with s.  
9 287.0641 and other applicable provisions of law, the  
10 obligations of the department under the service contracts do  
11 not constitute a general obligation of the state or a pledge  
12 of the faith and credit or taxing power of the state, nor may  
13 the obligations be construed in any manner as an obligation of  
14 the State Board of Administration or entities for which it  
15 invests funds, or the department except as provided in this  
16 section as payable solely from amounts available under any  
17 service contract between the corporation and the department,  
18 subject to appropriation. In compliance with this subsection  
19 and s. 287.0582, service contracts must expressly include the  
20 following statement: "The State of Florida's performance and  
21 obligation to pay under this contract is contingent upon an  
22 annual appropriation by the Legislature."

23 (5) The corporation may issue and incur notes, bonds,  
24 certificates of indebtedness, or other obligations or  
25 evidences of indebtedness payable from and secured by amounts  
26 payable to the corporation by the department under a service  
27 contract entered into under subsection (4) for the purpose of  
28 appropriating funds for projects and activities provided for  
29 in subsection (1). The corporation may select a financing team  
30 and issue obligations through competitive bidding or  
31 negotiated contracts, whichever is most cost-effective. Any

1 such indebtedness of the corporation does not constitute a  
2 debt or obligation of the state or a pledge of the faith and  
3 credit or taxing power of the state, but is payable from and  
4 secured by payments made by the department under the service  
5 contract under subsection (4).

6 (6) The corporation is exempt from taxation and  
7 assessments of any nature whatsoever upon its income and any  
8 property, assets, or revenues acquired, received, or used in  
9 the furtherance of the purposes provided in ss. 403.1835 and  
10 403.1838. The obligations of the corporation incurred under  
11 subsection (5) and the interest and income on the obligations  
12 and all security agreements, letters of credit, liquidity  
13 facilities, or other obligations or instruments arising out  
14 of, entered into in connection with, or given to secure  
15 payment of the obligations are exempt from all taxation;  
16 however, the exemption does not apply to any tax imposed by  
17 chapter 220 on the interest, income, or profits on debt  
18 obligations owned by corporations.

19 (7) The corporation shall validate any bonds issued  
20 under this section, except refunding bonds which may be  
21 validated at the option of the corporation, by proceedings  
22 under chapter 75. The validation complaint must be filed only  
23 in the Circuit Court for Leon County. The notice required  
24 under s. 75.06 must be published in Leon County and the  
25 complaint and order of the circuit court shall be served only  
26 on the State Attorney for the Second Judicial Circuit.  
27 Sections 75.04(2) and 75.06(2) do not apply to a validation  
28 complaint filed as authorized in this subsection. The  
29 validation of the first bonds issued under this section may be  
30 appealed to the Supreme Court and the appeal shall be handled  
31 on an expedited basis.

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

5       (9) The corporation is not a special district for  
6 purposes of chapter 189 or a unit of local government for  
7 purposes of part III of chapter 218. The provisions of  
8 chapters 120 and 215, except the limitation on interest rates  
9 provided by s. 215.84, which applies to obligations of the  
10 corporation issued under this section, and part I of chapter  
11 287, except ss. 287.0582 and 287.0641, do not apply to this  
12 section, the corporation created in this section, the service  
13 contracts entered into under this section, or debt obligations  
14 issued by the corporation as provided in this section.

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

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

20       (12) The corporation may contract with the State Board  
21 of Administration to serve as trustee with respect to debt  
22 obligations issued by the corporation as provided by this  
23 section and to hold, administer, and invest proceeds of those  
24 debt obligations and other funds of the corporation and to  
25 perform other services required by the corporation. The State  
26 Board of Administration may perform these services and may  
27 contract with others to provide all or a part of those  
28 services and to recover the costs and expenses of providing  
29 those services.

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

